

<b>Cohen v Roma View Catering, Inc.</b>
2020 NY Slip Op 34610(U)
May 18, 2020
Supreme Court, Queens County
Docket Number: Index No. 711260/2016
Judge: Marguerite A. Grays
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Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

FILED

5/20/2020  
12:49 PM

Present: HONORABLE MARGUERITE A. GRAYS  
Justice

IAS PART 4

COUNTY CLERK  
QUEENS COUNTY

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NORMAN COHEN,

Index

No.: 711260/2016

Plaintiff(s),

Motion

Date: March 10, 2020

-against-

ROMA VIEW CATERING, INC., MADISON  
SECURITY GROUP, INC., FIRST SERVICE  
RESIDENTIAL NEW YORK, INC., DAYTON  
BEACH PARK NO 1 CORP., COOPER SQUARE  
REALTY, INC., JENNIFER GRADY and  
SECURITY GUARD "JOHN DOE".

Motion

Cal. No.:

Motion

Seq. No.: 5

Defendant(s).

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The following papers numbered E97-E113, E115, E117, E119 and E120-E121 read on this motion by defendant Roma View Catering, Inc. (Roma View) for summary judgment dismissing plaintiff's complaint and all cross-claims and other claims against it.

PAPERS  
NUMBERED  
EF97-EF113  
EF115,EF117,  
E119  
E120-E121

Notice of Motion - Affid.-Exhibits.....  
Answering Affidavits - Exhibits .....  
Reply Affidavits - Exhibits .....

Upon the foregoing papers it is ordered that this motion is granted.

This action arises from injuries plaintiff claims to have suffered in an altercation with a security guard at a catering hall. Defendant catering hall Roma View moves for summary judgment dismissing plaintiff's claims and all other claims against it. In support of its motion, Roma View submits the deposition transcript of its maître d', Stephen Tanico (Tanico). Tanico testified that Roma View provided the venue for an event organized by co-defendant Dayton Beach Park No. 1 Corp. (Dayton) through Dayton's management company, co-defendant First Service

Residential New York, Inc. (First Service). It is undisputed that Dayton, through First Service, retained co-defendant Madison Security Group, Inc. (Madison) to provide security for the event. Tanico testified that he had no role in the hiring of security for the event, that he had no knowledge of any prior altercations occurring on the premises and further, that he had no knowledge of the alleged ‘history’ between plaintiff and the security guard identified as “Patrick”.

While an owner or proprietor has a general duty to act in a reasonable manner to protect patrons of its premises, it has no duty to protect against unforeseeable and unexpected assaults (*Afanador v Coney Bath*, 91 AD3d 683 [2012]; *Milan v AMF Bowling Ctrs.*, 38 AD3d 860 [2007]). Moreover, a negligent security claim is properly dismissed where the injury claimed was attributed to an unforeseeable act and its prevention was beyond any duty a landowner has to its patrons (*Zamone v Bar None Holdings*, 73 AD3d 601 [2010]; *Lebron v Loco Noche, LLC*, 82 AD3d 669 [2011]). Here, this court finds that defendant Roma View has sufficiently demonstrated that the altercation between plaintiff and a security guard was reasonably unexpected and unforeseeable to it.

An opponent to a motion for summary judgment bears the burden of presenting admissible evidence sufficient to raise a triable issue of fact to preclude a right to summary judgment (*Zuckerman v City of N.Y.*, 49 NY2d 557 [1980]). Roma View’s motion is opposed by the affirmations of counsel to plaintiff, and the respective counsel to co-defendants Madison, Dayton, First Service and Jennifer Grady (Grady). Initially, a party opposing a motion for summary must lay bare its proof with a sufficient evidentiary showing (*See, Schanzer v Johnson Ken-ro, Inc.*, 109 AD2d 786 [1985]). It is noted that none of the affirmations in opposition are supported by affidavits from parties with first-hand knowledge of the facts and no exhibits are provided (*See CPLR 3212 [b]*). An attorney’s affirmation, without more, is devoid of evidentiary value, and such failure is sufficient to warrant dismissal (*Zuckerman v City of N.Y., supra; Schanzer v Johnson Ken-ro, supra*).

In considering Madison’s assertion that this motion is premature, this argument was made by Madison in Roma View’s first motion for summary judgment, which was denied with leave to renew upon the completion of depositions (*See, Order of this Court dated January 25, 2019*). Madison has since presented a representative for deposition and all other court-ordered depositions are complete. Moreover, Madison cannot sustain another argument of ‘prematurity’ where plaintiff filed a Note of Issue stating that all outstanding discovery was complete<sup>1</sup> on August 26, 2019, and

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<sup>1</sup> An affirmation from plaintiff accompanying the Note of Issue did indicate than a remaining IME of plaintiff had not been taken, however, counsel states that plaintiff remains available for a pre-trial IME.

Madison did not make a motion to vacate the Note. Similarly unavailing is the argument of Dayton, Grady and First Service that Tanico’s testimony that he told the security guards where to stand is sufficient to impose liability for their acts (*Vargas v Beer Garden.*, 15 AD3d 277 [2005]; *McLaughlan v BR Guest*; 149 AD3d 519 [2017] [directing the placement of a security guard is insufficient for a finding of control]).

Based upon all of the foregoing, the court finds that plaintiff and co-defendants have failed establish the existence of any material fact sufficient to warrant denial of the motion of defendant Roma View. Accordingly, defendant Roma View’s motion for summary judgment is granted, and the complaint, all cross- claims, counter-claims and any other claims made against said defendant are dismissed.

Dated: 5/18/20

  
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MARGUERITE A. GRAYS  
J.S.C.

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