

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU CIVIL TERM PART 22

Present: HON. CHRISTOPHER G. QUINN
Justice of the Supreme Court

ROMERO SANTOS,

Plaintiff,

INDEX NO: 603067/2018

-against-

MOTION SEQ. No. 2 - MG

PAUL LECCHI and CAMPAGNE HOUSE
RESTAURANT,

Defendants.

The following papers were read on this motion:

- (1) Notice of Motion/Affirmation/Exhibits A-O
- (2) Affirmation in Opposition/Exhibits A-F
- (3) Reply

Defendant CAMPAGNE HOUSE RESTAURANT seeks an Order granting it summary judgment dismissing the claims against it pursuant to CPLR § 3212. Plaintiff opposes.

This action arises out of an automobile collision which occurred on December 13, 2017. Defendant LECCHI was operating a vehicle that allegedly struck the plaintiff's vehicle, resulting in injuries to the plaintiff. Defendant LECCHI was arrested for Driving While Intoxicated, a violation of NYS Vehicle and Traffic Law § 1192.2a, at the scene. Plaintiff alleges that CAMPAGNE HOUSE violated the NYS General Obligations Law in serving LECCHI alcoholic beverages while he was visibly intoxicated prior to the accident.

CAMPAGNE HOUSE claims it is entitled to summary judgment as there is no evidence that defendant LECCHI was served at its establishment while he was visibly intoxicated. There

is no evidence that LECCHI exhibited signs of intoxication in the hour that he was at the CAMPAGNE HOUSE. The only evidence regarding his appearance is his own testimony that he was not slurring his words and did not have any difficulties walking.

The bartender from CAMPAGNE HOUSE provides an affidavit wherein she states that she was trained to recognize signs of intoxication, and LECCHI did not stand out in her mind as someone who exhibited such signs. There was testimony from the CAMPAGNE HOUSE manager that the policy is not to serve a patron more than three drinks in an hour, and that no one remembered seeing LECCHI intoxicated on the date of incident. He also testified that in the past this bartender did notify him of other patrons who did exhibit such signs.

In order to establish a cause of action under the Dram Shop Act, General Obligations Law § 11-101, a plaintiff must establish that the defendant unlawfully sold alcohol to a visibly intoxicated person and that the sale of that alcohol bore some reasonable practical connection to the resulting damages [*Romano v. Stanley*, 90 NY2d 444 (1997)]. Unlawful sale is defined as the sale of alcohol to a visibly intoxicated person [*Fishman v. Beach*, 214 AD2d 920 (3rd Dept 1995)]. Counsel for CAMPAGNE HOUSE seeks a dismissal contending that the plaintiff has failed to provide any evidence that the defendant LECCHI was visibly intoxicated while he was at CAMPAGNE HOUSE or that he was served alcoholic beverages by any of its employees while in that state.

While counsel for the plaintiff opposes the motion largely on the issue of timeliness, the Court is compelled to note that extensions of time due to the pandemic were readily given, and there is no prejudice shown to the defendant by acceptance of a dispositive motion made nominally late. Thus the Court will not deny the motion on the basis of untimeliness, but will review the merits.

On the merits, counsel for plaintiff opposes arguing that at his deposition LECCHI testified that the only place he drank alcohol on the date of incident was at the CAMPAGNE

HOUSE. Plaintiff offers an unsworn police report to show that the incident took place at 3:47 p.m. and that the defendant had a blood alcohol content of .19 less than two hours after the incident. He does not provide any sworn testimony of any person, including the police officer, who saw LECCHI at the scene. He provides the deposition testimony of LECCHI who testified that he had five or six vodka mixed drinks at the CAMPAGNE HOUSE approximately one hour prior to the accident and that he stopped to get a haircut prior to the accident. LECCHI testified he remained at the barber shop for approximately one hour and no one there told him he was acting intoxicated or had slurred speech (Motion, Exh. I).

Plaintiff relies on a scientific treatise to support an argument that the plaintiff must have appeared intoxicated while still at CAMPAGNE HOUSE. Such reliance is misplaced, as there is no expert or other witness to state how LECCHI appeared. Proof of high alcohol content in an individual at a later time, without more, does not provide a sound basis for drawing inferences about his demeanor or appearance [*Sorenson v. Denny Nash*, 249 AD2d 745 (3rd Dept 1998); *Burnell v. LaFountain*, 6 AD2d 586 (3rd Dept 1958); *People v. Cruz*, 48 NY2d 419 (1979); *Csizmadia v. Town of Webb*, 289 AD2d 854 (3rd Dept 2001)]. The police report of an arresting officer is also insufficient to establish that LECCHI showed visible signs of intoxication during the time he was at CAMPAGNE HOUSE. The officer saw the defendant more than one hour after he left the establishment.

There is no eyewitness testimony that LECCHI appeared visibly intoxicated at the time he was served his last drink at CAMPAGNE HOUSE. Likewise there is no expert evidence to support a contention that “he must have” exhibited such signs.

Based on the proof and arguments presented, the motion of the CAMPAGNE HOUSE granting it summary judgment, is Granted. CPLR § 3212

It is SO ORDERED.



HON. CHRISTOPHER G. QUINN, J.S.C.

Dated: April 13, 2021