

**Alotta v Diaz**

2014 NY Slip Op 31256(U)

April 28, 2014

Supreme Court, Suffolk County

Docket Number: 09-39065

Judge: Denise F. Molia

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various state and local government websites. These include the New York State Unified Court System's E-Courts Service, and the Bronx County Clerk's office.

This opinion is uncorrected and not selected for official publication.

**COPY**

INDEX No. 09-39065  
CAL No. 13-01073OT

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 39 - SUFFOLK COUNTY

**PRESENT:**

Hon. DENISE F. MOLIA  
Acting Justice of the Supreme Court

MOTION DATE 9-27-13  
ADJ. DATE 1-24-14  
Mot. Seq. # 002 - MG

-----X  
DANIELLE ALOTTA, an infant over the age of  
14 years through her parent and natural guardian,  
DANIEL ALOTTA and DANIEL ALOTTA,  
Individually,

Plaintiffs,

- against -

ANTONIO M. DIAZ, ARELYS M. DIAZ,  
MARCO A. DIAZ, JOSEPH WAKEFORD,  
JOANNE WILLIAMS, JULIAN COPPOLA, an  
infant over the age of 14 years through his parent  
and natural guardian, CAROLYN COPPOLA and  
CAROLYN COPPOLA, Individually,

Defendants.  
-----X

KUJAWSKI & KUJAWSKI  
Attorney for Plaintiff  
1637 Deer Park Avenue  
Deer Park, New York 11729-0661

ADAMS, HANSON, FINDER, HUGHES, REGO,  
KAPLAN and FISHBEIN  
Attorney for Defendants Diaz  
1991 Marcus Avenue, Suite 305  
Lake Success, New York 11042

RUSSO, APOZNANSKI & TAMBASCO  
Attorney for Defendant Joseph Wakeford  
875 Merrick Avenue  
Westbury, New York 11590

ANDREA G. SAWYERS, ESQ.  
Attorney for Defendant Joanne Williams  
3 Huntington Quadrangle, Suite 102S  
P.O. Box 9028  
Melville, New York 11747

JULIAN & DEBRA COPPOLA (sued herein as  
CAROLYN COPPOLA), Pro Se  
350 Adirondack Drive  
Farmingville, New York 11738

Upon the following papers numbered 1 to 24 read on this motion for summary judgment ; Notice of Motion/ Order to Show Cause and supporting papers 1 - 15 ; Notice of Cross Motion and supporting papers      ; Answering Affidavits and supporting papers 16 - 22 ; Replying Affidavits and supporting papers 23 - 24 ; Other      ; (~~and after hearing counsel in support and opposed to the motion~~) it is,

**ORDERED** that the motion by defendant Joanne Williams for an order pursuant to CPLR 3212 dismissing the complaint and all cross claims against her is granted.

RST

This action arises out of a motor vehicle accident which occurred on July 8, 2008 at approximately 2:30 a.m. The infant plaintiff, who was approximately 15 years of age, was a passenger in a vehicle owned by defendants Antonio M. Diaz and Arelys M. Diaz (“the Diaz vehicle”) and operated by defendant Marco A. Diaz, who was approximately 18 years of age (“defendant Diaz”), when it was in a collision with a vehicle owned and operated by defendant, Joseph Wakeford (“defendant Wakeford”). The accident occurred on Mooney Pond Road at its intersection with Adirondack Drive, in the Town of Brookhaven. At the time of the accident, the Diaz vehicle was proceeding in a northerly direction along Adirondack Drive, which was controlled by a stop sign at its intersection with Mooney Pond Road. The defendant Wakeford’s vehicle was traveling in a westerly direction along Mooney Pond Road, which was not governed by a traffic control device.

On the evening of July 7, 2008 and into the morning of July 8, 2008 the infant plaintiff and defendant Julian Coppola (“Julian”), (approximately 14 years of age), had been guests of Alora Williams (“Alora), (also 14 years of age), the adoptive daughter and natural granddaughter of defendant Joanne Williams (“Joanne”). Although there is a question as to whether Joanne Williams knew of Julian Coppola’s intention to “sleep over” at her premises during that time period, there is no question that she knew he was a guest at the house and that infant plaintiff was a “sleep over” guest during the relevant time periods. Plaintiffs allege that Joanne Williams, negligently permitted the infant plaintiff to leave the Williams’ residence in the company of her infant daughter, Alora Williams and defendant Julian Coppola. Upon meeting up with defendant Marco A. Diaz, they are alleged to have been in possession of and to have consumed alcoholic beverages, thereby rendering them impaired or intoxicated. Plaintiffs further allege that defendant Joanne Williams was careless and negligent in failing to reasonably and adequately monitor the activities at her home, in failing to take adequate measures to prevent the happening of the incident complained of, in failing to properly operate, maintain, and control the premises, and in failing to provide her guests with a reasonably safe facility. Plaintiffs assert in their complaint and bill of particulars that defendant Joanne Williams violated General Obligations Law § 11-101 and the Laws of Suffolk County §214-12, *et seq.*<sup>1</sup>

Defendant Joanne Williams now moves for summary judgment dismissing the complaint and all cross claims against her on the grounds that because there was no sale of alcoholic beverages on her property such that a claim under General Obligations Law § 11-101 must fail, she had no knowledge of alcohol in her home or the consumption of same on July 7 or July 8, 2008 so she could not have violated the social host laws of Suffolk County or New York State, and she properly secured her home and was not negligent in the supervision of the infant plaintiff when the accident occurred. Defendant Joanne Williams posits that even if she were found to be negligent in the supervision of the infant plaintiff, same was not the proximate cause of her injuries in that they were caused by a superseding negligent act (the failure of defendant Diaz to stop at a stop sign). In support of her motion, defendant Joanne Williams includes copies of the pleadings and copies of deposition transcripts of plaintiffs and

---

<sup>1</sup>Article II: Social Host Law of Suffolk County was adopted on December 3, 2007 by L.L. No. 35-2007 (Chapter 214, Art. III, of the 1985 Code) and is now found in pertinent part in Suffolk County Code §§ 294-6, 294-7, and 294-8.

Alotta v Diaz  
Index No. 09-39065  
Page No. 3

defendants. Plaintiffs oppose the motion claiming that there are issues of fact as to the lack of supervision and the social host claim.

Summary judgment is a drastic remedy and should only be granted in the absence of any triable issues of fact (*see, Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 413 NYS2d 141 [1978]; *Andre v Pomeroy*, 35 NY2d 361, 362 NYS2d 131 [1974]). It is well settled that the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient proof to demonstrate the absence of any material issues of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923, 925 [1986]). Failure to make such a showing requires a denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853, 487 NYS2d 316, 318 [1985]). Further, the credibility of the parties is not an appropriate consideration for the Court (*S.J. Capelin Assocs., Inc. v Globe Mfg. Corp.*, 34 NY2d 338, 357 NYS2d 478 [1974]), and all competent evidence must be viewed in a light most favorable to the party opposing summary judgment (*Benincasa v Garrubbo*, 141 AD2d 636, 637, 529 NYS2d 797, 799 [2d Dept 1988]). Once this showing by the movant has been established, the burden shifts to the party opposing the summary judgment motion to produce evidence sufficient to establish the existence of a material issue of fact (*see Alvarez v Prospect Hosp., supra*).

The infant plaintiff, Danielle Alotta, testified at her deposition that she was in the 9th grade at the time of the accident, had become friends with Alora Williams during middle school, and had slept at Alora's house on prior occasions. She had been friends with Julian Coppola since the 7th grade. She also testified that she has no recollection of the evening prior to the accident or of the accident, and that she does not remember defendant Marco Diaz.

During her deposition, defendant Joanne Williams testified that she was the adopted mother and natural grandmother of Alora Williams, who died in the accident, and her three younger sisters. She stated that she had met the infant plaintiff on many occasions prior to July 8, 2008 and that she had also met Danielle's parents previously. She averred that she had met defendant Julian Coppola before and that he was not supposed to be sleeping over her house on the night of the accident, although he was an invited guest for the evening. Williams maintained that she "stayed on the couch [in the living room] because [she] had children upstairs and children in the den so it was a neutral location for [her] to be watching all of them. [She] was watching TV in the living room." She stated that although she did not specifically give instructions that evening regarding staying inside the house, she knows that on prior instances when Danielle slept over they had not left the house and that "[she] wouldn't have allowed her [the infant plaintiff] back. [She was] pretty strict like that. It's one of [her] only plain rules."

Joanne Williams recalled speaking to Alora, the infant plaintiff, and Julian Coppola at approximately 10 p.m. about Julian's going home because Joanne had to work the next morning. He assured her that he had a ride home. She then fell asleep on the couch between 10 and 11 p.m. while watching television, although she indicated that it was her intention to stay awake until defendant Julian Coppola left the house, not necessarily until the girls went to sleep. Finally, Joanne Williams asserted that she did not keep alcohol in the house, was not a drinker, did not provide alcohol for her friends (they would have to bring their own if they visited her), and that she did not know of any alcohol in Alora's closet.

Defendant Julian Coppola testified at his deposition that although he knew that Alora drank alcohol prior to the accident, he did not know her to drink it at defendant Joanne Williams' house. He also stated that, to his knowledge, Alora had never snuck out of her grandmother's house prior to the night of the accident. Contrary to Joanne Williams' testimony, Julian maintained that he had previously stayed overnight at her house prior to the night of the accident and that he was going to sleep there that night with her knowledge and consent. On the occasions he had slept there he contended that defendant Joanne Williams had checked on them in the middle of the night. His testimony coincided with Joanne's to the extent that he stated that she came into Alora's room at approximately 10 p.m. to tell them that she was going to go to bed and to ask how he was getting home. At that point he asked Alora if she wanted him to stay over, and Alora then asked Joanne if he could stay overnight. Williams allegedly permitted him to do so and told them to "stay in your room."

Julian further testified that at approximately 12 a.m. Alora announced that she was making plans to meet defendant Marco Diaz outside of the home, and that Julian, Alora, and Danielle left the house, which had been locked up, approximately 10 minutes later. They did not consume any alcohol while inside the home of defendant Joanne Williams, although the three children consumed a few ounces of Bacardi rum, which Alora had taken out of her closet prior to their leaving the house, when they walked to the high school. He claimed that the rum had been located in the closet "under a pile of things that she [had] in there... shoes, board games, all things." The three children planned to meet Diaz at the high school because "[they] wouldn't have been allowed to hang out with him at that time [by defendant Joanne Williams]." They "hung out" until Diaz picked them up in his automobile and brought them to Julian's house. While there, Julian and Danielle went inside, for "not even a minute". Julian took two bottles of Old English out of the refrigerator and brought them out to the car. He admitted that he opened the bottles, passed them around to the girls and that they each took "like three sips" from the time they left his house until the time of the accident. He averred that he did not observe defendant Marco Diaz drink any of the alcohol. Finally, he testified that Diaz did not stop at the stop sign at the intersection where the collision occurred, nor did he slow down from his 35 to 40 miles per hour speed while entering said intersection.

Pertinent portions of the deposition testimony of Marco Diaz reveal that he was the operator of a convertible type motor vehicle in which the infant plaintiff was a passenger on July 8, 2008 when it was involved in an accident. Diaz indicated that he picked up the infant plaintiff, Alora Williams, and Julian Coppola at Centereach High School after 1 a.m. because Alora Williams had said that it was too late to meet at her house. He had met Alora Williams one time previously, approximately one week prior to the accident and had never met the infant plaintiff or defendant Julian Coppola before that night. He stated that none of the three exhibited any signs of intoxication although he could smell the odor of alcohol. Diaz stated that Julian Coppola told him that he had obtained alcohol from his house but that his mother "didn't know about it." Although he testified that he stopped at the stop sign at the intersection where the accident took place, Diaz admitted that he plead guilty to a stop sign violation as a result of this incident.

The Dram Shop Act, General Obligations Law § 11-101, provides in pertinent part "[any person who shall be injured in person ... by any intoxicated person, or by reason of the intoxication of any person, whether resulting in his death or not, shall have a right of action against any person who shall, by

Alotta v Diaz  
Index No. 09-39065  
Page No. 5

unlawful selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication.” For liability to attach under the Dram Shop Act, a commercial sale of alcoholic beverages is required (*D’Amico v Christie*, 71 NY2d 76, 524 NYS2d 1 [1987]; *Conigliaro v Franco*, 122 AD2d 15, 504 NYS2d 186 [2d Dept 1986]). General Obligations Law § 11-100, imposes liability upon persons who unlawfully furnish alcoholic beverages to intoxicated individuals who have not reached the legal drinking age and cause injuries as a result of their intoxication, and states in pertinent part

“[a]ny person who shall be injured in person ... by reason of the intoxication or impairment of ability of any person under the age of twenty-one years, whether resulting in his death or not, shall have a right of action to recover actual damages against any person who knowingly causes such intoxication or impairment of ability by unlawfully furnishing to or unlawfully assisting in procuring alcoholic beverages for such person with knowledge or reasonable cause to believe that such person was under the age of twenty-one years.”

“Liability under General Obligations Law § 11-100 may be imposed only on a person who knowingly causes intoxication by furnishing alcohol to (or assisting in the procurement of alcohol for) person known or reasonably believed to be underage” (*Sherman v Robinson*, 80 NY2d 483, 487, 488, 591 NYS2d 974 [1992]), and while “ it provides a right of recovery for people injured by the actions of the intoxicated minor ... [i]t does not provide a right of recovery for injuries suffered by intoxicated minors as a result of their own intoxication” (*Rudden v Bernstein*, 61 AD3d 736, 738, 878 NYS2d 373 [2d Dept 2009]).

Suffolk County Code §§ 294-7 and 294-8 provide in pertinent part “§294-7 Definitions. ... KNOWINGLY Aware of the consumption of alcohol by a minor. ... §294-8 ... It shall be unlawful for any person over the age of 18 who owns, rents, or otherwise controls a private residence to knowingly allow the consumption of alcohol or alcoholic beverages by any minor on such premises or to fail to take reasonable corrective action upon learning of the consumption of alcohol or alcoholic beverages by any minor on such premises.”

Here, the only evidence of alcohol consumption were the admissions of defendants Julian Coppola and Marco Diaz. While Julian Coppola admitted that he, Alora Williams, and the infant plaintiff drank alcohol, he maintained that the first few ounces that they drank came from a bottle hidden in Alora’s closet, while the last few “sips” were from bottles he took from his mother’s home without her knowledge. No evidence is offered by plaintiff to show or prove that defendant Joanne Williams had any knowledge of this alcohol consumption or that she in any way supplied alcohol to the minors. Nor has any allegation been made, or proof offered to demonstrate that Joanne Williams “sold” alcohol to the minors involved herein. Additionally, there is no proof that anyone, including the infant plaintiff, was injured as a result of any actions by an intoxicated minor. The testimony reveals that the driver of the automobile involved in the collision was not drinking, but that the infant plaintiff was drinking herself. Thus, she cannot recover for injuries she may have sustained as a result of her poor judgment which may have resulted from her own intoxication. Accordingly, the causes of action and any cross claims

alleging a breach of the Dram Shop Act or the social host laws of New York State and Suffolk County are dismissed.

A person, other than a parent, who permits a "sleep over" in his/her home has a duty to adequately supervise the overnight guest, although he/she is not an insurer of the infant plaintiff's safety (*Moreno v Weiner*, 39 AD3d 830, 834 NYS2d 323 [2d Dept 2007]). "Such a person may be liable for any injury sustained by the infant which was proximately caused by his or her negligence. While a person caring for entrusted children is not cast in the role of an insurer, such an individual is obliged to provide adequate supervision and may be held liable for foreseeable injuries proximately resulting from the negligent failure to do so" (*Appell v Mandel*, 296 AD2d 514, 514, 745 NYS2d 491 [2d Dept 2002]). "The degree of supervision, however, depends on the surrounding circumstances and, in general, younger children require closer oversight than [*sic*] older children" (*Arango v Vasquez*, 89 AD3d 875, 876, 933 NYS2d 82 [2d Dept 2011]).

Here, where a fourteen and fifteen year old were sleeping over the home of Joanne Williams and her fourteen year old daughter Alora Williams, defendant Joanne Williams is not liable for negligent supervision since (1) she had observed them at 10 p.m. in the house, (2) the ensuing car accident was unforeseeable in light of her lack of awareness of the infants sneaking out of the house and consuming alcohol while so doing, (3) the infant plaintiff had previously slept over her house on numerous occasions without incident, and (4) defendant Joanne Williams fell asleep on a couch in proximity to the room where the infant plaintiff had been located (*see Lanzetta v Madori*, 55 AD3d 376, 867 NYS2d 43 [1st Dept 2008]; *Moreno v Weiner, supra*). Plaintiffs have failed to demonstrate that Joanne Williams breached a duty since she is not an insurer of the infant plaintiff's safety (*see Moreno v Weiner id*). Thus, plaintiffs' claims and all cross claims against defendant Joanne Williams alleging negligent supervision are dismissed.

The court having found adequate grounds to dismiss the claims and cross claims alleging violations of General Obligations Law § 11-101 (and § 11- 100) and the Laws of Suffolk County §214-12,*et seq.* (now known as Suffolk County Code §§ 294-6, 294-7, and 294-8) and negligent supervision by defendant Joanne Williams, grants the within motion for summary judgment dismissing the complaint and all cross claims interposed against defendant Joanne Williams. The action is severed and continued against the remaining defendants.

Dated: 4.28.14

  
Hon. Denise F. Molta  
A.J.S.C.

           FINAL DISPOSITION      X   NON-FINAL DISPOSITION