

## Concert Venue and Promoter Liability for Violent Acts and Injuries at Concerts

By Brian D. Caplan

Contrary to what one might expect, there is a paucity of case law in jurisdictions around the United States related to venue and promoter liability for acts of violence that occur at concerts. However, with the horrific acts of terror at concerts in Las Vegas, Paris, and Manchester, venue and promoter liability issues have received greater attention than ever before. A recent Florida state court decision in the case of *The Estate of Christina Grimmie, et al. v. AEG Live et al.*, denying motions to dismiss a complaint brought by the Estate of Christina Grimmie against the concert venue and promoter of a concert in Orlando, Florida where Grimmie, a 22-year-old singer and performer, was tragically killed by an armed assailant, provides useful illustration and guidance on the relevant inquiries at issue.



Brian D. Caplan



For example, in *Greenville Mem'l Auditorium v. Martin*,<sup>4</sup> the South Carolina Supreme court upheld a jury determination that injuries sustained by a rock concert patron struck by a glass bottle were foreseeable. The venue and its employees were found negligent in adequately securing and maintaining the concert venue where the rock group Loverboy was in concert, 14 security guards were provided to control a crowd of 6,000 persons, and patrons were openly drinking out of liquor bottles and smoking marijuana.<sup>5</sup> Where violent acts are totally unforeseeable, however, courts have been reluctant to find liability on behalf of venue owners.<sup>6</sup>

Accordingly, the owner of a 40-table diner would arguably not be responsible for a violent criminal act taking place on its premises by a stranger when it had no reasonable expectation that such conduct would likely occur. The foreseeability of a particular criminal act is to be determined in light of all the circumstances rather than by a rigid application of a mechanical "prior similar" rule. If a property owner takes affirmative steps to safeguard against weapons entering its establishment, such as through the use of metal detectors or body pat downs, it then undertakes a duty to protect and safeguard its patrons against violent acts (such as using banned weapons) on the premises. Once the duty is undertaken it cannot be carried out in a negligent manner without potential liability attaching to such conduct. The fact that a party in control of certain premises undertook certain precautionary measures may be evidence that an owner-defendant had actual or constructive knowledge of a dangerous condition.<sup>7</sup> Concert venues that have a history of violent acts taking place at their premises are put on notice of the risk of such future acts taking place and therefore must undertake reasonable and adequate precautions to ensure the safety of its patrons.<sup>8</sup>

In *Grimmie*, the plaintiffs alleged that the Orlando Philharmonic Orchestra, as the owner of The Plaza Live

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All questions of negligence begin with the question of whether a duty is owed from one party to another. However, venue liability and promoter liability require distinct analyses.

### Venue Liability

As the owner of real property, the owner of a concert venue generally has a common law duty to keep the property safe with respect to invitees on his or her or its venue. Accordingly, the owner of a premises with the right to control access has a duty to exercise due care to maintain the premises in a reasonably safe condition commensurate with the activities conducted thereon, to use every reasonable effort to maintain order among the patrons, employees, or those who come upon the premises, and to protect others from injury.<sup>1</sup> This duty is not, however, absolute, and is subject to a test of reasonable foreseeability.<sup>2</sup> Each case is fact specific.<sup>3</sup>

Theater, owed a duty to Christina Grimmie to use reasonable care and was obligated to keep the premises reasonably safe for her, the other performers, and the attendees at her concert. The plaintiffs further alleged that the Orlando Philharmonic Orchestra had the right and authority to manage and control the event and assumed a duty to protect Christina when its employees or agents performed bag checks of the attendees. Plaintiffs also noted that:

1. There was a “No Guns” sign in plain view where patrons entered the venue;
2. the venue conducted a superficial bag check for patrons attending the concert without using metal detectors, wands or body pat downs; and
3. Grimmie’s assailant was permitted to enter the venue with two hand guns and a hunting knife prior to the fatal attack.

In finding that the plaintiffs adequately alleged a factual basis for a finding of liability against the venue, the court noted:

While a property owner is not required to protect an invitee from every conceivable risk, the property owner does owe a duty to protect against risks which are reasonably foreseeable. However, the question of foreseeability is for the trier of fact. *Hall v. Billy Jack’s Inc.*, 458 So. 2d 760 (Fla. 1984); see also *Paterson v. Deeb*, 472 So. 2d @ 1218 (Where reasonable persons might differ, the ultimate determination of foreseeability and legal cause are questions for the jury.) Furthermore, “whether the specific injury was genuinely foreseeable or merely an improbable freak—then the resolution of the issue must be left to the fact-finder.” *McCain v. Florida Power Corp.*, 593 So. 2d 500-03 (Fla. 1992). Lastly, where a party specifically undertakes to provide security, liability for breach of duty can be established without any evidence of prior offenses at that location. *Burns Intern. Sec. Services Inc. of Florida v. Philadelphia Indem. Ins. Co.*, 899 So. 2d 361, 364-65 (Fla. 4th DCA 2005). Because there remain unresolved issues of fact, Count Vi [the wrongful death claim] survives the motion to dismiss.

### Promoter Liability

The liability of concert promoters for acts of violence that occur at their concerts is analyzed under a different framework. Powerful concert promoters have contracts with many concert venues that give them the ability, if they so choose, to determine what security measures

are undertaken by the owners of the venues. With such contracts in place, a strong argument can be made that a promoter legally stands in the same shoes as the venue owner for liability purposes, as the promoter has joint control over access to and security at a venue, giving rise to a duty to use reasonable care to protect concert attendees and performing artists from foreseeable harm. Promoters also often contractually agree directly with touring performers to provide and be responsible for the artists’ security. In such situations, where an injury occurs at a venue, an artist would also have a direct breach of contract action against the promoter.

As a rule, performing artists have contractual privity with concert promoters and no such privity with the owners of concert venues. Accordingly, it would be reasonable for such artists, who perform in various venues and states while touring, to the benefit of concert promoters’ bottom line, to look to their promoters for purposes of providing a safe workplace.

In *Grimmie*, the court found that the plaintiffs had adequately pled a special relationship between an artist and a promoter, AEG Live, imposing a duty upon the promoter to exercise reasonable care to protect the artist from foreseeable risks of harm. The *Grimmie* complaint alleged:

52. As part of Defendant AEG Live’s business, AEG Live identifies venues for the artists with whom it contracts, prices the event or tour, and arranges for financing and advertising for the event or tour.
53. As part of Defendant AEG Live’s business, AEG Live enters into contracts with venues and is responsible for assuring that the facilities are adequate for the health and safety of the artists, their equipment, and other personnel involved in the event or tour.
54. As part of Defendant AEG Live’s business, AEG Live is responsible for managing and controlling all tour events, including for assuring the safety of artists and other persons attending concerts.
55. In connection with the Spring/Summer 2016 Tour, neither Grimmie nor any other of the artists had contractual privity with the venues. Rather, Grimmie and the other artists relied on Defendant AEG Live to enter into appropriate contracts with the venues and to make all arrangements necessary for the concerts, including security arrangements.

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57. It is standard practice that, when a promoter engages with an artist, the promoter specifically undertakes to be responsible for the security of the tour’s performers during the tour. \*\*\*

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61. As a paid performer contracted by AEG Live to perform on the Spring/Summer 2016 Tour, Grimmie had a reasonable basis to believe that AEG Live would undertake to be responsible for her security at the venues where she performed.

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99. \*\*\* By virtue of its role in staging the concert, inviting Grimmie to participate in the concert being promoted by AEG Live, and inviting the public to attend for a price, AEG Live was under an obligation to keep the premises in a reasonably safe condition for her, the other artists participating in the concert, and the attendees of the concert.

The court in its decision cited several of these factors in rejecting AEG Live's motion to dismiss.

It is not surprising that courts in other jurisdictions have recognized that event promoters, such as AEG Live, can be held liable for injuries resulting from their failure to exercise reasonable care in the manner in which an event is conducted and the manner in which security is arranged.<sup>9</sup>

## Conclusion

Due to the unfortunate uptick of violence at music concerts and entertainment events, and the resulting casualties to concertgoers and performers alike, the issues of venue and promoter liability will likely become the focus of increased judicial scrutiny. As violent acts are perpetrated, it will become more difficult for venues and promoters to disclaim liability by maintaining that such senseless acts of violence are not foreseeable. In a climate where a 22-year-old performer is gunned down after a show and hundreds are held under siege at a music festival, the reality is that concert safety is more precarious than ever. Venues and promoters must adequately protect their performers and attendees with proper safety measures or risk facing significant liability under negligence and breach of contract theories.

## Endnotes

1. *Stevens v. Jefferson*, 436 So.2d 33, 34 (Fla. 1983); *Maheswari v. City of New York*, 2 N.Y.3d 288, 294, 778 N.Y.S.2d 442, 445 (2004); *Iacono v. MSG Holdings, L.P.*, 801 N.Y.S.2d 778 (Sup. Ct. N.Y. 2005).
2. *Stevens*, at 34.
3. *Id.*
4. *Greenville Mem'l Auditorium v. Martin*, 301 S.C. 242, 391 S.E.2d 546 (Sup. Ct. S.C. 1990).
5. See also *Rotz v. City of New York*, 143 A.D.2d 301 (1st Dept. 1988) (summary judgment denied to the City of New York in its capacity as the owner and operator of Central Park in connection with a free Diana Ross concert where injured attendees claimed that a stampede could have been averted with reasonable crowd control methods).

6. See *Reid v. Augusta-Richmond Cty. Coliseum Auth.*, 203 Ga. App. 235, 416 S.E.2d 776 (Ga. Ct. App. 1992) (stadium owner not liable for shooting in parking lot); *West v. SMG*, 318 S.W.3d 430 (Tex. App. 2010) (concert venue not liable for injuries caused to concert attendee by bottle thrown into audience by band member); *Djurkovic v. Three Goodfellows, Inc.*, 767 N.Y.S.2d 108 (1st Dept. 2003) (absent evidence of prior criminal activity at that club or expert testimony in the field of security as to any deficiencies in security provided by defendant, the club had no liability for an assault upon a club patron with a box cutter); *Villa v. Paradise Theater Prods., Inc.*, 85 A.D.3d 402 (1st Dept. 2011) (concert venue had no liability for unprovoked assault during rap concert where adequate security measures were taken, i.e., provision of security guards, metal detectors, handheld metal-detecting wands, police presence, and mandatory coat check).
7. *Lipkin v. Norwegian Cruise Line Ltd.*, 93 F. Supp. 3d 1311, 1323 (S.D. Fla. 2015).
8. See *Jacqueline S. v. City of New York*, 81 N.Y.2d 288 (N.Y. 1993) (In the context of an action alleging this defendant landlord's breach of the common law duty to provide adequate security, the question of whether knowledge of criminal activities occurring within a unified public housing complex can be sufficient to make injury to a person in one of the buildings foreseeable depends upon the context of prior criminal conduct at the premises).
9. See, e.g., *Gray v. Derderian*, 389 F. Supp. 2d 308, 313-16 (D.R.I. 2005); *Massey v. Jim Crockett Promotions, Inc.*, 184 W. Va. 441, 446-47, 400 S.E.2d 876, 881-82 (W.Va. 1990); *Pierce v. Murnick*, 265 N.C. 707, 709, 145 S.E.2d 11, 12 (N.C. 1965); *Jones v. Live Nation Entm't, Inc.*, 63 N.E.3d 959, 970-73 (Ill. App. 2016); *Bowes v. Cincinnati Riverfront Coliseum*, 12 Ohio App. 3d 12, 21-22, 465 N.E.2d 904, 914-15 (Ohio Ct. App. 1983); *McLaughlin v. Home Indem. Ins. Co.*, 361 So.2d 1227 (La. Ct. App. 1978), writ denied *sub nom*, 363 So.2d 922 (La. 1978); *Lawson v. Clawson*, 177 Md. 333, 340-341 (Md. 1939).

**Brian D. Caplan has more than 33 years' experience litigating a broad range of entertainment, intellectual property and commercial matters. He is a partner in the New York City law firm of Reitler Kailas & Rosenblatt LLC. His clients have included recording artists and producers, publishing companies, record labels, personal managers, business management, accounting firms, professional athletes, and dealers in fine art. In addition to contractual disputes, defamation cases and the prosecution and defense of copyright and trademark infringement actions, Brian has represented clients in a broad range of disputes relating to partnerships and closely held corporations, as well as employment matters.**

**Brian is frequently called upon to speak at seminars conducted in the United States and abroad and at select universities with respect to intellectual property matters and the dynamics of the entertainment industry. His clients include the Estate of George Gershwin, Cirque Du Soleil, the Lumineers, the Allman Brothers Band and Victor Willis, the original lead singer of the Village People. Brian represented Mr. Willis in a precedent-setting copyright termination case involving the composition "YMCA" and 22 other songs in which Mr. Willis terminated various copyright grants from the late 1970s.**