

Sklifas v Juliet Supperclub

2013 NY Slip Op 31105(U)

May 21, 2013

Sup Ct, New York County

Docket Number: 102400/11

Judge: Cynthia S. Kern

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SUPREME COURT OF THE STATE OF NEW YORK NEW YORK COUNTY

PRESENT: _____
Justice _____

PART _____

Index Number : 102400/2011
SKLIFAS, ATHANASIOS
vs
JULIET SUPPERCLUB
Sequence Number : 002
VACATE

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____

The following papers, numbered 1 to _____, were read on this motion to/for _____

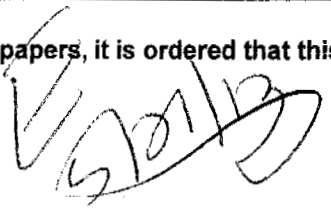
Notice of Motion/Order to Show Cause — Affidavits — Exhibits _____ | No(s). _____

Answering Affidavits — Exhibits _____ | No(s). _____

Replying Affidavits _____ | No(s). _____

FILED

Upon the foregoing papers, it is ordered that this motion is



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NEW YORK

is decided in accordance with the annexed decision.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE
FOR THE FOLLOWING REASON(S):

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IAS MOTION SUPPORT OFFICE
NYS SUPREME COURT-CIVIL

Dated: 5/21/13

[Signature], J.S.C.

1. CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION
2. CHECK AS APPROPRIATE: MOTION IS: GRANTED DENIED GRANTED IN PART OTHER
3. CHECK IF APPROPRIATE: SETTLE ORDER SUBMIT ORDER
- DO NOT POST FIDUCIARY APPOINTMENT REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: Part 55

-----X
ATHANASIOS SKLIFAS,

Plaintiff,

Index No. 102400/11

-against-

DECISION/ORDER

JULIET SUPPERCLUB, WEST 21st STREET
PROPERTIES, LLC, JOHN BAKSHI, 539 JB
ENTERPRISES, LTD., JOHN and JANE DOES 1-10
(fictitious names) and ABC CORPORATIONS 1-10
(fictitious entities),

Defendants.
-----X

FILED

MAY 21 2013

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NEW YORK

HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion :

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	<u>1</u>
Affidavits in Opposition.....	<u>2</u>
Replying Affidavits.....	<u>3</u>
Exhibits.....	<u>4</u>

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Plaintiff commenced the instant action against defendants alleging that they were negligent in causing plaintiff to be struck and assaulted while he was a patron in defendant Juliet Supperclub's nightclub. On or about January 22, 2013, this court disposed of the case due to plaintiff's failure to appear at two Compliance Conferences scheduled by this court. Plaintiff now moves for an Order vacating the dismissal and restoring the Complaint in this action. For the reasons set forth below, plaintiff's motion is granted.

The relevant facts are as follows. On December 29, 2010, plaintiff was a patron at the

premises known as the Juliet Supperclub located at 539 West 21st Street, New York, New York (the “premises”). While at the premises, plaintiff was allegedly assaulted by an intoxicated patron and suffered permanent injuries. On or about February 25, 2011, plaintiff commenced the instant action with the filing of a Summons and Complaint. On March 29, 2011, West 21st Street appeared and answered and served a Demand for a Verified Bill of Particulars and Combined Demands for Discovery and Inspection. On or about June 2, 2011, plaintiff served defendants with an Amended Verified Complaint.

On August 14, 2012, a Compliance Conference was held in this action but plaintiff failed to appear. Defendants allege that on September 24, 2012, a letter was sent to plaintiff’s counsel advising him of his failure to comply with discovery obligations and court orders but that plaintiff failed to respond. Another Compliance Conference was held on September 25, 2012 and plaintiff’s counsel appeared. However, plaintiff alleges in his motion papers that he did not appear on this date. According to court records, at this conference, the parties entered into a discovery schedule and another Compliance Conference was scheduled for January 22, 2013. On January 22, 2013, plaintiff failed to show up for the Compliance Conference. Thus, on that date, this court entered an Order dismissing plaintiff’s complaint pursuant to Uniform Rules - Trial Courts § 202.27 based on plaintiff’s failure to appear for two scheduled conferences. Plaintiff now moves for an Order vacating the dismissal of the case and restoring the complaint in this action.

A case that has been dismissed due to the plaintiff’s failure to appear for two or more scheduled court conferences may be restored if the plaintiff establishes “a reasonable excuse for the failure to attend the conference and a meritorious cause of action.” *Biton v. Turco*, 88 A.D.3d

519 (1st Dept 2011). In the instant case, plaintiff's motion to vacate the dismissal and restore the complaint is granted to the extent stated herein. As an initial matter, plaintiff has established a meritorious cause of action. Plaintiff has alleged that as a direct and proximate result of defendants' negligence, plaintiff suffered personal injuries including, but not limited to, multiple facial traumas, a fractured upper incisor, mandibular fracture and nasal bone fracture. Plaintiff has alleged that such injuries occurred due to defendants' negligence in failing to maintain the premises in a safe manner and failing to exercise reasonable care when serving alcohol to the patrons in the nightclub. Plaintiff also alleges in his second cause of action that defendants breached their nondelegable duties owed to plaintiff pursuant to New York General Obligations Law § 11-101.

However, it is unclear whether plaintiff has demonstrated a reasonable excuse for failing to appear at the two scheduled compliance conferences. Plaintiff fails to address his nonappearance at the August 2012 Compliance Conference and alleges that he failed to appear at the January 2013 Compliance Conference due to lack of notice of the conference from the Court. However, this court has a record of plaintiff's counsel's appearance at the September 2012 Compliance Conference during which the parties agreed to the January 2013 conference date. Thus, due to the fact there may have been some confusion as to when plaintiff appeared and what notice he had of the dates of the conferences, this court grants plaintiff's motion to restore this case to the calendar on the condition that plaintiff provide all outstanding discovery demanded by defendants within 30 days of the date of this order and that all parties, including plaintiff, appear for a Compliance Conference on July 30, 2013 at 11:00 a.m. at 60 Centre Street, New York, New York in Room 432. If plaintiff does not provide the discovery within the time frame provided or

appear at the Compliance Conference, the dismissal is not vacated.

Accordingly, plaintiff's motion to vacate the dismissal and restore the Complaint in this action is granted on the conditions stated above. This constitutes the decision and order of the court.

Dated: 5/21/13

Enter: CR

J.S.C.

FILED
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