

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

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Submitted - March 8, 2018

REINALDO E. RIVERA, J.P.
SANDRA L. SGROI
COLLEEN D. DUFFY
ANGELA G. IANNACCI, JJ.

2016-03620

DECISION & ORDER

Susan C. Giordano, appellant, v Heather A. Zepp,
et al., defendants, Three Brothers Winery & Estates,
LLC, respondent.

(Index No. 9605/12)

Giordano & Stern, LLP, Ossining, NY (Anthony M. Giordano of counsel), for
appellant.

Burke, Conway & Dillon, White Plains, NY (Thomas J. Burke and Martin Galvin of
counsel), for respondent.

In an action, inter alia, to recover damages for personal injuries, the plaintiff appeals
from an order of the Supreme Court, Orange County (Catherine M. Bartlett, J.), dated January 6,
2016. The order granted the motion of the defendant Three Brothers Winery & Estates, LLC, for
summary judgment dismissing the amended complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The plaintiff commenced this action to recover damages for injuries she alleges she
sustained on November 19, 2011, after she was assaulted by a patron of the defendant Three Brothers
Winery & Estates, LLC (hereinafter Three Brothers), following a wine-tasting tour of several
wineries. According to the plaintiff, the last wine-tasting event was at Three Brothers, and, after the
conclusion of the tour, she had returned to the hotel where she had been staying when the defendant
Heather A. Zepp, who had also been at Three Brothers, assaulted her. In her amended complaint,
the plaintiff alleged that Three Brothers had served alcohol to an already-intoxicated Zepp, and that,

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pursuant to the Dram Shop Act (General Obligations Law § 11-101), was therefore liable for her injuries.

Three Brothers moved for summary judgment dismissing the amended complaint insofar as asserted against it. In an order dated January 6, 2016, the Supreme Court granted the motion. The plaintiff appeals, and we affirm.


“To establish a cause of action under New York’s Dram Shop Act, a plaintiff is required to prove that the defendant sold alcohol to a person who was visibly intoxicated and that the sale of that alcohol bore some reasonable or practical connection to the resulting damages” (*Dugan v Olson*, 74 AD3d 1131, 1132 [citations omitted]; see Alcoholic Beverage Control Law § 65; General Obligations Law § 11-101). To establish its prima facie entitlement to judgment as a matter of law dismissing the Dram Shop Act cause of action insofar as asserted against it, Three Brothers was required to establish either that it did not serve alcohol to Zepp while she was visibly intoxicated, or that the serving of alcohol to Zepp had no reasonable or practical connection to the plaintiff’s injuries (see *Trigoso v Correa*, 150 AD3d 1041, 1043-1044).

Three Brothers met its prima facie burden by submitting affidavits from its owner and four of its employees, all of whom stated that they were at the winery on November 19, 2011, and they did not recall seeing or being informed about any visibly intoxicated patron. In opposition, the plaintiff failed to raise a triable issue of fact (see *Dugan v Olson*, 74 AD3d at 1133).

Accordingly, we agree with the Supreme Court’s determination to grant Three Brothers’ motion for summary judgment dismissing the amended complaint insofar as asserted against it.

RIVERA, J.P., SGROI, DUFFY and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court