

Marketer, Travel Agent Try To Exit Suit Alleging Rape At Resort

By **Nathan Hale**

Law360 (November 25, 2019, 5:39 PM EST) -- A marketer and a travel agency asked Friday to be released from a suit over the alleged rape of two young women at a Beaches resort in Jamaica, saying they do not own or operate the property and had no duty to protect against the alleged injuries.

In separate motions filed in federal court in Miami, Unique Vacations Inc. and The Mark Travel Corp. both argued for summary judgment in their favor on the grounds that the claims against them are misplaced and fail to meet pleading requirements under the laws of Jamaica and several U.S. states.

Miami-based Unique Vacations, which said it handles marketing and promotional services in the United States for the Sandals and Beaches resort brands, said in its motion it has no responsibility for ensuring guest safety or investigating criminal activity under the terms of its subcontract agreement with the resort owner.

Mark Travel said it has no corporate ties to the resort and described itself as "at best — a Wisconsin-based middleman in the transaction" between the plaintiffs and a Texas-based travel agency, Vacations To Go Inc., with whom they booked their reservation.

Janet Desantis and Margaret A. Torralva filed their lawsuit in May 2017 along with their respective daughters, Paiton E. Bater and Amber R. Torralva. They allege that during a May 2015 vacation the four took to the Beaches Ocho Rios Resort in Ocho Rios, Jamaica, three lifeguards at the resort lured the daughters, who were 21 and 17 at the time, to an industrial laundry room, where they raped the two young women.

They claim that while Bater was still locked in the laundry room and being assaulted, Desantis and Margaret and Amber Torralva were on the other side of the door, "yelling and screaming and banging on the door" in an effort to rescue her. At least one hotel employee walked by during the incident but ignored requests to open the door, according to the suit.

Their second amended complaint, filed this April, brings claims of negligence for failure to warn and negligent infliction of emotional distress against both Mark Travel and Unique Vacations. It also includes a claim for breach of contract/implied warranty against Mark Travel and claims of negligence, false imprisonment and assault and battery against Unique Vacations, which the plaintiffs claim was the worldwide representative for Sandals and Beaches and controlled the resort.

The alleged attackers — Dwight Davis, Jermaine Dyer and William Tapper — have been criminally charged with rape in Jamaica and also are named as defendants in the case, but are in Jamaica and outside the jurisdiction of U.S. courts, according to case documents.

Mark Travel focused heavily in its motion on the issue of which jurisdiction's law should apply to each of the claims. It argued that, following Florida's choice of law rules, the court should apply Jamaican law to the tort claims because it has the most significant relationship to the alleged attack itself and Michigan law to the breach of contract/implied warranty claim because that is where Desantis was located when she accepted an offer from Vacations To Go to book her reservation at the Beaches Ocho Rios Resort.

The failure to warn negligence claims fail because the travelers cannot establish that Unique Vacations and Mark Travel had a legal duty in relation to the incident because it is undisputed that they did not own, operate or control the resort or its employees, both defendants said.

They also both said there is no evidence they had prior knowledge of previous incidents of rape or sexual assaults in Ocho Rios or the surrounding area that would give rise to a duty to warn.

They also argued that Jamaican law does not recognize claims for negligence for infliction of emotional distress, and added that the evidence does not support such a claim even if the court alternatively chooses to apply Texas law, because the state strictly applies a requirement that claimants had to have directly observed the attack.

Counsel for Mark Travel said it had no further comment Monday on its motion, and counsel for the plaintiffs and Unique Vacations did not immediately respond to requests for comment Monday.

The plaintiffs are represented by Daniel Girvan Williams and Jennifer Marie Lipinski of Gordon & Doner and Geoffrey Nels Fieger, Melanie J. Duda and Todd J. Weglarz of Fieger Law Firm.

Unique Vacations is represented by Thomas E. Scott, Steven R. Safra and Oscar A. Campos of Cole Scott & Kissane PA.

Mark Travel is represented by Luis E. Suarez, Patricia Melville and Mark J. Heise of Boies Schiller Flexner LLP.

The case is Bater et al. v. Unique Vacations Inc. et al., case number 1:17-cv-21703, in the U.S. District Court for the Southern District of Florida.

--Editing by Daniel King.