

<b>Turan v United Am. Land, LLC</b>
2021 NY Slip Op 30787(U)
March 15, 2021
Supreme Court, New York County
Docket Number: 159668/2019
Judge: David Benjamin Cohen
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. DAVID BENJAMIN COHEN PART IAS MOTION 58EFM

Justice

-----X

JAHANGIR TURAN,

Plaintiff,

- v -

UNITED AMERICAN LAND, LLC, WALLPLAY LLC, ANNA
BLODA, JOHN AND JANE DOES,

Defendant.

-----X

WALLPLAY LLC

Plaintiff,

-against-

ABC ANGELS CLUB

Defendant.

-----X

INDEX NO. 159668/2019
MOTION DATE 10/08/2020
MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

Third-Party
Index No. 595175/2021

The following e-filed documents, listed by NYSCEF document number (Motion 001) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 30, 31

were read on this motion to/for DISMISSAL.

In this tort action, the plaintiff alleges that he sustained personal injuries when he was assaulted while walking on the sidewalk adjacent to a ground-level premises located at 323 Canal Street, New York, New York. In addition to the unknown assailants, the plaintiff has sued the owners and occupants of the premises, defendants United American Land, LLC ("United"), the owner of the premises, WallPlay LLC ("WallPlay") the lessee of the premises, and Anna Bloda ("Bloda"). Ms. Bloda had entered into a contract with WallPlay to sublease the premises for art events and/or showings. On the night of the alleged incident, Ms. Bloda was hosting an event for local skateboarders and skateboarding artists where alcohol was allegedly served.

According to the complaint, the plaintiff was walking past the premises at approximately 6:30 pm on the evening of July 30, 2019. He was wearing a red hat with the words “Make America Great Again” written on the front. The plaintiff alleges that several individuals, who were clearly attendees of the skateboarding event inside the premises, came outside and began insulting him because of the hat. He attempted to walk past then but they knocked his hat off and then proceed to assault him by punching him and smashing his face into a metal scaffold. The police were called and arrived but, according to the complaint, no arrests were made at that time and the matter was still under investigation. The plaintiff claims he suffered serious injuries to his face and head.

The complaint alleges multiple theories of liability against the defendants including negligence, negligent supervision, and violations of General Obligations Law § 11-101, also known as the Dram Shop Act. The plaintiff claims that the individuals who assaulted him were clearly intoxicated and had been served alcohol at the art event. He also claims that at least some of the assailants appeared to be minors and/or underage. Defendant Bloda now moves to dismiss the action.

In support of the motion, Ms. Bloda submits the pleadings and her personal affidavit wherein she essentially denies any knowledge of the incident prior to the arrival of the police and maintains that she was unaware of any minors being served alcohol at the subject event. She also argues that she had no duty to the plaintiff since he was not one of her invited guests and was a mere passerby who voluntarily choose to get involved in a confrontation that he could have avoided by crossing the street. In opposition to the motion to dismiss, the plaintiff and defendant WallPay both argue that there are issues of fact concerning whether Ms. Bloda’s service of alcohol to guests who were allegedly minors and/or or not adequately supervised

created a dangerous condition for which she is liable under both common-law negligence and the Dram Shop Act. They also argue that the motion to dismiss is premature because there has been no discovery in this action.

Pursuant to CPLR 3211(a)(7), on such a motion, the Court is limited to examining the pleading to determine whether it states a cause of action (*Guggenheimer v Ginzburg*, 43 NY2d 268 [1977]). In examining the sufficiency of the pleading, the Court must accept the facts alleged therein as true and interpret them in the light most favorable to the plaintiff (*Board of Education v State Education Dep't*, 116 AD2d 939 [3d Dept 1986]). Moreover, a court may freely consider evidentiary material submitted on the motion to remedy any defects in the complaint (*see Vorel v. NBA Props.*, 285 AD2d 641 [2d Dept 2001]).

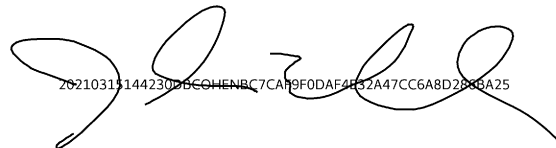
Here, there are clearly disputed issues of fact that cannot be resolved on a motion to dismiss absent at least some initial discovery. Those disputed issues of fact include whether Bloda herself furnished alcohol to anyone within in the building or was aware that anyone under the age of twenty-one or in an intoxicated state was furnished alcohol at the event. Ms. Bloda has acknowledged that she organized the event, was aware that alcohol would be served and that the event was not limited to persons over the age of twenty-one. It also appears as if Ms. Bloda may have lacked a proper liquor license for serving alcohol at the event. Whether Ms. Bloda was aware of what was happening on the sidewalk or had an opportunity to control the assailants are also disputed factual issues that cannot be decided at this stage of the litigation. Moreover, while Ms. Bloda states in her affidavit “it seemed to me that all customers and even attendees were adult”, this does not sufficiently establish that she did not have a legal duty to ensure that no underage drinking occurred at the event. This is merely another example of a material issue that requires clarification through the discovery process and is another basis to deny the motion

to dismiss in the absence of any meaningful discovery. It may well be, particularly if the plaintiff is unable to identify his assailants, that ultimately the plaintiff will be unable to establish his prima facie case, but he is entitled to try based on the sufficiency of his pleadings and the existing factual disputes between the parties. Accordingly, it is hereby

ORDERED that defendant Anna Bloda’s motion to dismiss is denied; and it is further

ORDERED that the defendant Anna Bloda’s shall serve an answer to the complaint within twenty (20) days of service of a copy of this order with notice of entry; and it is further

ORDERED that the parties shall appear for a preliminary conference in this matter on April 5, 2021 at 2:30 p.m., which will be held by Microsoft Teams, with a link to the conference to be sent via a subsequent court notice, unless, prior to that day, the parties meet and confer in order to complete a bar coded preliminary conference form to be provided by the Part 58 Clerk at [SFC-Part58-Clerk@nycourts.gov](mailto:SFC-Part58-Clerk@nycourts.gov), in which case the conference will be cancelled.



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3/15/2021  
DATE

DAVID BENJAMIN COHEN, J.S.C.

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE