

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: **HONORABLE DARRELL L. GAVRIN**  
Justice

IA PART 27

OS

MATTHEW CENZOPRANO,

Index No. 4110/15

Plaintiff,

Motion

Date November 8, 2017

- against-

WHITE CASTLE SYSTEM, INC. and MICHAEL A. GOLD,

Motion

Cal. No. 23

Defendants.

Motion

Seq. No. 5

The following papers numbered 1 to 3 read on this motion by, White Castle System, Inc. ("movant"), for an order, pursuant to CPLR 3212, granting summary judgment, dismissing the complaint as against it.

FILED  
APR 24 2018  
CLERK  
QUEENS COUNTY

Papers  
Numbered

- Notice of Motion - Affirmation - Exhibits - Memorandum of Law.. 1
- Affirmation in Opposition - Exhibits..... 2
- Reply Affirmation..... 3

Upon the foregoing papers, it is ordered that the motion is determined as follows:

At the outset, the court notes that although the motion is untimely, the note of issue has been vacated by order dated February 7, 2018. As such, the case reverts to pre-note of issue status and the court will consider the motion in the interest of judicial economy.

This is an action to recover damages for personal injuries that plaintiff allegedly sustained on April 15, 2012, as a result of an assault that occurred at a White Castle restaurant in Bayside, County of Queens, City and State of New York.

On a motion for summary judgment, a movant "must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]; see *Smalls v AJI Indus., Inc.*, 10 NY3d 733 [2008]). Once a *prima facie* demonstration has been made, the burden shifts to the party opposing the motion to produce evidentiary proof, in

admissible form, sufficient to establish the existence of a material issue of fact which requires a trial of the action (*Zuckerman v City of New York*, 49 NY2d 557 [1980]).

Plaintiff commenced this action alleging that movant failed to provide adequate security measures to protect persons on its premises. Movant seeks summary judgment solely on the issue of liability contending that it provided adequate security, the assault was not foreseeable and its conduct was not the proximate cause of the assault. It is well-settled that "New York landowners owe people on their property a duty of reasonable care under the circumstances to maintain their property in a safe condition" (*Tagle v Jakob*, 97 NY2d 165 [2001]). "Although landlords and permittees have a common-law duty to minimize foreseeable dangers on their property, including the criminal acts of third parties, they are not the insurers of a visitor's safety" (*Maneshwari v City of New York*, 2 NY3d 288 [2004]).

In the case at bar, movant has met its *prima facie* burden by establishing as a matter of law that the assault was not a foreseeable result of any security breach (*see Carney v Staten Island University Hospital*, 155 AD3d 677 [2d Dept 2017]). In opposition, plaintiff failed to raise a triable issue of fact.

Accordingly, the motion for summary judgment is granted and plaintiff's complaint is dismissed as against movant.

The caption shall be amended as follows:

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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MATTHEW CENZOPRANO,

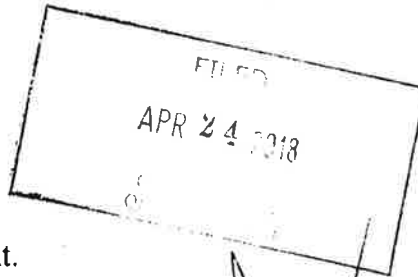
Index No. 4110/15

Plaintiff,

- against -

MICHAEL A. GOLD,

\_\_\_\_\_  
Defendant.



Dated: March 28, 2018

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DARRELL L. GAVRIN, J.S.C.