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Bloomfield Hills attorney James O. Elliott stands outside Vision Night Club in downtown Pontiac. The venue was the site of an August 2006 altercation involving his client, Wissam Kinaya, who was hospitalized with a broken nose and a closed-head injury.

'They can't act like it's the Wild West'

Attorney blames man's injuries on club that used independent, unlicensed security guards

Verdicts & Settlements Plus

By Douglas J. Levy

A man celebrating his 21st birthday with a friend at a downtown Pontiac nightclub ended up in the hospital with a broken nose and a closed-head injury.

He said he had no memory of what happened, but a series of incident reports from Vision Night Club suggested Wissam Kinaya caused enough of a disturbance to warrant a security guard's hitting him.

And even though James O. Elliott, Kinaya's attorney, asserted that Kinaya was the wrong man, Elliott said he knew it would be an uphill battle in trying to prove the defense's witnesses — including nine of the 17 bouncers on duty that night — weren't telling the truth.

"All I have is my client and his friend who both testified they did nothing wrong," said Elliott, a Bloomfield Hills-based personal injury attorney.

So Elliott filed a negligence and assault-and-battery lawsuit in Oakland County Circuit Court. The suit named Eagle Theater Entertainment LLC, doing business as Vision Night Club; H.A.N.D. Pontiac, Inc., which owns Vision's liquor license; Vision's head of security; and two of the bouncers.

Elliott's argument was that the club was liable for Kinaya's injuries, even though 13 of the 17 bouncers that night were independent contractors and not employed by the club.

In response to the suit, the defendants' assertion was that on Aug. 6, 2006, Kinaya and his friend were among a group squaring off against another group inside the facility, and Kinaya was causing a disturbance.

But Elliott contended that one of the independent-contractor bouncers, who was named in the suit, mistook Kinaya for someone else.

The bouncer put Kinaya in a half nelson hold and took Kinaya outside onto the street, Kinaya said. Elliott said, could not see the bouncer, and Kinaya's friend could see only the back of the bouncer as the bouncer led Kinaya out.

"By the time [the friend] got out the door, 45 seconds later, Kinaya was lying in a pool of blood," Elliott said.

When Elliott sent the defendants a notice of intent to file a lawsuit, the insurance company did not contact Elliott. Rather, Elliott said, the club owner went in person to Elliott's office, showed him reports taken from the night of the incident, and said Elliott didn't have a case.

Yet, Elliott said information in the reports was conflicting. According to Elliott:

- One bouncer said in his report that he went to the street because there was a commotion, and he found a second bouncer surrounded by a group of people. The second bouncer was struck by someone, so the first bouncer struck back and knocked the assailant to the ground. Right after, Kinaya ran up to the first bouncer, who swung and hit Kinaya.

- But the head of security's report said Kinaya threw a punch at the first bouncer.
- The first bouncer denied that at deposition, saying Kinaya only ran up to him, and the bouncer reacted by hitting Kinaya.

"The diverse statements within the incident reports had me take it to the next step and question whether these reports were truthful and accurate," Elliott said. "I felt very confident that in front of jurors, I could prove to them that these people were fabricating their stories."

Elliott also pointed out that there wasn't an official company that employed any of the independent contractors. Rather, Elliott said, Vision's head of security worked with an outside source who would commission the needed security for a set fee. (The source, Elliott said, fell out of contact with the club after the Kinaya incident.)

At deposition, Elliott learned that none of the independent contractors were licensed, which he said was a violation of Michigan's Private Security Business and Security Alarm Act.

Elliott said he found something else troubling.

"I asked all of the deponents whether there was any training for being a security guard," he said. "Everyone testified that there was no training provided, other than they said it was on-the-job training. One guy would watch the other guys. I asked, if they didn't have proper training, how were they supposed to know how to properly act? They couldn't answer that."

Elliott also said he asked the club's owner, its head of security and the bar manager

whether any of the independent-contractor guards had been convicted of a felony or had warrants out for their arrests. Each replied, "I don't know."

Because of the position of authority the bouncers would have over the nearly 1,000 patrons at the club that night, and the hazardous nature of the job, Elliott said that the club management should have known criminal-background information prior to hiring the bouncers.

The defense's motion for summary dismissal was denied by Oakland County Circuit Court Judge Denise Langford-Morris, and a trial date was set. However, a \$250,000 settlement was accepted prior to trial.

Elliott said the message this case sends is obvious.

"This bar and other bars should know they have to have certain procedures in place," he said. "They can't act like it's the Wild West, that people, even though they walk into their clubs, have rights that do not leave once they enter the front door. ... Sometimes it takes a long time to secure them, as it did in this case."

The defense attorney in this matter declined to comment on either the settlement or any of the facts of the case.

A Verdicts and Settlements report of the case, *Kinaya v. Johnson, et al.*, can be found on page 5 of this issue, and on our Web site, www.milawyersweekly.com.

If you would like to comment on this story, please contact Douglas J. Levy at (248) 865-3107 or douglas.levy@mi.lawyersweekly.com.

Man settles with club for injuries after ejection

Argument claims bar was negligent by hiring unlicensed guards

\$250,000

On Aug. 6, 2006, plaintiff Wissam Kinaya was celebrating his 21st birthday with a friend at Vision Night Club, a downtown Pontiac club owned and operated by defendant Eagle Theater Entertainment LLC and H.A.N.D. Pontiac, Inc.

On that evening, nearly 1,000 patrons were inside the club.

During an alleged altercation among some of the patrons, a security guard put Kinaya in a half nelson and escorted him out of the club and onto the street. Kinaya did not recall what led to his ejection or his subsequent injuries, which included a broken nose and closed-head injury. He was taken to POH Regional Medical Center and treated.

It was established through discovery that 13 of the 17 guards were independent con-

tractors and did not work directly for the club.

The defendant presented reports taken that night from nine of the 17 security guards at the nightclub, with some of the reports saying that Kinaya was drunk and being aggressive toward the guards, leading to his ejection. The defense also asserted that once on the street, Kinaya swung and hit one of the security guards, who struck back in self-defense.

However, the plaintiff said that the reports had discrepancies as to what happened, including a comment by one of the independent-contractor guards that he hit Kinaya after Kinaya only ran up to him.

The plaintiff asserted that before the night of the incident, the club had not collected information on the independent contractors, including their names, addresses, phone numbers and criminal backgrounds.

The independent contractors also were not licensed security guards, which violated Michigan's Private Security Business and Security Alarm Act.

Further, the plaintiff argued, because of the hazardous nature of the job, the club had the obligation to supervise all the security

Type of action: Assault and battery

Type of injuries: Broken nose, closed-head injury.

Name of case: *Kinaya v. Johnson, et al.*

Court/Case no./Date: Oakland County Circuit Court; 07-083852-NO; Feb. 3, 2009

Tried before: Judge

Name of judge: Denise Langford-Morris

Settlement amount: \$250,000

Attorney for plaintiff: James O. Elliott, Kerry O. Phillips

Attorney for defendant: Withheld

guards regardless of their status as independent contractors.

A summary disposition notice was denied at Oakland County Circuit Court, and a \$250,000 settlement was accepted prior to trial.

See news story on page 3.