

VERDICTS & SETTLEMENTS

SUPPLEMENT TO THE LOS ANGELES DAILY JOURNAL AND SAN FRANCISCO DAILY JOURNAL • FRIDAY, JANUARY 23, 1998

CASE IN FOCUS

THE CASE

Bar Gets Stuck With Tab in Drink-Tossing Tussle

Type: Tort, assault and battery, negligence.
Verdict: \$2,077,500.

Case/Number: *Peter Leeson and Grace Leeson v. Stewart Street Ventures, et al.* / 964778.

Court/Date: San Francisco Superior / July 18, 1997.

Judge: Walter H. Harrington Jr.

Disbursement: \$1.9 million to plaintiff Peter Leeson — \$1.1 million (economic damages); \$800,000 (non-economic damages). \$177,500 to plaintiff Grace Leeson — \$36,500 (non-economic); \$141,000 (punitive), including \$125,000 (from defendant Stewart Street Ventures); \$5,000 (from defendant Bay Area Hotel); \$10,000 (from defendant Kimpton Trust); \$1,000 (from defendant Harry Denton).

Attorneys: Plaintiffs — R. Scott Erlewine (Phillips & Erlewine, LLP, San Francisco). Defendants — A. Marquez Bautista (Leach, McGreevy & Bautista, San Francisco).

Technical experts: Plaintiffs — Oliver Sansen, security, Vallejo; G. Stephen Jizmagian, economist, San Francisco. Defendants — Thomas Del Torre, security, Novato; Mark Cohen, economist, LaFayette.

Medical experts: Plaintiffs — Kenneth L. Baldwin, M.D., orthopedic surgeon, San Luis Obispo; Phillip Kissell, M.D., neurolo-

gist, San Luis Obispo. Defendants — Richard Dedo, M.D., orthopedic surgeon, Daly City.

Facts: On Dec. 31, 1993, plaintiffs Peter Leeson, a 49-year-old doctor, and his wife Grace, a 49-year-old certified public accountant, were patrons at a gala New Year's eve party at Harry Denton's Bar & Grill (Denton's). Denton's is located in San Francisco and is part of the Kimpton Group of hotels and restaurants. Denton's is owned and operated by defendant Stewart Street Ventures, a limited partnership, whose general partner is Bay Area Hotel Associates, whose general partners are the Kimpton Revocable Trust and 590 Bush, Inc. (collectively referred to as "the Kimpton defendants"). Harry Denton is a San Francisco celebrity. The Kimpton defendants licensed Denton's name for the restaurant, and paid Denton to "consult" on the operation of the establishment and to greet and entertain customers. The Kimpton defendants held Denton out to the public as the owner. Later that night, as the party was closing down at approximately 1:30 a.m., the Leesons and two of their friends were sitting and quietly talking at the back of bar. Denton, who had been drinking, was sitting at the same bar and, for no reason, threw a glass of ice water on Grace Leeson. When asked to

apologize, Denton began to insult Grace and Peter Leeson. Out of frustration, Peter Leeson threw aside a bar stool. According to plaintiffs, a waitress began yelling at Peter Leeson. Four security personnel employed by the Kimpton defendants arrived but did nothing to intervene. The waitress then threw champagne in Peter Leeson's face, and he was immediately jumped by the security personnel who gang-tackled and piled on him, face first into the cement floor. Grace Leeson rushed over and helped free her husband. Plaintiff Peter Leeson brought this action against the defendants based on battery and negligence theories of recovery. Plaintiff Grace Leeson brought this action against the defendants based on battery and negligent infliction of emotional distress theories of recovery.

Contentions: The plaintiffs contended that there was evidence that employees had been drinking on duty that evening with the permission and knowledge of the management. The plaintiffs also contended that there was evidence that the Kimpton defendants knew that Denton had a drinking problem and nevertheless provided him with a free "promotional drink" tab. The defendants acknowledged the battery (i.e., throwing water) on Grace Leeson. However, they contended that

Peter Leeson had overreacted and pushed a waitress, therefore justifying the conduct of the security personnel, who they claimed acted reasonably to restrain him. The defendants also contended that Peter Leeson was contributorily negligent.

Injuries: Plaintiff Peter Leeson claimed he suffered clavicular osteolysis, soft tissue back injuries at L4-5 and pain and suffering. He also claimed there was a 70 percent chance of future fusion surgery. Plaintiff Grace Leeson claimed emotional distress.

Jury trial: Length, 11 days; Deliberation, ten hours; Comparative Liability, 15 percent (plaintiff Peter Leeson), 85 percent (defendants). Although the jury found that Peter Leeson was comparatively at fault, this finding did not reduce the amount of the judgment since comparative fault is not a defense to battery.

Settlement discussions: The plaintiffs made a settlement demand for \$1 million. The defendants made an offer of compromise for \$15,000.

Post-trial motions: The defendants motion for new trial was denied.

Other information: The verdict was reached approximately three years after the case was filed.

LITIGATOR STRATEGY

Argument Of Restraint Sat Well With Male Jurors

Name: R. Scott Erlewine.

Firm: Phillips & Erlewine, San Francisco.

Background: Erlewine was born in Lincoln, Neb., and raised in Sacramento. He received his bachelor's degree in economics and rhetoric from the University of California at Davis and his law degree from Hastings College of Law. Erlewine has been practicing for 17 years specializing in commercial litigation. An avid sportsman, he has climbed Mt. Kilimanjaro in Tanzania and Mt. Ventous in France, enjoys biking, golfing, skiing and ran his first marathon last year.

You have a lot of interests outside the law — tennis, mountain biking, the San Francisco Impossible Parking Space Race.

"(Laugh) You know, I finished second two years in a row, and in the second year it became too competitive for me. ... They have 24 cars, and it starts out near Fisherman's Wharf. The task is a simple one — first one back wins and you have to park, legally, in four different areas in San Francisco. ... You have in the right seat a parking meter maid. ... These people are unglorified people. They get abused by the public, and this

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SIBYLLA HEBBRICH / Daily Journal

FIGHTING WORDS — "Most men could relate," R. Scott Erlewine says. "One argument I made was most men in this sit-

uation would have immediately gone over and decked Harry Denton when he threw water on the wife. That didn't happen."

Restraint

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is really their one shot at glory. You are supposed to park legally, and you find these parking meter maids saying, 'Oh park over there! It's a red zone!' So, it is fun because you try to talk people out of their parking spaces. ... Quite frankly, you'd end up going up on the sidewalk to get around a stop light and get around people, and you are going over hills at a fair rate of speed. It became somewhat competitive, and after the second year I said, 'I have some competitive urges,' and I thought it was best I ought not further those."

Would you say you are competitive?

"Well, yeah, but on the public streets, you have to take into account public safety. ... In my first year, I was 300 yards from the finish line and the car in front of me was one of the contestants. He finished first, and I was two seconds behind him. As soon as we got off the light, he went to the right, and I went to the left. Unfortunately, there was a baby carriage on my side, and I had to make one of those life long decisions. ...

How much do I want to win?

"(Laugh) How much do I want to win? And I guess the [answer] was 'Not enough,' because I am sure the baby is doing well."

After climbing Mt. Kilimanjaro, how exciting is walking into court for you. To some attorneys, going into court is the ultimate, but let's face it, you've climbed a really big mountain.

"Well, Kilimanjaro, although it goes up to 19,000 feet and is sort of one of those life long dreams for most people, it is a long hike and not a technical climb. ... When you get to the top, it's sunrise, and the first thing you do is throw up. That's what I did — not one of those celebratory things you talk about. When you get up there, you sit down and your feet are dangling on top of the world. You can look out over Africa, and life is very good. ... But you ask how can you come back to trial? You know, life is compartmentalized, and I say that in a good way. You have different facets of your life that are fulfilling. One of those is being outside and doing adventurous, challenging things, and the other is the intellectually challenging and professionally challenging."

In the Case In Focus, who is Harry Denton?

"Well, Harry Denton is very well-known here in San Francisco. He is known as, I believe, 'Mr. Entertainment' is the way he described himself. He started off as a waiter in a bar over 20 years ago here in San Francisco and eventually owned a bar and then another. He was a partier — a very well-known social host. He is a celebrity personality. Almost anybody you ask would know him."

Is it unusual that his name is up front, but he does not own the restaurant?

"It would be a surprise to many people, but I don't think it was unusual. From what I understand, the Kimpton Group does this. [The Kimpton Group's] principal is Bill Kimpton. ... He has become a very well-known hotel owner and restaurateur in the West. They also either own or manage a number of fine restaurants. ... Here in San Francisco they own, for example, the Sir Francis Drake Hotel. At the top of that now is Harry Denton's Starlight Room, so they are using his

name for that facility. ... They have got Harry Denton's Bar and Grill here ... It's an upscale bar and restaurant where they have music. The security personnel are deemed door hosts — not bouncers (laugh). They claim to be refined and one of the problems I think was they wanted to hold them out as being door hosts and not security, because they felt they had a clientele that didn't need that. Now we were able to get a hold of their log books, which for

... [A] waitress came up to our client and started screaming at him literally a foot or two away. The door hosts came in and were surrounding the waitress, and our client and didn't do anything. That was in violation of all their rules of security. ... From our client's perspective, and the testimony was, that after a minute or so, the waitress threw a glass of champagne in our client's face and he was jumped by the security personnel. They rode him around the dance floor,

You know his father was a pilot. It is zero tolerance if you are a pilot. You can't make a little error. So in many ways, Randy takes a pilot's approach to law. He doesn't tolerate little errors.'

James M. Wagstaffe,
Cooper, White & Cooper

us was a find in the litigation, because they had a lot of information in there. For example, on the security aspect, they were attempting to portray Harry Denton's as an upscale professional bar, and [they] don't have problems or have to formally train the security. So, we look in the log book, and here are examples that they have 'big time' wrestling going on with the patrons. One [log] had flying tackles given by the security personnel. You know, things like that would generally lead reasonable people to believe that they had to have security — well-trained security, and we were able to prove that they didn't."

Exactly what happened? The plaintiffs were just sitting there and ...

"Let me go over it for you. My clients were a doctor and his wife, both 49. They had been married since they were, I believe, in college — college sweethearts. ... He and his wife had decided to come up for a New Year's weekend here in San Francisco. ... They went out to dinner and took a limousine over to Harry Denton's and danced for half an hour, forty-five minutes. [They] didn't have anything to drink while they were there. ... About 1:00 or 1:15 in the morning, they went to the very back area of the bar. ... They were sitting there quietly talking with two of their friends at the end of this bar, and Harry Denton was sitting a couple of seats down, and he had been drinking. For no reason at all without anything being said, he took a big glass of ice water and threw it all over the wife. That's how the events got started. Mrs. Leeson responded, 'Why did you do that?' He said, 'Because I wanted to, and I may do it again.' So, he got another glass and had it poured for him and sort of slammed the glass on the bar. Then Dr. Leeson came over, and they had a verbal exchange. ... Harry Denton started insulting the Leesons. ... Then, the wife came over and she saw that this was going nowhere fast and she said, 'Well, Harry let's just shake hands and be over with this.' So Denton sort of turned his head away from her and stuck out his hand with a limp wrist in a 'kiss my ring' gesture right in front of her face and wouldn't shake hands with her. So the wife said, 'Let's go.' The husband started to leave and then he turned around and said, 'I am not going to leave until I get an apology from this gentleman — he is the owner of the restaurant.' At that point, the husband, out of frustration, picked up a bar stool and threw it aside.

grabbing him, without identifying themselves, for 10 or 15 seconds. Then, he was driven face first into the cement sidewalk. At the same time, the wife was watching this. When they got off of him, his wife helped him up, he staggered around and these security people were still jumping up and down saying, 'Let's go outside and finish this like men.' The client hadn't thrown any punches. There was no testimony to that effect at all. He was just trying to free himself. The police came, the client went back to the hotel and then went to the hospital several hours later."

Had there been problems with Mr. Denton before?

"Well, first of all, as far as the drinking was concerned, he had a well-known drinking problem. To his credit and quite frankly, this is the way I started out my examination of him. I said, 'To your credit, you have stopped drinking haven't you, and it was after this event?' And he said, 'Yeah, well, that is true.' 'And before you stopped you thought it was important in order to have a good time, to be drinking. Correct?' And he said that was true too. 'In fact, the restaurant thought in order for you to have a good time and for you to bring in these patrons that you should be drinking?' And he said, 'Yeah that was probably true too.' That's why they gave him the free drinks. It was for profit. ... They knew he had a drinking problem. They knew he had memory loss."

What was the defendant's position in trial? That the plaintiff was partly at fault?

"Yeah. First of all, they admitted the battery on Mrs. Leeson, which was the throwing of the water. They would have looked foolish not to. ... Their theme at trial was, 'This was just throwing water, and the husband reacted unreasonably. He could have left the bar,' which is true. He could have walked out along with his wife, but he turned around and said he wanted an apology from a guy he believed to be the owner of the restaurant."

Is that something the jury could relate to, especially the men? How do you walk out after your wife has been insulted?

"Well, the interesting thing is, and I am not sure I understand this. ... We had, I believe, nine men and three women. It may have been eight to four. The verdict was generally nine-three. The

women were against us. I think it was exactly for the reasons you mentioned — that most men could relate. See, one argument I made to the jury was most men in this situation would have immediately gone over and decked Harry Denton when he threw water on the wife and started to insult the wife. That didn't happen. The doctor here is somebody who likes to talk things out. They said, 'Well, you could have left anytime,' and he said, 'Well, that's true, but I thought he would do it again unless he apologized. Someone should have said this is not right. If I had walked away from it, it would have happened to someone else.'"

For your trial motto you say it is important to pick the right theme, don't dwell, be visual. Did you apply all these things to this case?

"Yeah, you try and do it, but the toughest is to keep it short, not to dwell because you just don't know. How many witnesses do you bring in to prove pain and suffering. Is one enough? Will the jury think that because you've only got one you don't have enough? Well, the answer is that it just depends. There is a fine line, because if you don't do enough, then they may hold it against you, and if you try to do too many things, they will try and hold it against you because you are boring them. Quite frankly, from an overall perspective, since the O.J. trial, jurors have been much more active in asking questions during trial and also, (laugh) and I haven't had this, although I have heard about jurors telling the judge 'We've heard enough. Let's move on. You're wasting our time.' ... They are becoming much more, as people like to say today, proactive."

Is this a good thing?

"I think it is. There was just an article written on the issue of juries asking questions. You know, there are a lot of proponents for that because it does further the jury understanding and both counsel are alerted to the fact that these are questions they ought to be answering. If you are a trial lawyer and you are not listening to what the jury is asking, you've got a problem."

What other litigation professionals say about this attorney: Attorney Terence S. Cox of Cox, Wooten, Griffin & Hansen in San Francisco says about Erlewine: "I have worked with him on both the same cases and also as an opponent, and I have always found him to be extremely persistent and innovative. If there is a fact to be uncovered, Randy will find it." Attorney James M. Wagstaffe of Cooper, White & Cooper in San Francisco has known Erlewine since law school and says: "I think the best word to describe Randy Erlewine is he is an inventive attorney. When other people say it can't be done, Randy tries very hard to prove them wrong. He is inventively relentless. He is someone who comes up with creative ideas to advance his client's interest. He is someone willing to take on tough cases that might require long legs. ... Some guys will take a settlement because it is easier and more convenient. Randy is prepared to take a case to trial if that is the right thing to do. You know his father was a pilot. It is zero tolerance if you are a pilot. You can't make a little error. So in many ways, Randy takes a pilot's approach to the practice of law. He doesn't tolerate little errors." — Kathy Kinsey