

Matos v Maracas Club & Rest. LLC
2014 NY Slip Op 32538(U)
July 8, 2014
Supreme Court, Bronx County
Docket Number: 306350/10
Judge: Norma Ruiz
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7-29-2014

PART 26 22

Case Disposed
Settle Order
Schedule Appearance

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX:

-----X
MATOS, RASHELL W.

-against-

Index No. 0306350/2010

Norma Ruiz

Hon. EDGAR G WALKER

MARACAS CLUB

Justice.

-----X

The following papers numbered 1 to _____ Read on this motion, **SUMMARY JUDGEMENT DEFENDANT**
Noticed on **July 25 2013** and duly submitted as No. _____ on the Motion Calendar of _____

	PAPERS NUMBERED	
Notice of Motion - Order to Show Cause - Exhibits and Affidavits Annexed		
Answering Affidavit and Exhibits		
Replying Affidavit and Exhibits		
_____ Affidavits and Exhibits		
Pleadings - Exhibit		
Stipulation(s) - Referee's Report - Minutes		
Filed Papers		
Memoranda of Law		

Upon the foregoing papers this

**MOTION IS DECIDED IN ACCORDANCE WITH
THE ACCOMPANYING MEMORANDUM DECISION**

Motion is Respectfully Referred to:

Justice: _____

Dated: _____

Dated: 7 10 14

Hon. _____

EDGAR G WALKER, J.S.C.
Norma Ruiz, JSC

NEW YORK SUPREME COURT ----- COUNTY OF BRONX

PART 22

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Index No.: 306350/10

RASHELL W. MATOS

Plaintiffs,

-against-

Present:
HON. NORMA RUIZ

MARACAS CLUB AND RESTAURANT LLC
J.M.C. ENTERTAINMENT INC.,
EDWARD M. SHEEHY, Defendants.

The following papers numbered 1 to Read on this motion SUMMARY JUDGEMENT
Noticed on 7/2/13 and duly submitted as No. 8 on the Motion Calendar of 3/10/14

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Motion		
to:	Papers	Numbered
Notice of Motions and Affidavits Annexed.....		1- 2
Notice of Cross Motion and Answering Affidavits.....		3
Replying Affidavits		4
Memorandum of Law		5

Other:
Upon the foregoing papers, the foregoing motion(s) [and/or cross-motions(s), as indicated below, are consolidated for disposition] and decided as follows:

Defendants motion is denied upon a review of the moving papers and opposition submitted thereto.

In this action, the plaintiff seeks damages for injuries she sustained when she was assaulted by defendant Edward M. Sheeny ("Sheeny") while she was a patron at the defendant's nightclub known as Maracas. Defendant 121-08 Jamaica Avenue LLC owned the premises that were occupie by defendant JMC Entertainment Inc. ("JMC") d/b/a Maracas Club and Restaurant, LLC ("Maracas").

According ti the plaintiff's deposition testimony on August 16, 2009 she, along with some family members and friends, went to Maracas to celebrate her boyfriend Ramel's birthday. They

reserved a VIP section, arriving at the club around midnight. Approximately two hours later, while the plaintiff was sitting by herself, a stranger named Sheeny sat next to her and attempted to put his arm around her. When the plaintiff warned Sheeny that her boyfriend would be returning and would not appreciate his physical contact, Sheeny threatened to break her boyfriend's head. He then grabbed a bottle from the table, broke it and menaced her with it.

When Ralph, a member of her party, saw Sheeny menacing the plaintiff, he grabbed Sheeny who then got into an altercation with him.

As the fight ensued the defendant's bouncer dragged Ralph away, ejecting him from the club. At that point, the plaintiff was left alone with Sheeny. He then bit the plaintiff on the breast, threw her to the ground and repeatedly hit her head against a planter.

When Pai, another member of the plaintiff's party, saw what was happening, he intervened. This resulted in a fight between Sheeny and Pai which was broken up by the bouncer who eventually expelled Sheeny from the premises.

The plaintiff estimated that only minutes elapsed between the time Ralph was expelled and Sheeny attacked her.

Plaintiff complained to the bouncer that Sheeny attacked her party. She demanded they call the cops and tried to go outside to make sure he did not get away. The bouncers did not let her leave because she was bleeding from the breast and was not wearing shoes. As it was clear to her that the bouncers had no intention of calling the cops, she ran out barefoot and bleeding and flagged down a police vehicle on the street. The police officers told her to get inside the car. She then explained what happened and identified Sheeny, who was still on the street. Plaintiff contends that Sheeny was drunk and resisted arrest, requiring the police to throw him on the ground to effectuate the arrest. An ambulance was called for the plaintiff.

Micheal Sbivat "(Sbivat)", the operations manager for JMC, testified at a deposition. Sbivat oversaw the daily operations of JMC which includes the Maracas restaurant/club. Maracas hired its own security staff, all of whom were licensed by the state. Sbivat, who worked on the day of the subject incident, testified that there were approximately eight to ten bouncers working that evening, who are usually stationed 10 feet away from each other. Sbivat explained that the police/procedure in the event of a fight is "[b]asically to break it up and remove both or as many parties involved from the premises" (see Sbivat transcript at page 48). This was an unwritten policy that was verbally provided to all of the bouncers. Where a patron appeared to be intoxicated, they would be asked to leave.

According to Sbivat's deposition testimony, the plaintiff approached him, informed him that someone had bitten her and explained what happened. They then proceeded outside where they saw

Sheeny outside of the club. As the plaintiff was speaking with him, the police came over. Sbviat conceded hat he did not have any personal knowledge of the events, nor not now that Sheeny was drunk.

Defendants now move for summary judgement on the grounds that they can not be held liable to the plaintiff for er damages because se was attacked without warning. Under such circumstances, it can not be held liable.

The court finds that the defendants did not meet their initial burden in establishing there entitlement to summary judgement as a matter of law. Defendants conceded that Ralph and Sheeny were involved in a fight. The remove Ralph and let Sheeny remain leading to the plaintiff being attacked minutes after the bouncer removed Ralph. This was in violation of the defendants unwritten policy to remove all of the individuals involved in an altercation.

In light of the fact that the bouncers did not remove both individuals involved in the fight, the court finds that the defendants failed to establish that ~~he~~^{they} fulfilled ~~his~~^{their} common law duty to take minimal security precautions against foreseeable criminal activity.

Accordingly, the motion is denied.

This constitutes the decision and order of the Court.

Dated: 7/08/14
Bronx, New York



HON. NORMA RUIZ, J.S.C.