

<b>Denison v 300 E. 57 St., LLC</b>
2021 NY Slip Op 30399(U)
February 9, 2021
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. (MS) 004; 006

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 177, 178, 179, 180, 181, 182, 192

were read on this motion to/for DEFAULT

The following e-filed documents, listed by NYSCEF document number (Motion 006) 198, 199, 200, 201, 202, 203, 204, 205, 206, 208, 209

were read on this motion to/for RENEWAL

In this assault and negligent security 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 300 East 57 Street, LLC, Rudin Management Co. Inc., and 493 Rest. Inc. (d/b/a Mercury Bar East), that arose from a night out 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. (NYSCEF # 200 - December 24, 2019 Order). Additionally, this court denied plaintiff's attempt to reargue the summary judgment motion on April 17, 2020 (NYSCEF # 206 - April 17, 2020 Order).

Plaintiff now moves in MS4 for default judgment against Roxanne Woychowski pursuant to CPLR 3125. The motion is unopposed. Additionally, plaintiff moves in MS6 for leave to renew her opposition to the motion for summary judgment granted by this court on December 24, 2019 in favor of the Rudin defendants. The Rudin defendants oppose the motion. The Decision and Order is as follows:

## BACKGROUND

This court discussed the facts of this matter at length in its December 24 Order and it will not repeat them here. In brief, plaintiff alleges that she was drugged at Mercury Bar East and became separated from her friend. Once separated, plaintiff walked from the bar to her apartment complex located at 300 East 57<sup>th</sup> Street, 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 doorman Nehat Cira. After obtaining entry to the building, plaintiff and Woychowski did not go to plaintiff's apartment; instead, they ended up in an unoccupied apartment on a different floor. Subsequently, plaintiff alleges that Woychowski attacked her and caused her injuries.

In a surprising turn of events, plaintiff has now obtained an affidavit from defendant Roxanne Woychowski that provides defendant's perspective of the incident (NYSCEF # 201 – Woychowski Aff). Plaintiff's counsel obtained Woychowski's cooperation in exchange for discontinuing this action against her (NYSCEF # 199, ¶ 7).

Woychowski avers that “[o]n April 4, 2015, I worked a shift at a restaurant located on Second Avenue and 53rd Street. At approximately midnight, after I left the restaurant, I encountered a person I later learned was Zoe Denison on Second Avenue. She seemed very inebriated” (NYSCEF # 201, ¶ 2). Woychowski states that “[a]fter asking where she lived, I accompanied [plaintiff] to her apartment building on 57th Street between First and Second Avenue. Zoe entered the building and walked past the doorman. I followed behind her. The doorman spoke to Zoe but she did not respond to him other than waving her arm” (*id.*, ¶¶ 3-4). Woychowski claims that she “told the doorman that I was helping Zoe to get home, and that I was going to bring her to her apartment and also use the bathroom. I did not identify myself to the doorman, or provide any details of my relationship to Zoe” (*id.*, ¶ 5). Woychowski states that she and Zoe then “entered the elevator and exited on the fifth floor. An altercation later occurred between us that resulted in my arrest” (*id.*, ¶ 6).

On the basis of this new affidavit from Woychowski, plaintiff argues that this court should reconsider its prior determination granting summary judgment in favor of the Rudin defendants.

## DISCUSSION

A motion for CPLR 2221(e) renewal “shall be based upon new facts not offered on the prior motion that would change the prior determination or shall demonstrate that there has been a change in the law that would change the prior determination” (CPLR 2221[e]). CPLR 2221(e)(3) states that the motion “shall

contain reasonable justification for the failure to present such facts on the prior motion” (*id.*). A motion for renewal “is intended to draw the court’s attention to new or additional facts which, although in existence at the time of the original motion, were unknown to the party seeking renewal and therefore not brought to the court’s attention” (*William P. Pahl Equipment Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992]).

Plaintiff’s motion for renewal is denied. The Woychowski affidavit does not alter the prior determinations of this court.

Woychowski “told the doorman that [she] was helping Zoe to get home, and that [she] was going to bring her to her apartment and also use the bathroom. I did not identify myself to the doorman, or provide any details of my relationship to Zoe” (*id.*, ¶ 5). Woychowski’s testimony confirms the security footage that showed that doorman Nehat Cira spoke to plaintiff and was waved off. Woychowki’s testimony also confirms that Cira spoke to Woychowski. She told Cira that she was helping plaintiff get home. Nothing in the Woychowski affidavit contradicts the security video footage.

Even with the additional facts presented by the Woychowski affidavit, it cannot be said that the Rudin defendants knew or had reason to know “that there is a likelihood of conduct on the part of [Woychowski]... which is likely to endanger the safety of [plaintiff]” (*Nallan v Helmsley-Spear, Inc.*, 50 NY2d 507, 519 [1980]). Plaintiff waved off Cira, Woychowski told Cira that she was taking plaintiff home, and then Cira witnessed plaintiff and Woychowski hugging. The Woychowski affidavit does not change this court’s previous determinations. As such, there is no basis to grant renewal.

As for plaintiff’s motion for default judgment, it is denied. Plaintiff obtained Woychowski’s cooperation on the basis that she would discontinue this action against her. This court will honor that agreement.

Accordingly, it is ORDERED that plaintiff’s motion for renewal is denied; it is further

ORDERED that plaintiff’s motion for default judgment is denied; it is further


ORDERED that plaintiff’s action is discontinued as against defendant Roxanne Woychowski; it is further

ORDERED that defendants 300 East 57<sup>th</sup> Street, LLC and Rudin Management Co. Inc. are to serve a copy of this order with notice of entry on all parties who have appeared in this action within fifteen (15) days of this order; and it is further

ORDERED that plaintiff is to serve a copy of this order to defendant Roxanne Woychowski's attorney, who had appeared for a limited purpose, within seven (7) days of receipt of the notice of entry of this order.

The Clerk of the Court is directed to enter judgment as written.

This constitutes the Decision and Order of the court.

<u>2/9/2021</u>					
<b>DATE</b>			<b>MARGARET A. CHAN, J.S.C.</b>		
<b>CHECK ONE:</b>	<input type="checkbox"/>	<b>CASE DISPOSED</b>	<input checked="" type="checkbox"/>	<b>NON-FINAL DISPOSITION</b>	
<b>APPLICATION:</b>	<input type="checkbox"/>	<b>GRANTED</b>	<input checked="" type="checkbox"/>	<b>GRANTED IN PART</b>	<input type="checkbox"/> <b>OTHER</b>
<b>CHECK IF APPROPRIATE:</b>	<input type="checkbox"/>	<b>SETTLE ORDER</b>	<input type="checkbox"/>	<b>SUBMIT ORDER</b>	
	<input type="checkbox"/>	<b>INCLUDES TRANSFER/REASSIGN</b>	<input type="checkbox"/>	<b>FIDUCIARY APPOINTMENT</b>	<input type="checkbox"/> <b>REFERENCE</b>