

**Varga v Ambassador Theatre Group**

2025 NY Slip Op 32703(U)

August 1, 2025

Supreme Court, New York County

Docket Number: Index No. 153641/2020

Judge: Sabrina Kraus

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. SABRINA KRAUS PART 57M**

*Justice*

-----X

ELLE VARGA,

Plaintiff,

- v -

AMBASSADOR THEATRE GROUP, AMBASSADOR  
THEATRE GROUP - NY, LLC, CDL WEST 45TH STREET  
L.L.C. AS SUCCESSOR BY MERGER WITH CDL WEST  
45TH STREET L.P.,

Defendant.

-----X

INDEX NO. 153641/2020

MOTION DATE 04/17/2025

MOTION SEQ. NO. 004

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 004) 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123

were read on this motion to/for JUDGMENT - SUMMARY.

**BACKGROUND**

Plaintiff commenced this action seeking damages for personal injuries allegedly sustained on June 3, 2017, at The Hudson Theatre located at 139-141 West 44th street in Manhattan (the “Theatre”) when she was struck in the back of the head with a playbill by a man sitting behind her while attending a play. Plaintiff asserts a sole cause of action for negligence against Defendants Ambassador Theatre Group, LLC., i/s/h/a Ambassador Theatre Group, Ambassador Theatre Group-NY, LLC and CDL West 45th Street L.L.C., as successor by merger with CDL west 45th street, L. P. (collectively, “defendants”), the entities that owned and operated the Theatre.

Defendants commenced a third-party action against Hudson Theatre, LLC, which was discontinued by stipulation dated March 10, 2021.

On February 20, 2025, plaintiff filed her note of issue and certificate of readiness.

**PENDING MOTION**

On April 16, 2025, defendants moved for an order pursuant to CPLR § 3212 granting it summary judgment against plaintiff (mot. seq. 4).

**ALLEGED FACTS**

On June 3, 2017, plaintiff attend a performance at the Theatre with her neighbor, David. She had previously been to the Theatre on five or six occasions over the years. On the night of the incident patrons were provided with a complementary glass flute of champagne or prosecco and a playbill. Plaintiff arrived at the theatre around 7:40pm and was seated in the third row on the right side of the theatre three to four seats away from the stage. Plaintiff did not take note of the couple sitting behind them and did not interact with them prior to the incident.

The play began at 8:00 pm. Approximately 20 minutes into the play, plaintiff claims she was hit from behind with an object, which she believes was the glass flute inside two rolled up playbills, although she did not see it. While she did not know the source at first, a person sitting next to them she thought she was struck by the woman behind her. Plaintiff turned and said, “[d]id you hit me? Do not hit me again” and returned to watching the remainder of the performance.

After the play ended around 9:45, she turned around and asked the woman “[w]hy did you hit me?” and plaintiff claims her husband responded, “She didn't hit you, I did.” Security than came to address the commotion, at which time plaintiff claims the man once again claimed to have hit her. An employee stepped away to check the CCTV footage. The video did not show the alleged assault, only that the couple leaned forward at 9:33.

Police were called by the theatre, after taking statements, the officer declined to make an arrest. The theatre manager took statements from both parties, who left thereafter. The following day, plaintiff and David went to the local police precinct, and “forced them to take a report” after they declined to do so. The report states, in pertinent part, that “[w]hile sitting at location [Plaintiff] was slapped with a playbill theatre program causing minor annoyance.”

Plaintiff alleges sustained spinal injuries, as well as to the head and right shoulder.

### DISCUSSION

#### Summary Judgment Standard

Summary judgment is a drastic remedy reserved for those cases where there is no doubt as to the existence of material and triable issues of fact. *Sillman v Twentieth Century–Fox Film Corp.*, 3 NY2d 395, 404 (1957).

To prevail on a motion for summary judgment, the movant must establish, *prima facie*, its entitlement to judgment as a matter of law, providing sufficient evidence demonstrating the absence of any triable issues of fact. CPLR 3212(b); *Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25-26 (2019). If this burden is met, the opponent must offer evidence in admissible form demonstrating the existence of factual issues requiring a trial; “conclusions, expressions of hope, or unsubstantiated allegations or assertions are insufficient.” *Justinian Capital SPC v WestLB AG*, 28 NY3d 160, 168 (2016), quoting *Gilbert Frank Corp. v Fed. Ins. Co.*, 70 NY2d 966, 967 (1988).

In deciding the motion, the evidence must be viewed in the “light most favorable to the opponent of the motion and [the court] must give that party the benefit of every favorable inference.” *O’Brien v Port Auth. of New York and New Jersey*, 29 NY3d 27, 37 (2017).

Contentions

Defendants seek dismissal of plaintiff's claims against them, contending they lacked actual or constructive notice that an incident was likely to take place, as there was no recent criminal activity in the venue and the alleged incident occurred swiftly and without warning. They submit the expert affidavit of Daniel Kennedy, a professor of Criminal Justice and Security administration, who opines that the security measures at the Theatre were appropriate for the setting.

In opposition, plaintiff contends that defendants fail to meet their burden of proof, arguing that they created the condition that caused plaintiff's injury by providing glass stemware to "intoxicated and or disgruntled" patrons.

Analysis

With respect to landowners and leaseholders, there is a "duty to control the conduct of third persons on their premises when they have the opportunity to control such persons and are reasonably aware of the need for such control" *Pink v Rome Youth Hockey Ass'n, Inc.*, 28 NY3d 994, 997-98 (2016), quoting *D'Amico v Christie*, 71 NY2d 76, 85 (1987). "That duty includes 'minimiz[ing] foreseeable dangers on their property'... including 'foreseeable criminal conduct.'" *Id.* (internal citations omitted). "A restaurant or bar is not liable... for injury resulting from a fight between its customers where the fight reasonably could not have been anticipated or prevented." *Wirth v Wayside Pub, Inc.*, 142 AD3d 1346 (4th Dept 2016); see *Martinez v National Amusements, Inc.*, 50 AD3d 302 (1st Dept 2008) (granting summary judgment to owner and operator of theatre where there was no evidence of prior assaults or criminal activity there before plaintiff was assaulted). "[T]he owner of a public establishment has no duty to protect

patrons against unforeseeable and unexpected assaults.” *Giambruno v Crazy Donkey Bar & Grill*, 65 AD3d 1190, 1192 (2d Dept 2009).

Here, there is nothing in the record indicating any history of prior incidents of violence or criminal activity at the Theatre, nor any other facts indicating that defendants should have been on notice of any potential violent activity, including between the parties at issue. Thus, defendants meet their *prima facie* burden. In opposition, plaintiff’s contention that defendants provided the alleged attacker with the instrumentality by which plaintiff was assaulted is insufficient to raise a triable issue of fact as to notice, and her unsupported contention that her alleged assailant was “intoxicated and or disgruntled,” absent any facts indicating that any other employees or patrons were aware of that fact prior to the alleged assault, is also insufficient to raise a triable issue of fact.

### CONCLUSION

WHEREFORE it is hereby:

ORDERED that defendants’ motion for summary judgment is granted and the complaint is dismissed with costs and disbursements to defendant as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further


ORDERED that the Clerk is directed to enter judgment accordingly; and it is further

ORDERED that, within 20 days from entry of this order, movants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the Protocol on Courthouse and County Clerk Procedures for

Electronically Filed Cases (accessible at the "E-Filing" page on the court's website at the address [www.nycourts.gov/supctmanh](http://www.nycourts.gov/supctmanh));].

This constitutes the decision and order of this court.

202508010908285BKRAUS0305E0EB9754425B8B644D9D7AF91A62  


8/1/2025  
DATE

\_\_\_\_\_  
SABRINA KRAUS, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

CHECK IF APPROPRIATE: