

**Lorenzo v Great Performances/Artists as  
Waitresses, Inc.**

2017 NY Slip Op 30125(U)

January 20, 2017

Supreme Court, New York County

Docket Number: 161170/13

Judge: Manuel J. Mendez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: MANUEL J. MENDEZ  
Justice

PART 13

HECTOR LORENZO,  
Plaintiff

INDEX NO. 161170/13  
MOTION DATE 11-30-2016

- Against-  
GREAT PERFORMANCES/ARTISTS AS WAITRESSES,  
INC., DELAWARE NORTH COMPANIES INCORPORATED,  
GREAT EXPECTATIONS CATERING LLC, CPS 5 LLC, CPS  
1 REALTY LP, PLAZA ACCESSORY OWNER LP, FHR (NYC)  
LLC, FAIRMONT HOTELS & RESORTS (U.S.) INC., d/b/a  
FAIRMONT HOTEL MANAGEMENT, FRHI HOTELS &  
RESORTS (U.S.) INC., d/b/a FAIRMONT RAFFLES HOLDINGS  
INTERNATIONAL, HAMPSHIRE HOTELS MANAGEMENT, LLC,  
EL AD US HOLDING, INC., d/b/a EL-AD GROUP, ELAD PROPERTIES  
LLC, EL-AD PROPERTIES NY LLC, SAHARA PLAZA LLC,  
SAHARA PLAZA II INC., SAHARA HAMPSHIRE HOTEL  
MANAGEMENT CO. II INC., SAHARA HAMPSHIRE HOTEL  
MANAGEMENT LLC, KINGDOM HOLDING COMPANY,  
Defendants.

X  
INDEX NO. 595347/14

GREAT EXPECTATIONS CATERING, LLC and CPS 5 LLC,  
Third-party Plaintiffs,

- Against-  
JOHN YAHARA, NICOLE YAHARA THOBANI and  
ALY THOBANI,

MOTION SEQ. NO. 005

Third-Party Defendant.

-----X  
DELAWARE NORTH COMPANIES, INCORPORATED,  
Third-Party Plaintiff,

Third-party Action #2  
Index no.: 595339/2016

-Against-  
JOHN YAHARA, NICOLE YAHARA THOBANI, and  
ALI THOBANI,  
Third-party Defendants,

X  
FHR (NYC) LLC, FAIRMONT HOTELS & RESORTS (U.S.), INC.,  
d/b/a FAIRMONT HOTEL MANAGEMENT, and FRHI HOTELS &  
RESORTS (U.S.) INC., d/b/a FAIRMONT RAFFLES HOLDINGS  
INTERNATIONAL,  
Third-party Plaintiffs,

Third-party Action #3  
Index no.: 595661/2016

-Against-  
JOHN YAHARA, NICOLE YAHARA THOBANI and  
ALI THOBANI,  
Third-party Defendants.

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to 5 were read on this motion by defendants HAMPSHIRE  
HOTELS MANAGEMENT LLC, SAHARA PLAZA, LLC, SAHARA PLAZA II, INC., SAHARA HAMPSHIRE  
HOTEL MANAGEMENT CO., II, INC., and SAHARA HAMPSHIRE HOTEL MANAGEMENT LLC for summary  
judgment.

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

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

<u>PAPERS NUMBERED</u>	
	1-2
	3-4
	5

**Cross-Motion:**     Yes     No

Upon a reading of the foregoing cited papers, it is ordered that this motion by defendants HAMPSHIRE HOTELS MANAGEMENT LLC, SAHARA PLAZA, LLC, SAHARA PLAZA II, INC., SAHARA HAMPSHIRE HOTEL MANAGEMENT CO., II, INC., and SAHARA HAMPSHIRE HOTEL MANAGEMENT LLC for summary judgment dismissing all claims and cross-claims as against them is granted. All claims and cross-claims asserted against the moving defendants are severed and dismissed.

Plaintiff brings this action to recover against the defendants for injuries sustained on September 14, 2012 as a result of an assault on plaintiff by defendant John Yahara, while Plaintiff attended the wedding of defendants Nicole Yahara Thobani and Ali Thobani at premises owned, controlled, managed, maintained or operated by the defendants. Plaintiff alleges that defendant John Yahara assaulted him by punching him in the face , causing physical injury. He further alleges that the defendants are responsible for his injuries because they served liquor to John Yahara while he was visibly intoxicated and the incident occurred in premises owned, managed, maintained, operated or controlled by the defendants.

Defendants HAMPSHIRE HOTELS MANAGEMENT LLC, SAHARA PLAZA, LLC, SAHARA PLAZA II, INC., SAHARA HAMPSHIRE HOTEL MANAGEMENT CO., II, INC., and SAHARA HAMPSHIRE HOTEL MANAGEMENT LLC ( hereinafter “moving defendants”) move for summary judgment on the grounds that on the date of the incident they did not own, control, manage, maintain or operate the premises. The moving defendants allege that they acquired the property where the incident took place on November 26, 2012, two months after the incident resulting in plaintiff’s injury had taken place. In support of the motion the moving defendants submit the affidavits of Jay Stein, Chief Executive Officer of Dream Hotel Group LLC, formerly known as Hampshire Hotels Management LLC, and of Sandeep Wadhwa, President of Sahara US Corporation and a managing member and signatory of Sahara Plaza LLC.

Mr. Wadhwa states in his affidavit that Sahara Plaza LLC did not purchase the plaza Hotel until November 26, 2012 and did not own, operate, manage, maintain or control the premises at the time of the incident or serve or sell alcohol or have any involvement with the wedding celebration at which plaintiff was assaulted. He further states that defendants SAHARA PLAZA II, INC., SAHARA HAMPSHIRE HOTEL MANAGEMENT CO. II, INC., and SAHARA HAMPSHIRE HOTEL MANAGEMENT LLC, were never operational entities. [see moving papers exhibit A].

Mr. Stein states in his affidavit that HAMPSHIRE HOTELS MANAGEMENT LLC assumed management responsibilities for the plaza hotel’s food and beverage services after the hotel was purchased by Sahara Plaza LLC on

November 26, 2012 and that it did not own, operate, manage, maintain or control any part of the plaza hotel at the time of the incident. He further states that SAHARA HAMPSHIRE HOTEL MANAGEMENT CO. II, INC., has never been an operational entity [ See moving papers exhibit B]

The moving defendants further provide certified copies of the deeds to prove that Sahara Plaza LLC purchased the Plaza Hotel on November 26, 2012. [see moving papers Exhibits T and U].

Plaintiff opposes the motion but none of the co-defendants oppose that summary judgment be granted to the moving defendants. Plaintiff claims by an attorney affidavit that there is still outstanding discovery and that at this juncture summary judgment is premature. Plaintiff alleges that the certified copies of the deed do not prove that the moving defendants did not “assume any responsibilities or obligations via the purchase agreement.” If such was assumed in the purchase agreement then these defendants would still be liable to plaintiff.

When no discovery has taken place the motion for summary judgment is premature ( Elliot v. County of Nassau, 53 A.D. 3d 561, 862 N.Y.S. 2d 90 [2<sup>nd</sup>. Dept. 2009]; Aurora Loan Services, LLC v. Lamattina & Associates, Inc., 59 A.D. 3d 578 [2<sup>nd</sup>. Dept. 2009]), A party should be afforded a reasonable opportunity to conduct discovery prior to the determination of a motion for summary judgment. Where the state of discovery is incomplete, including the lack of any deposition, summary judgment is properly denied as premature ( Ali v. Efron, 106 A.D. 3d 560, [1<sup>st</sup>. Dept. 2013]; Wilson v. Yemen Realty Corp., 74 A.D. 3d 544, 903 N.Y.S. 2d 42 [1<sup>st</sup>. Dept. 2010]).

However, in reply the moving defendants provide the purchase agreement to prove that they did not assume any responsibilities or obligations that would cause them to be responsible to plaintiff or any of the co-defendants. [ see Reply papers Exhibit B].

In order to prevail on a motion for summary judgment, the proponent must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence, eliminating all material issues of fact.(Klein V. City of New York, 89 NY2d 833; Ayotte V. Gervasio, 81 NY2d 1062, Alvarez v. Prospect Hospital, 68 NY2d 320). Once the moving party has satisfied these standards, the burden shifts to the opponent to rebut that prima facie showing, by producing contrary evidence, in admissible form, sufficient to require a trial of material factual issues(Kaufman V. Silver, 90 NY2d 204; Amatulli V. Delhi Constr. Corp.,77 NY2d 525; Iselin & Co. V. Mann Judd Landau, 71 NY2d 420). In determining the motion, the court must construe the evidence in the light most favorable to the non-moving party(SSBS Realty Corp. V. Public Service Mut. Ins. Co., 253 AD2d 583; Martin V. Briggs, 235 192).

The moving defendants have made out a prima facie case entitling them to judgment as a matter of law. They have established that they did not own, operate, manage, maintain or control the property where this incident took place until November 26, 2012 which is over two months after the date of the incident that brings the parties to court. The plaintiff has failed to raise an issue of fact.

Accordingly, it is ORDERED that the motion for summary judgment is granted, and it is further

ORDERED that the complaint and all cross claims asserted against the moving defendants HAMPSHIRE HOTELS MANAGEMENT LLC, SAHARA PLAZA, LLC, SAHARA PLAZA II, INC., SAHARA HAMPSHIRE HOTEL MANAGEMENT CO., II, INC., and SAHARA HAMPSHIRE HOTEL MANAGEMENT LLC are severed and dismissed, and it is further

ORDERED that the caption of this action is amended to reflect the dismissal from this action of the moving defendants and the new caption shall read as follows:

HECTOR LORENZO,

Plaintiff

INDEX NO. 161170/13

- Against-

GREAT PERFORMANCES/ARTISTS AS WAITRESSES, INC., DELAWARE NORTH COMPANIES INCORPORATED, GREAT EXPECTATIONS CATERING LLC, CPS 5 LLC, CPS 1 REALTY LP, PLAZA ACCESSORY OWNER LP, FHR (NYC) LLC, FAIRMONT HOTELS & RESORTS (U.S.) INC., d/b/a FAIRMONT HOTEL MANAGEMENT, FRHI HOTELS & RESORTS (U.S.) INC., d/b/a FAIRMONT RAFFLES HOLDINGS INTERNATIONAL, EL AD US HOLDING, INC., d/b/a EL-AD GROUP, ELAD PROPERTIES LLC, EL-AD PROPERTIES NY LLC, KINGDOM HOLDING COMPANY,

Defendants.

X

GREAT EXPECTATIONS CATERING, LLC and CPS 5 LLC,  
Third-party Plaintiffs,

INDEX NO. 595347/14

- Against-

JOHN YAHARA, NICOLE YAHARA THOBANI and ALY THOBANI,

Third-Party Defendant.

X

DELAWARE NORTH COMPANIES, INCORPORATED,  
Third-Party Plaintiff,

Third-party Action #2  
Index no.: 595339/2016

-Against-

JOHN YAHARA, NICOLE YAHARA THOBANI, and ALI THOBANI,

Third-party Defendants,

X

FHR (NYC) LLC, FAIRMONT HOTELS & RESORTS (U.S.), INC.,  
d/b/a FAIRMONT HOTEL MANAGEMENT, and FRHI HOTELS &  
RESORTS (U.S.) INC., d/b/a FAIRMONT RAFFLES HOLDINGS  
INTERNATIONAL,

Third-party Action #3  
Index no.: 595661/2016

Third-party Plaintiffs,

-Against-  
JOHN YAHARA, NICOLE YAHARA THOBANI and  
ALI THOBANI,

Third-party Defendants.

and it is further

ORDERED that within 20 days from the date of entry of this order the moving  
defendants serve a copy of this order with notice of entry on all parties appearing, on the  
General Clerk's Office Trial Support Clerk ( Room 119) and on the County Clerk ( Room  
141B), and it is further


ORDERED that the General Clerk's Office Trial Support Clerk and County Clerk  
amend their records to reflect the dismissal of the moving defendants and the  
amendment of the caption, and it is further

ORDERED that the County Clerk enter Judgment dismissing the complaint and all  
cross-claims asserted against the defendants HAMPSHIRE HOTELS MANAGEMENT  
LLC, SAHARA PLAZA, LLC, SAHARA PLAZA II, INC., SAHARA HAMPSHIRE HOTEL  
MANAGEMENT CO., II, INC., and SAHARA HAMPSHIRE HOTEL MANAGEMENT LLC .

Dated: January 20, 2017

ENTER:

MANUEL J. MENDEZ  
J.S.C.

  
\_\_\_\_\_  
Manuel J. Mendez  
J.S.C.

Check one: FINAL DISPOSITION    X NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST                     REFERENCE