

Denison v 300 E. 57 St., LLC
2020 NY Slip Op 30948(U)
April 17, 2020
Supreme Court, New York County
Docket Number: 152848/2016
Judge: Margaret A. Chan
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. MARGARET A. CHAN PART IAS MOTION 33EFM

Justice

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DENISON, ZOE

Plaintiff,

- v -

300 EAST 57 STREET, LLC; RUDIN MANAGEMENT CO. INC.; 493 REST. INC. (d/b/a MERCURY BAR EAST); PRECINCT SECURITY AND INVESTIGATIONS INC.; WOYCHOWSKI, ROXANNE

Defendants.

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INDEX NO. 152848/2016
MOTION DATE
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 183 through 193 were read on this motion to/for REARGUMENT.

In this action, plaintiff Zoe Denison seeks to recover damages from injuries she sustained at the hands of defendant Roxanne Woychowski and the alleged negligence of the co-defendants that arose from a night on the town in the city, state, and county of New York on April 4, 2015. This court granted summary judgment and dismissed plaintiff's action on December 24, 2019, with respect to defendants 300 East 57 Street, LLC and Rudin Management Co. Inc. (collectively "Rudin defendants"), and 493 Rest. Inc. d/b/a Mercury Bar (NYSCEF #185 - December 24 Order).

Plaintiff now moves for leave to reargue this court's December 24 Order and, upon reopening, deny the motion. Plaintiff's motion is limited to the grant of summary judgment in favor of the Rudin defendants. The Rudin defendants oppose the motion. The Decision and Order is as follows:

BACKGROUND

The facts of this matter was discussed at length in its December 24 Order and will not be repeated here. In brief, plaintiff alleges that she was drugged at the Mercury Bar East and became separated from her friend with whom she had spent most of the afternoon and evening going to several bars. Once separated, plaintiff walked from the bar to her apartment complex located at 300 East 57th Street, which is owned and managed by the Rudin defendants. Along the way, plaintiff somehow encountered defendant Roxanne Woychowski. Plaintiff and Woychowski

entered the building and were met by a doorman, Nehat Cira. After obtaining entry into the building, plaintiff and Woychowski did not go to plaintiff's apartment; instead, they went to an unoccupied apartment on a different floor. Subsequently, as plaintiff alleged, Woychowski attacked her and caused her injuries.

In the instant motion, the interaction between plaintiff, Woychowski, and Cira is the critical issue. The court's December 24 Order regarding the facts of this interaction is repeated here in full:

"At approximately 12:12 a.m. on April 5, 2015, plaintiff arrived home and was followed inside by defendant Woychowski (NYSCEF #96 – 300 East 57th Street Surveillance Footage). It is unknown how, when, or where plaintiff and Woychowski came upon one another. The building's doorman, Nehat Cira, is seen standing at a desk in the lobby holding what appears to be a log book (*id.*). Cira hurriedly put the book away as soon as he noticed plaintiff enter the building (*id.*).

Cira testified that he spoke to plaintiff when she entered the lobby, asking her how she was and if she and Woychowski were together, and plaintiff responded in the affirmative (NYSCEF #93 – Cira EBT at 78-79, 94, 172, 180-181). The lobby surveillance footage confirms Cira saying something to plaintiff when she entered the building, and plaintiff is seen raising her arm after she passes Cira on the way to the elevator. Woychowski, following behind plaintiff, also raises her arm. Woychowski and Cira appear to briefly exchange words, after which Cira moves to the front door vestibule and Woychowski continues on to the elevator. At this point, plaintiff had her back to Cira and is seen pushing the elevator button. Woychowski then reaches the elevators, puts her arms around plaintiff, and they hug.

Cira testified that it appeared to him that plaintiff had consumed alcohol that evening, but that plaintiff did not sound drunk or walk in a drunken manner (*id.* at 93-94). Cira testified that he smelled alcohol on plaintiff and Woychowski (*id.* at 156). Cira also testified that he did not believe that plaintiff was in any danger or that she was in trouble (*id.* at 151)"

(NYSCEF #185, 3).

This court's December 24 Order found that Cira interacted with plaintiff who then waved him off as indicated in the security video footage. The Rudin building security procedure requires a doorman to ask if an unknown person entering with a tenant was a guest. Cira apparently spoke to plaintiff who then gestured to Cira. The December 24 Order also noted that even if Cira did not interact with plaintiff,

the behavior Cira plainly observed, namely plaintiff and Woychowski hugging by the elevator, would not have allowed the Rudin defendants to know or have a reason to know “that there is a likelihood of conduct on the part of [Woychowski]... which is likely to endanger the safety of [plaintiff]” (*see id.* at 7 quoting *Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519 [1980]). Thus, as matter of law, the Rudin defendants fulfilled their obligation to plaintiff in providing plaintiff a minimal amount of security to protect plaintiff from a foreseeable harm (*id.* at 8). The conclusion in the December 24 Order was that since Woychowski was perceived as a plaintiff’s guest, the Rudin defendants’ conduct was not a proximate cause of plaintiff’s injuries (*id.*)

DISCUSSION

A motion for CPLR 2221(d) reargument “shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion, but shall not include any matters of fact not offered on the prior motion”. The movant bears the burden of demonstrating that “the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision” (*id.*). “Reargument is not designed to afford the unsuccessful party successive opportunities to reargue issues previously decided or to present argument different from those originally asserted” (*id.*). Thus, the motion is not intended as a vehicle to rehash what has already been argued or for raising new questions (*see Simpson v Loehmann*, 21 NY2d 990, 990 [1968]).

Plaintiff’s motion is denied. Plaintiff makes two arguments contending that this court incorrectly made findings of fact and did not evaluate expert testimony regarding doorman security. As for plaintiff’s first argument, she advances the same arguments that were made in the prior motion. This court noted the inconsistencies between Cira’s testimony and the video footage, but still found that based on the video footage, there was no basis for the Rudin defendants to know or have reason to know that Woychowski posed a threat to plaintiff. This video evidence is undisputed.

As for plaintiff’s second argument, the expert testimony does nothing to alter the undisputed evidence in the video that showed nothing that would alert the Rudin defendants to view Woychowski as a foreseeable danger to plaintiff. Plaintiff indicated that Woychowski was plaintiff’s guest, and even if that were not the indication or plaintiff’s wave to Cira were disregarded, plaintiff’s act of hugging Woychowski dispels any notion that Woychowski was engaged in any dangerous conduct to plaintiff. The expert testimony would not change this view. As such, there is no basis to disturb the December 24 Order.

Plaintiff also argues that this matter is factually similar to *Prizer v 81st W. Riv. Co., LLC*, 2015 N.Y. Slip Op. 30689[U] [NY Sup Ct, New York County 2015] in

which the *Prizer* court reached a contrary summary judgment decision. In the *Prizer* case, the doorman testified that he believed the burglar to be the known tenant's guest and so did not stop him (*see id.* at 1). In contrast, the doorman in the instant case testified that he did in fact speak to plaintiff, and after that, both plaintiff and Woychowski waved him off and continued to the elevator hugging each other, an act that cannot be characterized as dangerous or violent. Again, the doorman's testimony was corroborated by the video footage.

While plaintiff's experience was indeed horrific, the Rudin defendants are not liable for her injuries. The evidence shows no basis for the Rudin defendants to have known or to have reason to know that Woychowski was a danger to plaintiff. As such, plaintiff's motion for reargument is denied.

Accordingly, it is ORDERED that plaintiff's motion for reargument is denied; and it is further

ORDERED that defendants 300 East 57 Street, LLC and Rudin Management Co. Inc. are to serve a copy of this order with notice of entry on all the parties within thirty days of this order.

This constitutes the Decision and Order of the court.



MARGARET A. CHAN, J.S.C.

4/17/2020

DATE

MARGARET A. CHAN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE