

INTENTIONAL TORTS

Battery — Intentional Torts — Assault and Battery — Intentional Torts — False Imprisonment (Non-Governmental) — Intentional Torts — Malicious Prosecution

“\$585,000 Verdict - Jury Finds Diner Patron was Battered by Security Guard Employed by Diner”

Verdict (P) \$585,000

Case Martin Eaton v. Frank Fiotos, John Fiotodimitrakis, Antonios Fiotodimitrakis, 541 Fioto Property Corp., Fioto Property Corp., 518 Metropolitan Ave. Corp., Kellogg's Diner, Bryan Vetell, Forte Security Group, Inc., and John Doe(s), No. 00189/2014

Court Kings Supreme

Judge Mark I. Partnow

Date 3/16/2020

Plaintiff**Attorney(s)**

Samuel O. Maduegbuna, Maduegbuna Cooper LLP, New York, NY
William W. Cowles, Maduegbuna Cooper LLP, New York, NY

Defense**Attorney(s)**

Emeka Nwokoro, Pillinger Miller Tarallo, LLP, Elmsford, NY (Frank Fiotos, John Fiotodimitrakis, Antonios Fiotodimitrakis, 541 Fioto Property Corp., Fioto Property Corp., 518 Metropolitan Ave. Corp., Kellogg's Diner)

None reported (Bryan Vetell, Forte Security Group Inc.)

Facts & Allegations

On Jan. 20, 2013, plaintiff Martin Eaton, 41, a writer, was a customer at Kellogg's Diner in Brooklyn. He attempted to pay for his meal with a credit card but was told the restaurant only accepted cash. Eaton told diner employees that he was going to get cash from a nearby ATM. Eaton alleged that Brian Vetell, a security guard at the diner, followed him to the street and told him to return to the diner. Eaton claimed he was then attacked by Vetell. Eaton also alleged that he was attacked by police officers who were eating in the diner but not aware of the ongoing incident. Eaton claimed psychological injuries plus injuries to his neck, back and shoulder.

Eaton sued Vetell along with various companies and individuals believed to be the owners of the diner. He also sued Forte Security Group, which was believed to be the company hired by the diner to provide security on the premises. The lawsuit included claims for assault, battery, false imprisonment and malicious prosecution as well as violation of his constitutional rights.

Per plaintiff's counsel, there was no evidence the diner had hired Forte.. Both Forte and Vetell never appeared in the action.

Eaton claimed that when he returned to the diner, Vetell grabbed him, pulled him inside the restaurant and slammed him into a counter. Eaton alleged that the guard then grabbed him by the neck and pinned him to the ground. Eaton said that other diner employees then locked the door and accused him of failing to pay his bill.

The employees also alerted police officers who were eating in the diner of the incident. Eaton claimed that while he was explaining to the officers what happened, they choked and assaulted him. Eaton was arrested and placed in jail for 18 hours. The criminal charges against him were dismissed three months later.

The officers were not sued as part of this case. However, Eaton maintained that Vetell started the entire chain of events, including his malicious prosecution, by attacking him without provocation. Eaton's counsel further noted that the diner employees failed to stop Vetell during the assault.

Plaintiff's counsel argued that Vetell was an employee of the diner, and that the diner and its owners were thus liable for the guard's actions. To support this argument, Eaton's counsel pointed out that Vetell was paid directly from the diner cash register each night. Plaintiff's counsel also noted that the diner's night manager told Vetell what to do during his shifts.

The defense maintained that Vetell was hired by a security company and was not an employee of the diner. The defense thus claimed it should not be liable for his actions. Defense counsel further argued that it should not be held responsible for the actions of the cops that arrived to the scene.

The court did not send the false imprisonment, assault or malicious prosecution claims or constitutional violation claim to the jury.

Injuries/Damages

The trial was bifurcated.

Eaton sustained soft tissue injuries to his neck, back and dominant shoulder. He had one chiropractic visit but otherwise did not seek treatment for these injuries.

Approximately five years later, Eaton began seeing a psychotherapist. He was diagnosed with post-traumatic stress disorder. He began a course of therapy that continued through the time of the trial. His treating therapist testified that his condition is permanent and that he will need this treatment for the foreseeable future, but for no more than a few years more.

Eaton no longer has any physical limitations but still struggles with fear, anger and anxiety due to his PTSD. He also suffers flashbacks and has trouble sleeping. He is now afraid of police, as well. As a result, he no longer socializes as much as he did before.

Eaton sought recovery of future medical expenses and damages for his past and future pain and suffering. He also initially sought punitive damages, but the court would not allow the jury to consider that claim.

Defense counsel retained an expert psychiatrist who examined the plaintiff. The doctor agreed that Eaton had PTSD but claimed that the plaintiff's symptoms were mild. The expert opined that Eaton would not need more than three additional years of psychotherapy.

Result

The jury found that Vetell was an employee or special of the diner, and that he committed battery.

The jury awarded Eaton \$585,000.

Plaintiff(s)

Martin Eaton

\$35,000 future medical cost for three years of psychotherapy

\$275,000 past pain and suffering

\$275,000 future pain and suffering

\$585,000 plaintiff's total award

Demand \$300,000

Offer \$200,000

Insurer(s)

Greater New York Mutual Insurance Co.

Trial Details

Trial Length: 4 Days

Jury Deliberations: Less than an hour on each phase of liability and damages deliberations reported

Jury Poll: 6-0

Jury Composition: 2 male, 4 female

Plaintiff

Expert(s)

John Bliss, psychotherapy, New York, NY (Samuel O. Maduegbuna, William W. Cowles) (treating therapist)

Defense

Expert(s)

William B. Head, Jr., psychiatry, Staten Island, NY (Emeka Nwokoro) (IME doctor)

Post-Trial

None reported

Editor's Note

This report is based on information that was provided by plaintiff's counsel.

Plaintiff(s)

Demographics

Martin Eaton

Age: 41 Years

Occupation: writer

Gender: Male

Married: No

Children: No