

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

D33413
G/kmb

_____AD3d_____

Argued - December 6, 2011

REINALDO E. RIVERA, J.P.
RANDALL T. ENG
SHERI S. ROMAN
SANDRA L. SGROI, JJ.

2011-03738

DECISION & ORDER

Manuel Roberts, respondent, v Nostrand Hillel
Food, Inc., etc., et al., appellants.

(Index No. 31229/03)

Smith Mazure Director Wilkins Young & Yagerman, P.C., New York, N.Y. (Marcia K. Raicus of counsel), for appellants.

Richard J. Katz, LLP (Arnold E. DiJoseph, P.C., New York, N.Y., of counsel), for respondent.

In an action to recover damages for personal injuries, the defendants appeal, as limited by their brief, from so much of an order of the Supreme Court, Kings County (Kramer, J.), dated March 2, 2011, as denied that branch of their motion which was for summary judgment dismissing the complaint.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, and that branch of the defendants' motion which was for summary judgment dismissing the complaint is granted.

The plaintiff was a patron in the defendants' restaurant when he became engaged in a verbal dispute with another customer. The two exited the restaurant, at which point an individual alleged to be a restaurant employee tried to break up the altercation. The plaintiff then allegedly attempted to re-enter the restaurant; his next recollection was waking up in a hospital approximately two weeks later, having sustained injuries to his head. The plaintiff commenced this action alleging that the defendants were negligent in failing to provide adequate security on the premises.

December 27, 2011

Page 1.

ROBERTS v NOSTRAND HILLEL FOOD, INC.

“[A] landlord has a duty to maintain minimal security measures, related to a specific building itself, in the face of foreseeable criminal intrusion” (*Miller v State of New York*, 62 NY2d 506, 513; *see Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519-520).

The defendants established their prima facie entitlement to judgment as a matter of law by submitting evidence demonstrating that the acts committed by the other customer against the plaintiff were not foreseeable. They had no knowledge or information about that customer that would put them on notice of his propensity to assault the plaintiff, nor any notice of prior similar incidents (*see Royston v Long Is. Med. Ctr., Inc.*, 81 AD3d 806, 807; *Robinson v Sacred Heart School*, 70 AD3d 666, 667; *Guo Hua Wang v Lang*, 47 AD3d 766, 767; *Sepulveda v Empire of Hempstead*, 6 AD3d 603, 604; *Scheir v Lauenborg*, 281 AD2d 530, 530-531; *Lindskog v Southland Rest.*, 160 AD2d 842, 843).

In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324; *Royston v Long Is. Med. Ctr., Inc.*, 81 AD3d at 807; *Robinson v Sacred Heart School*, 70 AD3d at 667; *Guo Hua Wang v Lang*, 47 AD3d at 767; *Sepulveda v Empire of Hempstead*, 6 AD3d at 604; *Scheir v Lauenborg*, 281 AD2d at 531; *Lindskog v Southland Rest.*, 160 AD2d at 843).

Accordingly, the Supreme Court should have granted that branch of the defendants’ motion which was for summary judgment dismissing the complaint.

RIVERA, J.P., ENG, ROMAN and SGROI, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court