

Murden v Bleachers Sports Bar & Grill

2025 NY Slip Op 34043(U)

October 16, 2025

Supreme Court, Kings County

Docket Number: Index No. 501240/2021

Judge: Lisa S. Ottley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS – PART 24

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YOUSSEF MURDEN,

Plaintiff,

Motion Seq. #2

-against-

Index # 501240/2021

BLEACHERS SPORTS BAR & GRILL and 240
FLATBUSH AVENUE, LLC d/b/a BLEACHERS
SPORTS BAR,

Decision and Order

Defendants.

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240 FLATBUSH AVE LLC d/b/a BLEACHERS SPORTS
BAR and d/b/a BLEACHERS SPORTS BAR & GRILL
i/s/h/a 240 FLATBUSH AVENUE, LLC,

Third-Party Plaintiffs,

-against-

FACE DOWN SECURITY, LLC,

Third-Party Defendant.

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HON. LISA S. OTTLEY, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this Notice of Motion for Summary Judgment submitted January 6, 2025.

Papers	Numbered
Notice of Motion & Affirmation.....	1&2 [Exh. A -G]
Affirmation in Opposition.....	3
Affirmation in Reply and further Support of Motion.....	4

Plaintiff commenced this action against the defendants seeking to recover damages due to an alleged assault by patrons of defendants’ establishment that occurred on February 17, 2019, because of defendants’ alleged negligence. Defendants move for an order pursuant to CPLR 3212 for summary judgment in its favor dismissing plaintiff’s complaint and amended complaint in its entirety which alleges a violation of the Dram Shop Act and negligence. Plaintiff opposes defendants’ motion on the grounds that the defendants fail to establish their entitlement to summary judgment as a matter of law and issues of fact which preclude summary judgment from being granted.

Discussion

It is well settled that to grant summary judgment, it must clearly appear that no material issue of fact has been presented. *See, Grassick v. Hicksville Union Free School District*, 231 A.D.2d 604, 647 N.Y.S.2d 973 (2nd Dept., 1996). “Where the moving party has demonstrated its entitlement to summary judgment, the party opposing the motion must demonstrate by admissible evidence the existence of a factual issue requiring the trial of the action.” *See, Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595 (1980). The papers submitted in the context of the summary judgment motion are viewed in the light most favorable to the party opposing the motion. *See, Marine Midland Bank, N.A. v. Dino v. Artie’s Automatic Transmission Co.*, 168 A.D.2d 610 (2nd Dept., 1990). If the *prima facie* showing has been met, the burden then shifts to the opposing party to present sufficient evidence to establish the existence of material issues of fact requiring a trial. *See, CPLR 3212[b]; Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 508 N.Y.S.2d 923 (1986).

In this action, the plaintiff alleges that the defendant served alcohol and liquor to patrons on February 17, 2019, while at Bleachers Sports Bar & Grill located at 240 Flatbush Avenue, Brooklyn, New York, who were intoxicated and in doing so were negligent and failed to comply with New York State law concerning the operation of the premises and selling alcoholic beverages. Plaintiff also alleges that as a result of defendants’ negligence in serving alcoholic beverages to the visibly intoxicated assailants who were patrons at the defendants’ establishment, the defendants failed to provide a safe eating and drinking place for the plaintiff and in failing to and omitting to prevent the assault upon plaintiff, they were negligent in the screening, hiring and supervision of its employees.

Defendants argue that summary judgment must be granted as a matter of law in their favor since there is no admissible evidence showing that defendants served alcohol to visibly intoxicated patrons who assaulted the plaintiff, nor did the sale of alcohol bare a reasonable or practical connection to the plaintiff’s damages. Specifically, defendants argue that the plaintiff was merely speculating that alcohol was being served to the assailants and did not know what the assailants were drinking or whether the bottle the bartender was pouring from contained alcohol and the fact that the drinks were served in a shot glass does not establish that alcohol was served. Defendants further argue that even if the assailants were served alcohol, the mere consumption of alcohol is not enough to defeat a motion for summary judgment.

In opposition to defendants’ motion, plaintiff argues that while he was at the bar that he observed the individuals who ultimately assaulted him become intoxicated and the bartender continued to serve shots even though the individuals were visibly intoxicated with glassy eyes, slurred speech and falling all over each other. Plaintiff also argues that one of the individuals aggressively approached him, the bartender’s method of de-escalating a possible confrontation was to offer to buy a round of drinks for the visibly intoxicated and aggressive individuals.

In reply, defendants argue that plaintiff testified there was never a fight or physical altercation inside of defendants' premises; the plaintiff and individuals who were never identified by the plaintiff were kept separate and plaintiff left the bar without incident; and the assault happened after the plaintiff left and walked several storefronts away when he was suddenly attacked by the men running towards him. In addition, defendants argue that plaintiff's testimony points to one of the unidentified individuals aggressively approaching the plaintiff and being grabbed on the arm by the same individual which if taken at face value would provide no notice to the defendant of a violent tendency of the unidentified individual.

After careful review of the moving papers, opposition thereto and reply, the court finds as follows:

General Obligations Law 11-11-101(1) provides that "[a]ny person who shall be injured in person, property, means of support, or otherwise by any intoxicated person, or by reason of intoxication of any person, ... shall have a right of action against any person who shall, by unlawful selling to or unlawfully assisting in procuring liquor for such intoxicated person, have caused or contributed to such intoxication." To establish a cause of action under the Dram Shop Act, a plaintiff is required to prove that the defendant sold alcohol to a person who was visibly intoxicated, and that the sale of that alcohol bore some reasonable or practical connection to the resulting damages." See, *Garratt v. Silva*, 238 A.D.3d 996, 236 N.Y.S.3d 104 (2nd Dept., 2025). Consequently, for a defendant to establish its prima facie entitlement to judgment as a matter of law dismissing a cause of action under the Dram Shop Act, it is required to establish either that it did not serve alcohol to the person while he or she was visibly intoxicated or that its sale of alcohol to him or her had no reasonable or practical connection to the resulting damages. See, *Simmons v. Vecchiano*, 233 A.D.3d 724, 222 N.Y.S.3d 160 (2nd Dept., 2024).

In support of its motion, the defendants submitted the deposition transcript of its manager, Garry Jean-Baptiste, who testified that he became aware of the incident the next day when the bar manager, Marissa Martinez told him that two men got into an argument inside the bar over a girl and were escorted out of the bar. Mr. Jean-Baptiste also testified that the bartenders have E-Tips certification (an online course) and would stop serving any customer if the customer appeared intoxicated. He further testified that he was informed that the plaintiff became upset, and a verbal argument ensued between the plaintiff and another customer. He also stated that he was never informed that the individuals were intoxicated. Defendants also submitted the deposition testimony of the plaintiff and points out that the plaintiff did not know what the group of men were drinking and that he did not speak with the group of men while they were having shots at the bar. Plaintiff also testified that he was at the bar for two hours when one of the guys bumped into him. Plaintiff could not state how many drinks were ordered and only described the men as being African American, one with dreads; he could not see the eyes of the guy who bumped into him and that as he started to walk out of Bleachers, he pulled away when the guy with the dreads grabbed his arm. Plaintiff further testified that when he proceeded to walk down the block that he heard yelling and saw the guys running towards him. He was assaulted by the guy with the dreads and another guy had something sharp which cut his forearm. The incident took place two businesses away from where defendants' business is located.

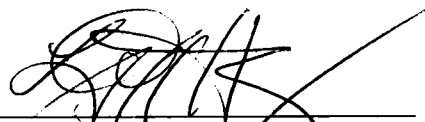
The court finds that the defendant has failed to establish as a matter of law, that it did not serve alcohol to the patron(s) while visibly intoxicated or that its sale of the alcohol to the patrons had no reasonable or practical connection to the resulting damages. The manager, who was not present at the establishment when the incident occurred did not testify as to the patrons' intoxication and/or lack thereof. There is no testimony from the actual bartenders whose names were not remembered by Mr. Jean-Baptiste as to the serving of the alcohol and whether the patrons were visibly intoxicated. In addition, the manager testified that the patrons were escorted out of the bar due to the argument that occurred between the plaintiff and one of the patrons, over the plaintiff's girlfriend. Here, Bleachers failed to establish its prima facie entitlement to judgment as a matter of law dismissing the causes of action alleging a violation of General Obligations Law 11-100 and 11-101. See, *Filc v. 7221 Someplace Else, Ltd.*, 219 A.D.3d 1487, 196 N.Y.S.3d 532 (2nd Dept., 2023). Viewing the facts in the light most favorable to the plaintiff, the court finds that the plaintiff has raised a triable issue of fact as to whether the patrons involved in the incident were served alcohol while visibly intoxicated. See, *Conklin v. Travers*, 129 A.D.3d 765, 10 N.Y.S.3d 609 (2nd Dept., 2015).

As to the cause of action for common law negligence, the court finds the plaintiff failed to raise a triable issue of fact. Under a theory of common-law negligence, a landowner may be responsible for injuries caused by an intoxicated guest, however, that liability may be imposed only for injuries that occurred on the defendants' property, or in an area under the defendant's control, where the defendant had the opportunity to supervise the intoxicated guest and was reasonably aware of the need for such control. See, *Filc v. 7221 Someplace Else, Ltd.*, *supra*. In the case at bar, the incident occurred outside and away from the defendants' establishment after the unidentified patrons were escorted out of defendants' establishment.

Accordingly, the defendants' motion granting summary judgment is denied as to the cause of action alleging a violation under the Dram Shop Act and granted dismissing the cause of action alleging common-law negligence asserted against defendants.

This constitutes the decision and order of this court.

Dated: Brooklyn, New York
October 16, 2025



 HON. LISA S. OTTLEY, L.S.C.
 HON. LISA S. OTTLEY
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 KINGS COUNTY CLERK