

**Esquivel v Hard Eight Rest. Co. LLC**

2019 NY Slip Op 34954(U)

June 25, 2019

Supreme Court, Kings County

Docket Number: Index No. 513672/2018

Judge: Carolyn E. Wade

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This opinion is uncorrected and not selected for official publication.

At Part 84 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Brooklyn, New York on the 25th day of June 2019

**PRESENT:**

**HON. CAROLYN E. WADE,**

Justice

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ANDREW R. ESQUIVEL III, as Administrator of the Estate of ANDREW BOYD ESQUIVEL, deceased, and ANDREW R. ESQUIVEL III and SUSANNE B. ESQUIVEL, Individually,

Plaintiffs,

Index No. 513672/2018

*Seq's 1-3*  
**DECISION and ORDER**

-against-

HARD EIGHT RESTAURANT COMPANY LLC d/b/a THE TO MOTIONS WHISKEY BROOKLYN AND THE WHISKEY ANNEX, GEORGE C. RUOTOLO III, JUSTIN RUOTOLO, ROBERT M. MAGILL, JAMES P. WISEMAN, JOHN W. WISEMAN, EAST THIRD RESTAURANT CORP. d/b/a WHISKEY TOWN, 79 RESTAURANT GROUP INC. d/b/a WHISKEY TAVERN, 79 RESTAURANT CORP. d/b/a WHISKEY TAVERN, 524 GRAND STREET LLC d/b/a THE BIG WHISKEY, MEANE JOE GREENE LLC d/b/a THE BIG WHISKEY, 36 WILSON RESTAURANT COMPANY LLC d/b/a THE LITTLE WHISKEY, GRAHAM AVENUE RESTAURANT COMPANY INC. d/b/a TOM & JOAN'S WHISKEY BAR, TOM AND JOAN'S RESTAURANT COMPANY LLC d/b/a TOM & JOAN'S, CK BROOKLYN LLC d/b/a THE WHISKEY SHOP and NICHOLAS BATKA,

Defendants.

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**Recitation, as required by CPLR §2219(a), of the papers considered in the review of motion sequence #1-3:**

Order to Show Cause/Notice of Motion and Affidavits/Affirmations Annexed.....	<u>1, 2, 3</u>
Cross-Motion and Affidavits/Affirmations.....	<u>                    </u>
Answering Affidavits/Affirmations.....	<u>2, 3, 4</u>
Reply Affidavits/Affirmations.....	<u>5</u>
Memorandum of Law.....	<u>6, 7</u>

Upon the foregoing papers and after oral argument, defendants GEORGE C. RUOTOLO III, JUSTIN RUOTOLO, ROBERT M. MAGILL, JAMES P. WISEMAN, JOHN W. WISEMAN, EAST THIRD RESTAURANT CORP d/b/a WHISKEY TOWN, 79 RESTAURANT CORP d/b/a WHISKEY TAVERN and 36 WILSON RESTAURANT COMPANY LLC d/b/a THE LITTLE WHISKEY, MEANE JOE GREENE LLC d/b/a THE BIG WHISKEY, 524 GRAND STREET LLC d/b/a THE BIG WHISKEY and GRAHAM AVENUE RESTAURANT COMPANY INC. d/b/a TOM & JOAN'S WHISKEY BAR (collectively, "Moving Defendants") respectively made the following motions against ANDREW R. ESQUIVEL III, as Administrator of the Estate of ANDREW BOYD ESQUIVEL, deceased, and ANDREW R. ESQUIVEL III and SUSANNE B. ESQUIVEL, Individually ("Plaintiffs"):

1. (Motion Seq. #1) Defendants GEORGE C. RUOTOLO III, JUSTIN RUOTOLO, ROBERT M. MAGILL, JAMES P. WISEMAN, JOHN W. WISEMAN move, pursuant to CPLR § 3211 (a) (7), for an Order dismissing the Complaint as against them; or, in the alternative, granting them leave to serve an Answer within thirty days.
2. (Motion Seq. #2) Defendants EAST THIRD RESTAURANT CORP d/b/a WHISKEY TOWN, 79 RESTAURANT CORP d/b/a WHISKEY TAVERN and 36 WILSON RESTAURANT COMPANY LLC d/b/a THE LITTLE WHISKEY move, pursuant to CPLR § 3211 (a) (7), for an Order dismissing the Complaint as against them; or, in the alternative, granting them leave to serve an Answer and Written Demands within thirty days.
3. (Motion Seq. #3) Defendants MEANE JOE GREENE LLC d/b/a THE BIG WHISKEY, 524 GRAND STREET LLC d/b/a THE BIG WHISKEY and GRAHAM AVENUE RESTAURANT COMPANY INC. d/b/a TOM & JOAN'S WHISKEY BAR move, pursuant

to CPLR § 3211 (a) (1) and (7), for an Order dismissing the Complaint as against them; or, in the alternative, granting them leave to serve an Answer within thirty days.

This action arises out of a motor vehicle accident which occurred on July 16, 2016, on Bedford Avenue in Brooklyn, New York, where a vehicle driven by defendant Nicholas Batka struck four pedestrians - Andrew Boyd Esquivel, Divya Mendezes, Sophia Tabchouri, and James Balchuna. Batka, an off-duty New York City police officer, was allegedly under the influence of alcohol served by a bar owned by defendant Hard Eight Restaurant Company LLC in Williamsburg, Brooklyn. The pedestrians sustained injuries, and Andrew Boyd Esquivel died at Bellevue Hospital.

In this instant motion, the Moving Defendants argue, *inter alia*, that Plaintiffs failed to pierce the corporate veil to assert claims against them.

“When assessing a motion to dismiss a complaint or counterclaim pursuant to CPLR 3211(a)(7) for failure to state a cause of action, the court must afford the pleading a liberal construction, accept as true all facts as alleged in the pleading, accord the pleader the benefit of every possible inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Rabos v R & R Bagels & Bakery, Inc.*, 100 AD3d 849, 851 [2d Dept 2012]). “The allegations of the pleading cannot be vague and conclusory” (*Phillips v Trommel Const.*, 101 AD3d 1097, 1098 [2d Dept 2012], quoting *Stoianoff v Gahona*, 248 AD2d 525, 526 [2d Dept 1998]), “but must contain sufficiently particularized allegations from which a cognizable cause of action reasonably could be found” (*V. Groppa Pools, Inc. v Massello*, 106 AD3d 722, 723 [2d Dept 2013]; see also *Mazzei v Kyriacou*, 98 AD3d 1088, 1090 [2d Dept 2012]).

After a meticulous examination of the submissions, the Court determines that Plaintiffs sufficiently pled their causes of action in the Complaint against the Moving Defendants, with the exception of 524 Grand Street LLC, who was merely a landlord of defendant Meane Joe Greene LLC. Notably, Plaintiffs concede that 524 Grand Street LLC should be dismissed, in light of the documentary evidence that it is not associated with the corporate entity that operated the other defendants (Gaier Aff. ¶80).

Accordingly, based on the above,

Motion Seq. #1 is **GRANTED TO THE EXTENT** that defendants GEORGE C. RUOTOLO III, JUSTIN RUOTOLO, ROBERT M. MAGILL, JAMES P. WISEMAN, JOHN W. WISEMAN are granted leave to serve answers within thirty days from the date of notice of entry.

Motion Seq. #2 is **GRANTED TO THE EXTENT** that defendants EAST THIRD RESTAURANT CORP d/b/a WHISKEY TOWN, 79 RESTAURANT CORP d/b/a WHISKEY TAVERN and 36 WILSON RESTAURANT COMPANY LLC d/b/a THE LITTLE WHISKEY are granted leave to serve answers within thirty days from the date of notice of entry.

Motion Seq. #3 is **GRANTED TO THE EXTENT** that defendant 524 GRAND STREET LLC d/b/a THE BIG WHISKEY is hereby **DISMISSED** from this action. Defendants MEANE JOE GREENE LLC d/b/a THE BIG WHISKEY and GRAHAM AVENUE RESTAURANT COMPANY INC. d/b/a TOM & JOAN'S WHISKEY BAR are granted leave to serve answers within thirty days from the date of notice of entry.

This constitutes the Decision and Order of the court.



**HON. CAROLYN E. WADE  
ACTING SUPREME COURT JUSTICE**

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**HON. CAROLYN E. WADE  
ACTING SUPREME COURT JUSTICE**

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