[2] EMPIRE STATE BUILDING, INC. and EMPIRE STATE BUILDING COMPANY, LLC., Plaintiffs, -against- J. RAY CORLISS, IV a/k/a JEB CORLISS and JOHN DOES 1-10, Defendants,**

104674/2007

SUPREME COURT OF NEW YORK, NEW YORK COUNTY

2010 N.Y. Misc. LEXIS 2104; 2010 NY Slip Op 31460(U)

June 9, 2010, Decided

NOTICE: THIS OPINION IS UNCORRECTED AND WILL NOT BE PUBLISHED IN THE PRINTED OFFICIAL REPORTS.

PRIOR HISTORY: People v. Corliss, 51 A.D.3d 79, 853 N.Y.S.2d 45, 2008 N.Y. App. Div. LEXIS 1821 (N.Y. App. Div. 1st Dep't, 2008)

JUDGES: [*1] JANE S. SOLOMON, J.S.C.

OPINION BY: JANE S. SOLOMON

OPINION

DECISION, ORDER AMD PARTIAL JUDGMENT

SOLOMON, J.:

Plaintiffs Empire State Building, Inc. and Empire State Building Company, LLC (together, ESB) sue defendants J. Ray Corliss, IV, aka Jab Corliss (Corliss), and John Does 1-10 for damages and for a permanent injunction barring Corliss from the Empire State Building. Corliss counterclaims for defamation, false imprisonment and intentional infliction of emotional distress. ESB now moves for partial summary judgment as to liability and, separately, moves to amend its "answer to counterclaims" and for summary judgment dismissing the counterclaims. The motions are decided as follows.

[**3] FACTS

Corliss is a BASE-jumper [1] and at the time of the events surrounding this action was the host of "Stunt Junkies," a television show on the Discovery Channel.

1 BASE is an acronym that stands for Building, Antenna, Span and Earth, which represent the four surfaces from which BASE-jumpers parachute-jump.

Around 4:30 p.m. on Friday, April 27, 2006, Corliss entered the Empire State Building and purchased a ticket to the observation deck (the Observatory) on the 86th floor. Corliss was dressed in a "fat suit" over which he wore [*2] regular street clothing. He also sported a false mustache and a face mask. When he reached the 86th floor, Corliss removed his fat suit in a restroom, revealing a black jumpsuit and a parachute, and put on a helmet outfitted with a video camera.

Corliss left the restroom and sprinted towards the edge of the building which was protected by a three foot retaining wall and topped by a ten foot security fence, intending to jump from the building, deploy his parachute, land on the busy street below, hail a taxi and drive away (Motion, Ex. B), he climbed the wall and

fence. Security personnel prevented the jump by grabbing him through the fence. Police arrived, handcuffed him to the fence, removed his parachute for safety reasons and [**4] arrested him. In order to remove Corliss safely from the parapet, ESB shut down the Observatory, removed all visitors, dismantled the security fence, secured Corliss to the building side of the fence, and reassembled the fence. Corliss was found guilty of reckless endangerment in the second degree under New York Penal Law § 120.20.

DISCUSSION

A. *Trespass*:

ESB argues that Corliss committed a trespass when he climbed over the security fence in direct contravention [*3] of posted warning signs that state "CAUTION Throwing objects from the Observatory or climbing fence is dangerous, unlawful and prohibited; low fence, do not lift children" (Affidavit of James T. Connors, General Manager for Empire State Building, Inc., SI 8). Corliss counters that the ticket he bought does not state that he could not jump from the building, and that the warning sign was not noticeable or conspicuously placed and he did not know he was prohibited from climbing the fence.

"A claim for trespass requires an affirmative act constituting or resulting in an intentional intrusion upon plaintiff's property" (Congregation *B'nai Jehuda v. Hiyee Realty Corp.*, 35 AD3d 311, 312, 827 N.Y.S.2d 42 [1st Dept. 2006]). Corliss's contention that the ticket granted unfettered access to the entirety of the [**5] 86th floor is belied by the very existence of a three foot retaining wall topped by a ten foot security fence. That the caution sign was allegedly not in his immediate view is of no moment. Moreover, his conduct evinces his belief that his plan was not likely to be acceptable.

B. *Intentional Interference with Business Relations*:

ESB argues that it is undisputed that visitors at the Observatory when Corliss [*4] attempted his jump had to be evacuated, no new tickets were sold during the evacuation and no ticket holder could enter until he was removed. ESB claims that services were stopped for approximately one hour. Corliss counters that ESB has not submitted sufficient evidence that it closed down operations or was harmed.

"To prevail on a claim for tortious interference with business relations in New York, a party must prove 1) that it had a business relationship with a third party; 2) that the defendant knew of that relationship and intentionally interfered with it; 3) that the defendant acted solely out of malice or used improper or illegal means that amounted to a crime or independent tort; and 4) that the defendant's interference caused injury to the relationship with the third party" (*Amaranth LLC v. J. P. Morgan Chase & Co.*, 71 AD3d 40, 47, 888 N.Y.S.2d 489 [1st Dept. 2009]).

The Affidavit of James T. Connors, offered by ESB in [**6] support of their motion, does not entitle ESB to summary judgment as to liability on this claim. This is because the affidavit does not conclusively establish that Corliss intentionally interfered with ESB's business relationship with its customers. It must prove this element [*5] at trial.

C. *Permanent Injunction*:

ESB seeks an injunction barring Corliss from the Empire State Building to deter him from attempting another jump. Indeed, at his criminal trial, Corliss testified that jumping from the Empire State Building had been his dream and that he had been training to do so ever since he was a teenager (Corliss Transcript, attached as Ex. D to Tannenbaum Affidavit, pg. 1365-66). Corliss also said "I'm not doing anything wrong. And I don't believe there's anything wrong with what I do. Some people choose to use elevator systems, stairwells. I use the parachute system" (Id., at 1360) and "I do believe that a person should have a right to BASE jump" (Id., at 1467). ESB contends that this is a threat of continuing trespass, and could cause irreparable injury.

"The threat of continuing trespass entitles a property owner to injunctive relief where irreparable injury may result" (*Exchange Bakery & Restaurant v. Rifkin*, 245 NY 260, 269, 157 N.E. 130 [1927]; *Long Island Gynecological Services, P.C. v. Murphy*, 298 AD2d 504, 748 N.Y.S.2d 776 [**7] [2nd Dept. 2002]).

As the Appellate Division stated in reversing the criminal court's decision to dismiss the Indictment against Corliss, "[c]limbing over the security [*6] fence, to a position where, according to one security guard, he appeared ready to jump off the building, in itself put many people at risk .... Additionally, the actions defendant took created a risk of serious physical injury to building security staff . . . and even bystanders in the

vicinity were endangered by the ensuing struggle" (*People v. Corliss*, 51 AD3d 79, 84, 853 N.Y.S.2d 45 [1st Dept. 2008]). Under the circumstances, ESB is entitled to the permanent injunction it seeks.

D. Corliss's Counterclaims:

In his first counterclaim, Corliss asserts that the allegations in ESB's complaint that his actions were "illegal" are false, malicious and defamatory. However, an allegation in a complaint is tantamount to a statement made in open court in the course of a judicial proceeding, and is absolutely privileged if "by any view or under any circumstances, it may be considered pertinent to the litigation" (*Martirano v. Frost*, 25 NY2d 505, 507, 255 N.E.2d 693, 307 N.Y.S.2d 425 [1969]). In any event, his conviction defeats this claim.

In his second counterclaim, Corliss alleges that he was falsely imprisoned by ESB representatives or employees when he [**8] was handcuffed to the security fence. The evidence shows that the police used the handcuffs; [*7] nevertheless, assuming that his argument extends to ESB's security personnel, their detention of him in order to prevent him from jumping and endangering the public, was justified (*Rivera v. City of New York*, 40 AD3d 334, 341, 836 N.Y.S.2d 108 [1st Dept. 2007]; *Marrero v. City of New York*, 33 AD3d 556, 824 N.Y.S.2d 228 [1st Dept. 2006]).

Corliss's third counterclaim is for intentional infliction of emotional distress. ESB correctly argues that Corliss has not sufficiently pleaded facts to support his counterclaim. The first element of the tort requires that ESB's actions must have been extreme and outrageous (*see, e.g., Howell v. New York Post Co., Inc.*, 81 N.Y.2d 115, 121, 612 N.E.2d 699, 596 N.Y.S.2d 350 [1993]). Preventing an individual from jumping off of the 86th floor of the Empire State Building is neither extreme nor outrageous.

Accordingly, ESB's motion for summary judgment dismissing Corliss's counterclaims is granted.

All remaining contentions have been considered and have been found either to be moot or without merit.

In accordance with the foregoing, it hereby is

ORDERED that Plaintiffs' motion for partial summary judgment as to liability is granted on the first and third claims in the complaint, and is otherwise denied; and it further is

[**9] ORDERED [*8] and ADJUDGED that defendant is permanently enjoined and restrained from entering in or upon property of plaintiffs in New York, New York, known as the Empire State Building; and it further is

ORDERED that Plaintiffs' motion for summary judgment dismissing defendant's counterclaims is granted; and it further is

ORDERED that counsel shall appear for a preliminary conference in Part 55, 60 Centre Street, Room 432, New York, NY, on July 19, 2010 at noon to chart discovery if plaintiff intends to press the second claim in its complaint.

Dated: June 9, 2010

Enter:

/s/ Jane S. Solomon

J.S.C.

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