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ORIGINAL FILED
AUG 10 2012
LOS ANGELES
SUPERIOR COURT

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES - CENTRAL DISTRICT**

BENJAMIN ZELMAN,

Plaintiff,

v.

UNITED VALET PARKING, INC., a
California Corporation; MICHAEL
GOLDMAN, an individual; KOI GROUP
SERVICES, LLC; and DOES 1 through
50, Inclusive,

Defendants.

CASE NO. BC446127

[Assigned for All Purposes to Judge Rolf M. Treu, Dept. 58]

~~[PROPOSED]~~
**ORDER GRANTING DEFENDANT KOI
LP'S MOTION FOR SUMMARY
JUDGMENT**

[Code of Civ. Proc. §§ 437c, 437c(o)(1)
and 437c(o)(2)]

DATE: August 10, 2012
TIME: 8:30 a.m.
DEPT.: 58

Complaint Filed: 9/23/10

Trial Date: 9/10/12

The Motion for Summary Judgment of Defendant KOI LP ("Koi") came on for hearing on August 10, 2012, in Department 58 of the above-entitled Court before the Honorable Rolf M. Treu pursuant to *Code of Civil Procedure* §§ 437c, 437c(o)(1) and 437c(o)(2). Steven L. Rodriguez of Wood, Smith, Henning & Berman LLP appeared on behalf of Koi. Justin Ehrlich of the Law Offices of Ian Herzog appeared on behalf of Plaintiff BENJAMIN ZELMAN ("Plaintiff").

1 After consideration of the papers in support of Koi's Motion for Summary
2 Judgment, as well as all arguments made in opposition thereto, and following oral
3 argument, and with good cause appearing thereon, the judge adopts its tentative ruling
4 granting Koi's Motion for Summary Judgment as follows:

5 Tentative Ruling: Motion for summary judgment is granted.
6

7 Background –

8 On 9/23/10, Plaintiff, Benjamin Zelman filed this action for negligence against
9 Defendants, United Valet Parking, Inc. (“United Valet”) and Michael Goldman to recover
10 for injuries sustained during an automobile/pedestrian accident. On 8/12/11, Plaintiff filed
11 an amendment to the complaint naming Koi Group Services, LLC as DOE 1.
12

13 The operative Second Amended Complaint asserts a single cause of action for
14 negligence. Koi LP dba Koi Restaurant & Lounge (erroneously sued as Koi Group
15 Services, LLC) (“Koi”) and United Valet have filed cross-complaints against each other
16 for indemnity.
17

18 Motion for Summary Judgment –

19 Koi moves for summary judgment as to the SAC.
20

21 1. Request for Judicial Notice

22 Koi requests judicial notice of the SAC and the amended notice of lien filed by the
23 State Compensation Insurance Fund. The RJN is granted.
24

25 2. Evidentiary Objections

26 Plaintiff objects to portions of the declaration of Nick Haque: the objections are
27 overruled.
28

1 Koi objects to portions of the declaration of Benjamin Zelman: Objection No. 2 is
2 sustained, remainder is overruled.

3
4 Koi objects to portions of Plaintiff's separate statement: these objections are to
5 facts contained in the separate statement and therefore are not proper evidentiary
6 objections pursuant to CRC 3.1352 and 3.1354. Additionally, they are not numbered
7 consecutively, a violation of CRC 3.1354(b). The Court declines to rule on the improper
8 and improperly formatted objections. The Court additionally declines to consider the
9 objections as argument, as this would result in exceeding the page limitations of CRC
10 3.1113(d) because Koi's reply memorandum is already 10 pages in length.

11
12 **3. Undisputed Facts**

13 On 5/19/10, Plaintiff was struck by a vehicle driven by Goldman at or near La
14 Cienega Boulevard and Melrose Place in Los Angeles, CA. Koi is a Japanese restaurant
15 located at 730 North La Cienega Blvd., and had entered into a contract with United Valet
16 for valet parking services. Koi does not have a parking lot, and United Valet positioned a
17 valet stand on the public sidewalk abutting La Cienega Blvd. Juan Alonso assisted United
18 Valet with providing valet services to Koi, interacting with United Valet personnel. Juan
19 Alonso offered a valet attendant position to Plaintiff in July 2007: as a valet, Plaintiff
20 would park and retrieve cars at parking lots or at public meters located on La Cienega
21 Blvd. and Melrose. At the time of the accident, Plaintiff was working as an independent
22 contractor and valet parking attendant for United Valet.

23
24 **4. Relationship between Koi and United Valet**

25 Koi submits that United Valet is its independent contractor, having delegated to
26 United Valet all valet attendant parking workplace safety issues. Haque Decl. ¶¶ 5-9, see
27 also Haque Decl. Ex. A § 4 (stating that United Valet is to provide its services as an
28 independent contractor). This is sufficient to carry Koi's initial burden to establish an

1 independent contractor relationship with United Valet and consequently that Koi is not
2 liable for Plaintiff's injuries (see *SeaBright Ins. Co. v. US Airways, Inc.* (2011) 52 Cal.4th
3 590, 594). In opposition, Plaintiff argues that the relationship between Koi and United
4 Valet is not an independent contractor one but may be of several different types.

5
6 First, Plaintiff argues that Koi and United Valet were in a joint venture. "There are
7 three basic elements of a joint venture: the members must have joint control over the
8 venture (even though they may delegate it), they must share the profits of the
9 undertaking, and the members must each have an ownership interest in the enterprise."
10 *Jeld-Wen, Inc. v. Superior Court* (2005) 131 Cal.App.4th 853, 872. Plaintiff fails to submit
11 any evidence of the nature of the venture or enterprise that Koi and United Valet are
12 asserted to jointly be in: whether a restaurant business or valet parking services.
13 Assuming *arguendo* that Plaintiff could establish such a venture (whatever that might be),
14 Plaintiff only argues that Koi shared revenues with United Valet (see *Haque Decl. ex. A §*
15 *3*) and exerted control over aspects of United Valet's services (see *Marshall Decl. Ex. 5-9*
16 *[KOI0005]*). Plaintiff fails to submit any evidence that either Koi or United Valet had an
17 ownership interest in each other or whatever the venture might be.

18
19 Second, Plaintiff argues that United Valet is a concessionaire (see 6 *Witkin,*
20 *Summary 10th* (2005) *Torts, Ch. IX § 1239*) and Plaintiff is business invitee of Plaintiff
21 (see, e.g., *Schwartz v. Helms Bakery Limited* (1967) 67 Cal.2d 232, 239-40). However,
22 Plaintiff fails to submit any evidence or argument that United Valet, in providing valet
23 parking services, qualifies as a concessionaire. Additionally, it is undisputed that Plaintiff
24 is an independent contractor of United Valet hired by Juan Alonso of United Valet;
25 therefore, Plaintiff fails to submit any evidence that Plaintiff is a business invitee of Koi.
26 Lastly, Plaintiff concedes that the danger he encountered was on a public street (see
27 *Opp'n p. 8:25-27*); therefore, Plaintiff fails to submit any evidence that he was injured on
28 property owned or controlled by Koi (see *Owens v. Kings Supermarket* (1988) 198

1 Cal.App.3d 379, 386-88; see also A. Teichert & Son, Inc. v. Superior Court (1986) 179
2 Cal.App.3d 657, 663-64).

3

4 5. Affirmative Contribution

5 Plaintiff argues that there are triable issues as to whether Koi increased or
6 contributed to the cause of the accident (see Hooker v. Dept. of Transportation (2002) 27
7 Cal.4th 198, 211-12). However, Plaintiff's argument relies on evidence that Koi would
8 relate certain customer complaints regarding the speed of retrieving cars to United Valet.
9 See Haque Depo. [Marshall Decl. Ex. 1] p. 46:2-19; Zelman Decl. ¶¶ 7. This evidence
10 establishes only that Koi raised concerns regarding the speed of retrieving cars. Notably,
11 Plaintiff's declaration indicates that such instructions were given to Plaintiff by United
12 Valet personnel (see Zelman Decl. ¶¶ 5). It is conjecture and speculation that Koi told
13 United Valet or Plaintiff to cross the street outside of the cross-walk, which is insufficient
14 to oppose summary judgment (see Buehler v. Alpha Beta Co. (1990) 224 Cal.App.3d
15 729, 733). Plaintiff has no evidence that Koi affirmatively instructed United Valet or
16 Plaintiff to cross the street outside of the cross-walk. See Brannan v. Lathrop Constr.
17 Associates, Inc. (2012) 206 Cal.App.4th 1170, 1178-79. Lastly, to the extent that Plaintiff
18 argues that Koi controlled aspects of United Valet's parking services, Plaintiff's evidence
19 relies on a memorandum (see Marshall Decl. Ex. 5-9 [KOI0005]) that implicates no safety
20 issues concerning the valet parking services.

21 ~~Koi LP is entitled to judgment against plaintiff Benjamin Zelman pursuant to a~~
22 ~~timely memorandum of costs.~~

23 IT IS SO ORDERED.

24 *Judgment to be Separately Submitted*

25 DATED: AUG 10 2012

26

27

28

ROLF M. TREU

JUDGE OF THE SUPERIOR COURT