

Haneef v Gambrinus Co.
2010 NY Slip Op 30756(U)
April 1, 2010
Supreme Court, New York County
Docket Number: 108558/09
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. EILEEN A. RAKOWER

PART 15

Index Number : 108558/2009

HANEEF, SYED N.

vs

GAMBRINUS

Sequence Number : 001

SUMMARY JUDGMENT

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

1

2

3

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

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APR 06 2010

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**DECIDED IN ACCORDANCE WITH
ACCOMPANYING DECISION / ORDER**

Dated: 4/1/10


HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 15

-----X
SYED N. HANEEF,

Plaintiff,

- against -

THE GAMBRINUS COMPANY, CROWN IMPORTS
LLC and CONSTELLATION BRANDS, INC.,

Defendant.

-----X
THE GAMBRINUS COMPANY,

Third-Party Plaintiffs,

- against -

EXTRADE, S.A. de C.V., MANHATTAN BEER
DISTRIBUTORS, LLC and MANHATTAN BEER
DISTRIBUTORS, INC.,

Third-Party Defendants.

-----X
HON. EILEEN A. RAKOWER

Plaintiff Syed N. Haneef ("Plaintiff") brings this action to recover for personal injuries sustained on November 12, 2006 at the premises known as 90th Street Grocery in the City, County and State of New York. Specifically, Plaintiff alleges that, while he was stacking Corona beer bottles, a cap on one of the bottles exploded and struck him in the eye.

Presently before the Court is a motion by Defendants Crown Imports LLC ("Crown") and Constellation Brands, Inc. ("Constellation") for summary judgment. Crown and Constellation submit the affidavit of Robert Ryder, Executive Vice President and Chief Financial Officer of Constellation. In his affidavit, Ryder states

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and ORDER

Mot. Seq.
001

Third Party
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that, “[o]n November 12, 2006, neither Constellation Brands, Inc. nor its subsidiaries imported or distributed Corona Beer to the eastern United States and more particularly to New York State.” Crown and Constellation also submit the affidavit of William F. Hackett, President of Crown. Hackett states in his affidavit that prior to January 2007, he was the President of Barton Beers, Ltd. (“Barton”). According to Hackett, Barton contributed its assets to Crown in January 2007, and on January 2, 2007, Crown started distributing Corona beer in the eastern half of the United States. Hackett states that prior to January 2007, Barton “imported and distributed Corona Beer only to the western half of the United States,” and “did not import or distribute beer to the [e]astern half of the United States...” Based on the foregoing, Crown and Constellation claim that they are entitled to judgment as a matter of law.

Plaintiff is the only party that opposes the motion. Plaintiff submits an affirmation in opposition to the motion. Plaintiff annexes a printout from Crown’s website which states that

Crown Imports LLC is a joint venture that imports, distributes and markets the Modelo portfolio and other fine beer brands across the entire U.S. The Crown portfolio includes Corona Extra, the #1 imported beer in the U.S. and #6 beer overall, Corona Light, Modelo Especial, Negra Modelo, Pacifico, St. Pauli Girl and the Tsingtao beer brands.

Crown Imports is a 50-50 joint venture between Grupo Modelo, S.A. de C.V.... and Constellation Brands, Inc.....

Plaintiff states that he should “be permitted the opportunity to determine through discovery whether [Crown and Constellation] were involved in owning, manufacturing, designing, assembling, selling and/or distributing” the beer bottle which injured Plaintiff.

Crown and Constellation submit a reply affirmation. Annexed as exhibits to the reply affirmation are press releases announcing the joint venture between Crown on the one hand, and Grupo Modelo and Constellation on the other, effective January 2, 2007. Also annexed as an exhibit is a supplemental affidavit from Crown President Hackett.

The proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law. That party must produce

[* 4]

sufficient evidence in admissible form to eliminate any material issue of fact from the case. Where the proponent makes such a showing, the burden shifts to the party opposing the motion to demonstrate by admissible evidence that a factual issue remains requiring the trier of fact to determine the issue. The affirmation of counsel alone is not sufficient to satisfy this requirement. (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). In addition, bald, conclusory allegations, even if believable, are not enough. (*Ehrlich v. American Moninger Greenhouse Mfg. Corp.*, 26 N.Y.2d 255 [1970]). (*Edison Stone Corp. v. 42nd Street Development Corp.*, 145 A.D.2d 249, 251-252 [1st Dept. 1989]).

The Court finds that Crown and Constellation are entitled to summary judgment. Crown and Constellation have adduced sufficient evidence to make a prima facie showing of entitlement to judgment as a matter of law. The Ryder and Hackett affidavits clearly and unequivocally state that neither company imported or distributed Corona beer in the eastern half of the United States until January 2007, several months after the incident.

Plaintiff has failed to meet his burden of demonstrating the existence of an issue of fact. The printout from Crown's website is undated, and therefore does not refute Crown and Constellation's assertion, supported by the Ryder and Hackett affidavits, that neither Crown nor Constellation distributed Corona beer in the eastern half of the United States prior to January 2007. Moreover, the press releases on Crown's website (submitted by Crown and Constellation on reply) explain (consistently with the Ryder and Hackett affidavits) that the joint venture commenced on January 2, 2007.

Finally, the Court declines to deny summary judgment on the grounds of CPLR §3212(f), as it is well settled that the mere hope that additional discovery will yield evidence which establishes liability on the part of the movant is insufficient to defeat a motion for summary judgment (*see Smith v. Andre*, 43 A.D.3d 770, 771 [1st Dept. 2007]).

Wherefore it is hereby

ORDERED that Crown and Constellation's motion for summary judgment is granted and all claims and cross-claims asserted against Crown and/or Constellation are severed and dismissed; and it is further

ORDERED that the remainder of the action shall continue.

This constitutes the decision and order of the court. All other relief requested is denied.

DATED: March 31, 2010



EILEEN A. RAKOWER, J.S.C.

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