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Selmani v. City of New York

Supreme Court, Appellate Division, Second Department, New York - April 23, 2014 - N.Y.S.2d - 2014 N.Y. Slip Op. 02764

Restaurant patrons brought action against city, city fire department, and two individual firefighters, seeking to recover damages for personal injuries sustained when firefighters allegedly assaulted them. The Supreme Court, Kings County, granted summary judgment in favor of city and city fire department. Patrons appealed.

The Supreme Court, Appellate Division, held that:

- City and fire department established their prima facie entitlement to judgment as matter of law on issue of vicarious liability for alleged assault, but
- City and fire department failed to establish prima facie entitlement to judgment as matter of law on claims for negligent hiring, supervision, training, and retention.

City and city fire department established their prima facie entitlement to judgment as matter of law on issue of vicarious liability for two firefighters' alleged assault of restaurant patrons by demonstrating that alleged tortious conduct of two firefighters was not within scope of their employment.

City and city fire department, moving for summary judgment on restaurant patrons' claims for negligent hiring, supervision, training, and retention based on two firefighters' alleged assault of patrons, failed to establish prima facie entitlement to judgment as matter of law, since city and fire department failed to submit evidence that they did not know or have reason to know of firefighters' alleged propensity for assaultive conduct, or that any such negligence on part of city or fire department was proximate cause of patrons' injuries.

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