IN THE DISTRICT COUR OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

RANDY STINE and TAMARA STINE, Individually and as husband and wife	)	
Plaintiffs,	)	
vs.	)	Case Number: CJ-2011-6753
BILL VEAZEY'S PARTY STORE, INC., AND OKLAHOMA CORPORATION, and TONY HERIFORD,	)	
Defendants.	)	

ORDER AND JUDGMENT AS TO NON-JURY TRIAL IN THE ABOVE CAUSE

The above cause was tried to the Court, without a jury, on October 28 and 29, A.D. 2013, and November 1, A.D. 2013.

On August 21, A.D. 2010, Plaintiff Randy Stine suffered personal injuries while attending a "high roller" or V.I.P. party at the Firelake Grand Casino ("Firelake" or "the Casino"), which was owned and operated by the Citizen Potawatomi Nation Indian tribe at Shawnee, Oklahoma.[1] Firelake is not a party to this case because the Oklahoma Supreme Court has held that in such cases Indian tribes may be sued only in tribal courts.[2] Bill Veazey's Party Store, Inc. (Veazey's), an Oklahoma Corporation is the Defendant herein and rents out, delivers certain party materials and decorations.[3] Plaintiffs assert that the Casino contracted with Veazey's to set up certain party decorations that the Casino would use during a V.I.P event. Two of the aforesaid party decorations provided by Veazey's were "Tiki Totem" displays which were used as the "beginning" and "end" of an entryway corridor leading into the party. The Tiki had two columns on top of which an arch was placed. The display had been elevated by placing plastic egg crates beneath each column. Plaintiffs

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[1] Mrs. Tamara Stine, Plaintiff Randy Stine's wife, has joined her husband as Plaintiff herein and seeks recovery for her loss of consortium.

[2] *Sheffer v. Buffalo Run Casino*, 213 Ok 77, _____P.3rd _____.

[3] Mr. Tony Heriford was originally named a party Defendant. However, well before trial Plaintiffs voluntarily dismissed Mr. Heriford from this case without prejudice on February 22, 2013.

assert that they were standing near or under the second or "end" Tiki display which ultimately fell on Mr. Stine causing him injuries. Although Veazey's contends that evidence shows that Tony Heriford, a very inebriated individual, intentionally shook or moved one of the Tiki's two supporting columns causing the arch to fall causing Plantiffs' injuries, Plaintiffs contend that Veazey's was negligent in the way its employees assembled or directed the assembly of the Tiki display and that this negligence was the cause of Mr. Stine's injuries.

In defense, Veazey's denies that it set up the Tiki display at issue but nevertheless contend that there is no evidence of negligence by Veazey's in any set-up. At the same time Veazey's contends that even assuming that the said display was set-up negligently, Veazey's negligence was not the cause of Mr. Stine's injuries. Rather, Veazey's contends that the aforementioned actions of Mr. Heriford was the proximate cause of Mr. Stine's injuries and further asserts that had Mr. Heriford not acted as he did, the Tiki display would not have fallen and Mr. Stine would not have been injured.

I. FINDINGS OF FACT

The case was submitted for decision by this Court after all the evidence was heard by the Court and after the parties filed their findings of fact and conclusions of law. Accordingly, this Court FINDS and CONCLUDES as follows:

1. Plaintiffs Randy and Tamara Stine are husband and wife, respectively, and are citizens of the State of Oklahoma.

2. Defendant Bill Veazey's Party Store, Inc. is a corporation formed and existing under the laws of the State of Oklahoma. Veazey's principal place of business is located in Oklahoma City, Oklahoma.

3. Ms. Michelle O"Bright and Ms. Debbie Cook were the Casino employees coordinating the V.I.P. event.[4] Ms. O'Bright, the Casino events manager contacted Veazey's to rent the decorations Firelake would use for the event and selected the decorations from pictures e-mailed by Veazey's. Veazey's staff inquired as to the purpose of the decorations, but at the time Ms. O'Bright did not know how the

[4] Trial Tr. Vol. II, 314;16-215 (Oct. 29, 2013).

displays would be used or where they would be placed.[5] During the rental negotiations, there was no discussion regarding display set-up – Ms. O'Bright assumed Veazey's would set-up the displays as part of the job.[6] The Casino never contracted for Veazey's to set up the rented decorations, but only to deliver them.[7] In fact, Veazey's treats set-ups as a separate service that carries an additional fee and had such arrangements been made Veazey's invoice would have included a set-up charge which it does not.[8] The agreement did not include any terms under which Veazey's agreed to set up any of the decorations delivered. Veazey's policy is to charge a set-up fee if a set-up is contracted for and done,[9] but here the Casino was not charged for a set-up.[10]

4. Veazey's employees Mr. Steve Houston and Mr. John Brooks delivered the requested decorations to Firelake at approximately 10:00 a.m. on August 21, 2010. Among those delivered were two "Tiki Totem" or "Mayan god" displays. The Tiki Totem displays were similar in construction, differing very little in appearance. Both were composed of three parts – two columns and a top (an arch) that sat upon the two columns.

5. The Casino decided to use the two Tiki displays as the "beginning"(Tiki I) and "end"(Tiki II) of an entrance corridor leading to the V.I.P. party's registration table inside the Casino's event center.

6. Mr. Houston assisted Firelake employees with the assembly of the first "beginning" Tiki display (Tiki I), which was assembled in front of the doorway to the casino's event center where a luau was to take place. He testified that he and Mr. Brooks were directed by the Casino as to where and how the Tiki was set up which is what they did.[11] He further testified that his job description is to do what the

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[5] *Id* at 132:16-133:15; 144:13-20.

[6] *Id.* at 37:10-25.

[7] *Id* at 145:9-15.

[8] *Id.* at 145:16-147:3; Invoice & Route Sheets (Def.'s Trial Exh. 1). Ms. O'Bright conceded that the delivery invoice was the only paperwork she had regarding the Casino's rental agreement with Veazey's. Trial Tr. Vol. I (Exh. 1) at 12:9-13.

[9] Vol. I: 146, 147.

[10] *Id.* at 149:3-6.

[11] Houston Dep. 57

customer asks me to do.[12] During that assembling, the Casino produced plastic milk crates and directed that the Tiki's columns be set on the plastic crates. Mr. Houston voiced concerns about using the milk crates which he said would make the display unstable. The Casino did not heed his concerns.

7. Neither Mr. Houston nor any other Veazey's employee assembled or assisted with the assembly of Tiki II which served as the "end" of the entrance corridor. Instead, when the decorations were first delivered, Veazey's employees carried Tiki II into the Casino and set it off the side along the wall. When the Veazey's employees left the Casino, the second Tiki (II) remained in that position.

8. When the V.I.P. party began the evening of August 21, 2010, Tiki II had been assembled and (like Tiki I) its columns were set up on top of milk crates. Tiki II was positioned as the "end" of the party's entrance corridor, and Tiki I was positioned as the "beginning."

9. Plaintiffs Randy and Tamara Stine, husband and wife, attended the V.I.P. party at the casino the night of August 21, 2010. After playing on slot machines, the Stines entered the corridor to attend the party.

10. While the Stines were standing near Tiki II in the corridor, Mr. Heriford came upon Tiki II's columns and shook it. When Heriford shook the column, the top part of Tiki II – the arch – fell on Mr. Stine. The arch weighed over 22 pounds.

11. Mr. Heriford was admittedly intoxicated (which he admitted)[13] at the time of this incident and had been drinking beer with a group of friends approximately 6-7 hours before arriving at the Casino.

12. Mr. Heriford intentionally shook Tiki II's column, causing the arch to fall on Mr. Stine. Had he not shaken Tiki II's column , the display would not have fallen on Mr. Stine.[14]

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[12] *Id* at 15.

[13] Vol. II, 60:18-20.

[14] Plaintiffs, in their Trial Brief (p. 7) argue that (citing Tr. I, 30) "Notwithstanding testimony from O'Bright that the patron (Mr. Heriford) both bumped and shook the leg (of the Tiki), the video evidence shows no such action." On the contrary, this Court has viewed the video which is unclear as to what actually happened. In the same Brief and page, Plaintiffs further state that "The photographer (Thomas Dale Hibben) at the event testified that after bumping the pole, the patron may have wiggled it. Tr. I, 54." On the contrary, Mr. Hibben testified that Mr. Heriford "put both hands on" the

13. To its representatives knowledge, Veazey's had never experienced any situation where one of the decorations injured another person. Likewise, before this incident, Veazey's had never had any problems with their Tiki displays falling over.

14. Veazey's, through its representaives, did not expect that an intoxicated Casino patron would come upon and intentionally shake or move one of the Tiki's columns.

15. A reasonable person in Veazey's position would not have expected an intoxicated Casino patron to come upon and intentionally shake or move one of Tiki II's columns.

16. Mr. Stine suffered injury when the Tiki display's 22 1/2-pound arch fell on him.

17. There was a conflict of testimony as to what part, if any, Veazey's employees played in setting up the displays. Firelake never contacted or contracted with Veazey's to set-up the rented decorations, but only to deliver them.[15] Ms. O'Bright assumed that Veazey's would set-up the decorations as part of the job.[16] Ms. O'Bright testified that when Mr. Houston and Mr. Brooks left the second Tiki (the one by which Plaintiff was injured) had been placed on egg crates to make it taller.[17] Ms. O'Bright testified that Veazey's assembled the second Tiki (by which Plaintiff was injured).[18] Yet, Ms. O'Bright had to be reminded on cross-examination that in her Deposition she testified to the very opposite saying that when Messrs. Houston and Brooks left, Tiki Totem II was in fact not on egg crates, thus clearly indicating that Casino employees, not Veazey's, placed the display on egg crates.[19] Mr. Houston testified he did not set up the second Tiki Totem or even witness its being set up.[20] In fact, he testified that when the Veazey's employees left Firelake

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Tiki's column "and kind of gave it a wiggle or a shake" Tr. I, 54:7-12. It was, Mr. Hibben said, "kind of him rocking it." Tr. I, 55:1-2.

[15] *Id.* at 145:9-15.

[16] *Id.* at 37:10-25.

[17] Vol. I, Trial Tr. at 16;6, 7; 41:9.

[18] *Id.* at 16:6-8.

[19] *Id.* at 41:4-25; 42:1-10.

[20] *Id.* at 40;24-41;12; 49:13-18; 84:7-85:5.

Tiki II had been placed along a nearby wall and had not been set up yet.[21] Moreover, Mr. Houston consistently warned Ms. O'Bright that placing the Tiki on egg crates made it unstable.[22] Yet, even though she agreed,[23] she testified that the Tiki was set on egg crates at her direction.[24] If Ms. O'Bright herself thought the Tiki display was unstable or unsafe, she had the authority to take it down.[25]

While Ms. O'Bright's testimony is inconsistent and contradictory, Mr. Houston's testimony is consistent with no contradictions. Ms. O'Bright had an interest in protecting herself and her employer Firelake Casino. Contrary to Ms. O'Bright, Deborah Cook of the Casino testified that she had no involvement in setting up Tiki II, was not present when it was set-up and never saw Veazey's set it up.[26] Moreover, she had concerns about the Tiki not being stable[27] which was Ms. O'Bright's job.[28] On the other hand, Mr. Houston consistently voiced concern about setting the Tiki on egg crates because of his belief that it would make the Tiki unstable[29] and denied setting up the second Tiki II. Mr. Houston had no motive to conceal or alter the truth. Moreover, at the time of his video Deposition (which was admitted into evidence), Mr. Houston was no longer a Veazey employee having been, he said, unjustly fired by Veazey's. Had Mr. Houston had any kind of motive to alter the truth, it would not have been in a way favorable to Veazey's defense. Thus, the Court FINDS that notwithstanding his record,[30] Mr. Houston's testimony is more credible than that of Ms. O'Bright.

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[21] *Id.* at 84.

[22] *Id.* at 47:22-25; 48:12-14; 49:3-8;51:5-16;55:12-20;62:19-24;66:83:4-9.

[23] *Id.* at 20:20-22.

[24] *Id.* at 43;3, 4.

[25] *Id.* at 221:16-21.

[26] Vol. 2: 215, 216.

[27] *Id.* at 216:22-25; 217

[28] *Id.* at 222.

[29] *Houston Dep.* At 47:15-48.2; 83:4-12.

[30] Mr. Houston, well over ten years prior to his testimony on January 22, 2013, had criminal convictions which by virtue of 12 O.S. §2609B are not admissible unless the Court determines that they should be. The Court determines that, based on Ms. O'Bright's contradictory and misleading testimony as opposed to Mr. Houston's consistent testimony, they are not probative as to this case. As to any convictions less than ten years old, the Court determines, pursuant to 12 O.S. §2403, that these are also not probative for the same reason.

18. Mr. Heriford has been dismissed as party, but the Court finds as between Plaintiffs and Veazey's, his action in shaking the Tiki was a direct and proximate cause of Mr. Stine's injuries. Since this Court has been informed that a case involving this incident herein has been filed against Firelake Grand Casino in the Indian Court, this Court makes no findings of facts or Conclusions of Law as to the liability or non-liability of Firelake herein although as owner of the premises some concurrent liability may possibly attach to Firelake in the Indian court.[31] Moreover, since Mr. Stine was an invitee, Firelake owed him a high duty as to his safety.[32]

II. CONCLUSIONS OF LAW

Defendant Bill Veazey's was legally served with summons and the Plaintiff's Petition and actively participated in this action since commencement. Thus, the Court has personal jurisdiction over the parties to decide this case. Venue for this action is proper herein because Veazey's is a domestic corporation situated within Oklahoma County, Oklahoma.

To succeed herein Plaintiffs must prove each of the following elements by the greater weight of the evidence,": (1) that Veazey's owed Plaintiffs a duty of care to protect them from injury; (2) that Veazey's failed to perform that duty (or was "negligent"), and (3) that Plaintiffs' injuries were proximately caused by Veazey's failure to meet their duty and exercise due care.

A. Veazey's Did Not Assemble Tiki II

Based on the evidence, this Court has found that Veazey's did not assemble Tiki II which injured Mr. Stine when Mr. Heriford shook the display. To hold Veazey's liable for Mr. Stine's it must at least be shown that the action or inaction of Veazey's was the direct and proximate cause of the injury. "Causation" in a negligence action is defined as "a cause which, in a natural and continuous sequence, produces injury and without which the injury would not have happened."[33] It was held in *Akin v. Mo.*

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[31] See *Long v. Ponca City Hospital, Inc.,* (Okl. 1979) 593 P.2d 1081, 1085.

[32] In *Pickens v. Tulsa Metro. Ministry,* (Okl. 1997) 951 P.2d 1079, 1083-84, it was held that in addition to a duty to protect an invitee from hidden dangers, traps, snares and the like, a landowner owes an invitee the duty of exercising reasonable care to keep the premises in a reasonably safe condition for the reception of the visitor.

[33] Okla. Unif. Jury Instr. – Civ. §9.6.

Pacific R.R. Co., 1998 OK 102, ¶38, 977 P.2d 1040, 1054, that "(t)he proximate cause of an injury is the efficient cause, i.e., the agency which produces the effect. It must be the cause which sets in motion the chain of circumstances leading to the injury." While a plaintiff need not prove causation with absolute certainty, the "mere possibility of causation is insufficient."[34] Accordingly, when causation is a matter of "pure speculation or conjecture" the verdict must be entered for the defendant."[35]

Thus, this Court holds that Plaintiff herein has failed to prove, by the greater weight of the evidence, that any negligence alleged against Veazey's was the proximate cause of Mr. Stine's injury. This Court holds that Veazey's alleged negligence was not the "cause which set in motion the chain of events leading to Mr. Stine's injury. In view of the fact Mr. Heriford had to first shake or move the Tiki display before it would fall, the facts instead show that Veazey's alleged negligence, at best, was merely a remote cause or "mere condition" which is insufficient to attach liability."[36] Thus, Plaintiffs fail to prove Veazey's actions or inactions were the proximate cause of Mr. Stine's injury.

B. <u>Mr. Heriford's Action Constituted "Intervening Cause"</u>

Veazey's contends that assuming *arguendo* that it was somehow negligent in this cause as to Mr. Stine, Mr. Heriford's action in shaking the Tiki was an intervening cause absolving Veazey's of any liability. In *Long v. Ponca City Hospital, Inc.*, 1979 OK 32, 593 P.2d 1081, the tort liability of the defendant hospital was predicated upon the placement of a catheter in the rectum of a patient, rather than in her bladder, while being prepared for surgery. The hospital attempted to avoid liability, although admitting negligence, by proving that the actions of the surgeon involved, which they characterized as negligent, superseded the hospital's liability, and that their negligence merely furnished a condition and was not the cause of the injuries alleged. The Supreme Court held that the major distinction between a cause and a

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[34] *Hardy v. SW Bell Tel. Co.*, 1996 OK 4, 910 P.2d 1024, 1027.

[35] *Hardy, Ibid.*, "(A) party will not permitted to recover from another whose acts, however wrongful, are not the proximate cause of the injury suffered."

[36] In *Johnson v. Mid-South Sports, Inc.*, 1991 OK 17, 806 P.2d 1107, 1108-09 (plaintiff injured when unknown event spectator collided with plaintiff, sending plaintiff sliding down a poorly maintained, beer-soaked access ramp. The poorly maintained ramp was not a "cause" but merely a "condition" under which plaintiff's injuries occurred.

condition is foreseeability, and found that the trial court's instructions submitted the question of foreseeability to the jury and affirmed the decision of the trial court. The jury held for the defendant hospital after which the Court of Appeals reversed. However, the Supreme Court on appeal upheld the trial court's instruction to the jury and upheld the decision for the hospital. In so doing, the Court declared:

> "The general rule is that the causal connection between an act of negligence and injury is broken by the intervention of a new, independent and efficient cause, which was neither anticipated nor reasonably foreseeable.....In such case the negligence of the original wrongdoer is not actionable because it is only the remote, rather than the proximate, cause of the injury.....Thus where a negligent act merely creates a condition making an injury possible, and a subsequent independent act causes the injury, the original act of negligence is not ordinarily the proximate cause thereof."

The Supreme Court in *Long* held that to relieve the one guilty of the first act of negligence of responsibility, the intervening cause must entirely supersede the original negligence and the intervening cause must have been reasonably foreseeable. The Court reversed the Court of Appeals and upheld the trial court judgment. It was held in *Hardy, supra,* that while a plaintiff need not prove causation with absolute certainty, the "mere possibility of causation is insufficient." Thus, *Hardy* held that when causation is a matter of "pure speculation or conjecture" the verdict must be entered for the defendant.

In this case, Mr. Heriford's intentional act of shaking the Tiki's column was the supervening, proximate cause of Mr. Stine's injury, and Plaintiffs' arguments that Veazey's caused Mr. Stine's injury rest on noting more than "pure speculation or conjecture." It was held in *Thompson v. Presbyterian Hosp., Inc.,* 1982 OK 87, 652 P.2d 260, 264 that a true supervening cause exists when three prongs are met: (1) the intervening act is independent of the original act, (2) the intervening act is "adequate of itself to bring about the result," and (3) the intervening act was not reasonably foreseeable by the defendant. Thus, this Court concludes and holds that Mr. Stine's injuries were proximately caused by Mr. Heriford's intentional acts, i.e., shaking the Tiki display which served as a supervening cause that severed any causal link between Veazey's actions and Mr. Stine's injury. Mr. Heriford's foolish

actions which tragically resulted in Mr. Stine's injuries were independent of any of Veazey's actions and were adequate in themselves to bring about Mr. Stine's injury. At worst, Veazey's actions in providing the Tiki to Firelake only provided an "opportunity" for injury to occur and were not the proximate cause of Mr. Stine's injuries.

IT IS THEREFORE CONSIDERED, ORDERED AND ADJUDGED by the Court that Defendant Veazey's is awarded judgment on and against Plaintiffs' Petition which is hereby dismissed with prejudice as to Veazey's.

Decided this 10th day of March, A.D. 2014.

BILL GRAVES,
Judge of the District Court

I, TIM RHODES Court Clerk for Oklahoma County Okla. certify that the foregoing is a true, correct and complete copy of the instrument as appears of record in the District Court Clerk's Office of Oklahoma County, Okla., this 10th day of March, 2014

TIM RHODES, Court Clerk

By _____ Deputy

CERTIFICATE OF MAILING

This is to certify that on this ___ day of March, A.D., 2014, a true and correct copy of the above and foregoing document was mailed, by regular U.S. mail, with postage thereon fully prepaid, to the following counsels of record:

Bryce Jonson
Emily Biscone
105 North Hudson, Suite 100
Oklahoma City, Oklahoma 73102
Attorneys for Plaintiff

D Todd Riddles
311 North Harvey
Oklahoma City, Oklahoma 73102
Attorneys for Defendant

TIM RHODES, COURT CLERK

_____

Deputy Court Clerk

BILL GRAVES

DISTRICT JUDGE

OKLAHOMA COUNTY COURTHOUSE

OKLAHOMA CITY, OKLAHOMA 73102

PRESORTED FIRST CLASS

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D Todd Riddles
311 North Harvey
Oklahoma City, Oklahoma 73102

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