

Abad v Lorenzo

2018 NY Slip Op 32420(U)

August 1, 2018

Supreme Court, Queens County

Docket Number: 17262/13

Judge: Timothy J. Dufficy

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.

ORIGINAL

Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

PRESENT: HON. TIMOTHY J. DUFFICY
Justice

PART 35

-----X

KIRLD ABAD,
Plaintiff,
-against-

Index No.: 17262/13
Mot. Date: 6/5/18

STEPHEN LORENZO, EMELITA E. LORENZO,
STEPHEN KOO, 1049 LLC, MIMI KOO,
MISTER EAST, AMIKLE RESTAURANT, INC.
and CENTRAL PARK BAR RESTAURANT
SUSHI,
Defendants.

Mot. Seq.: 11

FILED
AUG -9 2018
COUNTY CLERK
QUEENS COUNTY

-----X

The following papers were read on this motion by plaintiff for leave to renew the motions, that resulted in the order entered on December 2, 2015, dismissing the claims against defendants Amikle Restaurant, Inc. d/b/a Central Park and Mister East, sued herein as Mister East, Amikle Restaurant, Inc. and Central Park Bar Restaurant Sushi on the grounds of lack of jurisdiction, and upon renewal denying said defendants' motion to dismiss the complaint and granting plaintiff's cross motion for an order striking said defendants' eighth affirmative defense of lack of personal jurisdiction.

PAPERS
NUMBERED

Notice of Motion-Affirmation-Exhibits.....	1-4
Opposing Affirmation-Exhibits.....	5-7
Reply Affirmation.....	8-9

Upon the foregoing papers, the motion by plaintiff is denied, as set forth below.

On November 10, 2012, plaintiff Kird Abad was a passenger in a vehicle returning to New York from the Mister East nightclub in New Jersey. While still in New Jersey, the plaintiff exited the vehicle, and was allegedly struck by the vehicle which was operated by defendant Stephen Lorenzo. Plaintiff commenced the within action to recover damages for his injuries, among others, against Mister East, and its owners and operators Amikle Restaurant Inc., and Central Park Bar Restaurant Sushi. Plaintiff

alleged that said defendants were negligent and violated the New Jersey Alcoholic Beverage Server Fair Liability Act (NJSA 2A:22A-1, *et seq.*), commonly known as the Dram Shop Act, for serving alcoholic beverages to Lorenzo while he was visibly intoxicated. Plaintiff Abad is a resident of New York, and defendant Amikle Restaurant Inc. is a New Jersey corporation, and the subject defendants' principal place of business is in New Jersey.

This Court in an order, dated November 24, 2015 and entered on December 2, 2015, granted defendants Mister East, Amikle Restaurant, Inc. and Central Park Bar Restaurant Sushi's motion, to dismiss the complaint on the grounds of lack of personal jurisdiction, pursuant to CPLR 3211(a)(8), and denied that branch of plaintiff Abad's cross-motion which sought to dismiss said defendants' affirmative defense of lack of personal jurisdiction.

Plaintiff appealed this Court's Order, entered on December 2, 2015. While said appeal was pending, Mr. Abad commenced an action in New Jersey against Mister East, Amikle Restaurant, Inc. and Central Park Bar Restaurant Sushi. Louis Andrianos and Kostantino Rexinis, who each had a 50% interest in Central Park Bar Restaurant Sushi or Mister East, at the time of Abad's accident, were deposed in the New Jersey action on October 11, 2017 and January 12, 2018, respectively.

Plaintiff's within motion for leave to renew the prior motion and cross-motion, which resulted in the Order, entered on December 2, 2105, was fully submitted on June 5, 2018. The Appellate Division Second Department, in a decision and order dated July 25, 2018, affirmed this Court's Order, entered on December 2, 2015, dismissing the complaint as to defendants Mister East, Amikle Restaurant, Inc. and Central Park Bar Restaurant Sushi (*Abad v Lorenzo*, AD3d , 2018 NY Slip Op 05436 [2d Dept 2018]).

A motion for leave to renew must "be based on new facts not available at the time of the prior motion that would change the prior determination" (CPLR 2221 [e][2]). Here, the plaintiff's motion to renew is based upon the deposition testimony of Mr. Andrianos and Mr. Rexinis in the New Jersey action. Mr. Andrianos, and more particularly Mr. Rexinis, testified that Mister East had an oral agreement with a very small number of promoters who solicited customers in New York and New Jersey;

that 3 to 4 promoters were present at the nightclub on Friday evenings and 5 or 6 promoters were present at the nightclub on Saturday evenings; and that the promoters who were present in the nightclub acted as hosts and help manage the nightclub. Mr. Rexinis identified a head promoter called Friikkaio. The promoters engaged by Mister East, in turn used sub-promoters, and the sub-promoters used sub-sub-promoters to solicit customers in New Jersey and New York. Only a small number of promoters directly engaged by Mister East received payments directly from Mister East. All of the promoters, sub-promoters and sub-sub-promoters relied upon social media to promote the nightclub.

The deposition testimony offered herein was not available at the time of the prior motion, as the defendants had moved to dismiss the complaint, pursuant to CPLR 3211(a)(8), and this Court determined that the plaintiff had failed to demonstrate that any of the outstanding discovery sought at that time would establish that jurisdiction exists under CPLR 301 and 302(a)(1) and (3).

The deposition testimony relied upon by the plaintiff, however, merely elaborates on the club's use of promoters to advertise it's business and solicit customers via social media, and does not present any new evidence that would change this Court's prior determination. Plaintiff presents no new evidence that the defendants conducted sufficient purposeful activities in New York, which bears a substantial relationship to the subject matter of this action, so as to avail themselves of the benefits and protections of New York's laws (*see Johnson v Ward*, 4 NY3d 516, 520 [2005]; *see also Abad v Lorenzo, at supra*). Plaintiff, thus, has not presented any new facts that would result in a different outcome as regards long-arm jurisdiction under CPLR 302(a)(1) .

Plaintiff has also failed to present any new facts that would result in a different outcome as regards personal jurisdiction under CPLR 302(a)(3). It is beyond dispute that the situs of the accident is New Jersey, where the accident occurred, and not New York, where the resultant damages were subsequently felt by the plaintiff (*see Abad v Lorenzo, supra; Bloomgarden v Lanza*, 143 AD3d 850, 852 [2d Dept 2016]).

Finally, the plaintiff has not presented any new facts that would result in a different outcome as regards personal jurisdiction under CPLR 302(a)(3)(i). At the most,

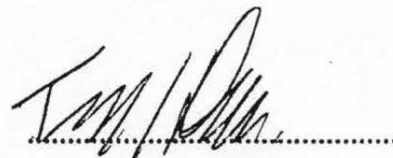
plaintiff presents evidence of a network of promoters, sub-promoters, and sub-promoters, all of whom were not know to Andrianos and Rexinis, who used social media to promote the nightclub. However, “[s]uch passive internet activity, which merely imparts information without permitting a business transaction, is generally insufficient to establish a basis for personal jurisdiction” (*Abad v Lorenzo, at supra; see also Paterno v Laser Spine Inst.*, 24 NY3d 370 [2014]; *Grimaldi v Guinn*, 72 AD3d 37 [2d Dept 2010]).

In view of the foregoing, plaintiff’s motion for leave to renew the prior motions, which resulted in this Court’s Order, entered on December 2, 2015, is denied in its entirety. To the extent that the within motion is one for reargument, it is denied as untimely and as academic in view of the Appellate Division’s decision and order of July 25, 2018.

Accordingly, it is

ORDERED, that plaintiff’s motion is denied in its entirety.

Dated: August 1, 2018



TIMOTHY J. DUFFICY, J.S.C.

FILED
 AUG - 9 2018
 COUNTY CLERK
 QUEENS COUNTY