

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

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_____AD3d_____

Submitted - May 4, 2012

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
ARIEL E. BELEN
SHERI S. ROMAN, JJ.

2011-06128

DECISION & ORDER

Arturo Fabian Pineda, appellant, v Javar Corporation,
et al., respondents, et al., defendants (and a third-party
action)

(Index Nos. 11376/09, 350423/10)

Paul G. Vesnaver, Esq., PLLC, Baldwin, N.Y. (Victor A. Carr of counsel), for
appellant.

Hardin, Kundla, McKeon & Poletto, P.A., New York, N.Y. (Stephen J. Donahue of
counsel), for respondents.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Queens County (Kitzes, J.), entered May 5, 2011, which granted the
cross motion of the defendants Javar Corporation, Carlos Taborda, and Sarabanda Night Club for
summary judgment dismissing the complaint insofar as asserted against them.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly was injured when the vehicle in which he was a passenger was
involved in an accident. Before the accident, the plaintiff purchased alcoholic beverages for Jesus
Moros, the driver of the vehicle, at the defendant Sarabanda Night Club (hereinafter Sarabanda).
The plaintiff commenced this action against, among others, Sarabanda, Javar Corporation, the entity
which owned Sarabanda, and Carlos Taborda, an owner of Sarabanda (hereinafter collectively the
respondents). The plaintiff alleged, inter alia, that the respondents served alcoholic beverages to
Moros while he was visibly intoxicated, in violation of General Obligations Law § 11-101, the Dram
Shop Act.

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The Supreme Court properly granted the respondents' cross motion for summary judgment dismissing the complaint insofar as asserted against them. The respondents established, prima facie, that the plaintiff procured alcohol for Moros, which precludes the plaintiff from recovering against the respondents under the Dram Shop Act (*see Reese v Sierra*, 17 AD3d 439, 440; *Campbell v Step/Lind Rest. Corp.*, 143 AD2d 111; *Vandenburg v Brosnan*, 129 AD2d 793, 794, *affd* 70 NY2d 940). In opposition, the plaintiff failed to raise a triable issue of fact.

SKELOS, J.P., LEVENTHAL, BELEN and ROMAN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "Aprilanne Agostino". The signature is written in a cursive, flowing style.

Aprilanne Agostino
Clerk of the Court