Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D28708
O/kmg

_____AD3d_____ Argued - October 5, 2010

MARK C. DILLON, J.P.
ANITA R. FLORIO
RUTH C. BALKIN
SHERI S. ROMAN, JJ.

2009-07174 DECISION & ORDER

Katieann Blomberg, appellant, et al., plaintiff, v
C.N.M. Rose Lounge, Inc., et al., defendants, USA
Center Moriches Gas and Convenient, Inc., respondent.

(Index No. 7385/04)

Sullivan Papain Block McGrath & Cannavo, P.C., New York, N.Y. (Stephen C. Glasser of counsel), for appellant.

La Capra, Salz & Kowalski, LLP, Central Islip, N.Y. (Edward S. Kowalski of counsel), for respondent.

Law Offices of Brian J. McGovern, LLC, New York, N.Y. (Michelle A. Cohen of counsel), for defendant Heather Carroll.

In a consolidated action to recover damages for personal injuries, the plaintiff Katieann Blomberg appeals, as limited by her brief, from so much of an order of the Supreme Court, Suffolk County (Spinner, J.), dated June 3, 2009, as granted that branch of the motion of the defendant USA Center Moriches Gas and Convenient, Inc., which was for summary judgment dismissing the complaint insofar as asserted by her against that defendant.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs payable by the respondent, and that branch of the motion of the defendant USA Center Moriches Gas and Convenient, Inc., which was for summary judgment dismissing the complaint insofar as asserted by the appellant against it is denied.

On its motion for summary judgment, the defendant USA Center Moriches Gas and

Convenient, Inc. (hereinafter USA Gas), came forward with evidence sufficient to establish its prima facie entitlement to judgment as a matter of law by establishing that it did not sell alcohol to the defendant Heather Carroll on the night of the incident in question. In opposition, the appellant raised a triable issue of fact as to whether Carroll had purchased alcohol from USA Gas.

Accordingly, the Supreme Court should have denied that branch of USA Gas's motion which was for summary judgment dismissing the complaint insofar as asserted by the appellant against it.

DILLON, J.P., FLORIO, BALKIN and ROMAN, JJ., concur.

ENTER:

Matthew G. Kiernan
Clerk of the Court