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Denny's May Be Liable for Attack by Rowdy Patrons

By JEFF D. GORMAN



(CN) - A woman who was attacked by drunken customers at Syracuse, N.Y. Denny's in July 2008, can bring a negligence claim against the restaurant, the 2nd Circuit ruled.

Kelly Gray sued Denny's Corp. for negligence in connection with a late-night attack by rowdy patrons who were in the restaurant after local bars had closed.

In a [complaint](#) filed in the federal court in Syracuse, Gray said she and other Denny's patrons were minding their own business when a half dozen "visibly intoxicated" patrons began acting in a "disruptive, aggressive and violent" manner.

Gray said she complained to restaurant employees, but they did nothing to quiet the group, and ultimately she felt moved to approach the table herself.

With that, the defendants "violently assaulted and attacked Plaintiff by striking her in the back of the head, her jaw, her stomach, and other parts of her body, and kicking her while she lay on the ground," the plaintiff said.

Gray later sued the restaurant and the defendants she says assaulted her, seeking at least \$5 million in compensatory damages, as well as exemplary and punitive damages.

The district court granted Denny's motion for summary judgment, but the circuit court overturned the decision and remanded the case for further action.

"Denny's knew that bar rush customers were frequently loud and profane, viewed such conduct as workplace violence, and knew that on at least five reported occasions, bar rush customers had become so disruptive that police were dispatched to the restaurant. At least two of those incidents involved physical violence," wrote circuit judges Reena Raggi, Gerard Lynch and Raymond Lohier Jr., in an unsigned order.

"Gray has raised a triable issue of fact as to whether Denny's breached its duty by failing to quiet the customers at Tables 5 and 6, which failure resulted in Gray's approaching the table herself," they added.

Denny's argued that Gray's action broke the chain of causation and absolved the restaurant of liability. The Circuit disagreed, stating that it is a question for the trial jury.

Simon Lesser attorney Leonard Lesser applauded the development.

"We are obviously pleased with the panel's decision to vacate the award of summary judgment to Denny's based upon its consideration of the record developed in discovery," Lesser said in an email.

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