

**Doren v Allstar Sec. & Consulting, Inc.**

2023 NY Slip Op 32125(U)

June 26, 2023

Supreme Court, New York County

Docket Number: Index No. 152450/2021

Judge: Mary V. Rosado

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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: HON. MARY V. ROSADO PART **33M**

*Justice*

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CHRISTOPHER DOREN,

Plaintiff,

- v -

ALLSTAR SECURITY & CONSULTING, INC., 53-55 WEST  
21ST OWNER, LLC, NEW LOUNGE 4324 LLC, D/B/A  
BOUNCE SPORTING CLUB, JOHN DOE 1, JOHN DOE 2  
(SAID NAMES BEING FICTITIOUS TO REPRESENT  
UNKNOWN SECURITY GUARDS WORKING AT THE  
PREMISES ON DATE OF INCIDENT),

Defendant.

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NEW LOUNGE 4324 LLC, D/B/A BOUNCE SPORTING CLUB

Plaintiff,

-against-

JACOB O'BRIEN

Defendant.

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**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595940/2022

The following e-filed documents, listed by NYSCEF document number (Motion 001) 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54

were read on this motion to/for DISCOVERY.

Upon the foregoing documents, Plaintiff Christopher Doren's ("Plaintiff") is granted leave to seek an order compelling discovery, and upon being granted leave, Plaintiff's motion seeking to compel Defendant Allstar Security & Consulting, Inc. ("Allstar") to produce records related to prior similar incidents is granted in part and denied in part. Allstar's cross-motion seeking a protective order with respect to Plaintiff's notice of discovery and inspection dated January 26, 2023 is likewise granted in part and denied in part.

This is an action arising out of a fight which happened after the Plaintiff was escorted out of Bounce Sporting Club on October 19, 2019. Plaintiff was a patron who suffered injuries in the fight, while Allstar was contracted by Defendant New Lounge 4324 LLC (“New Lounge”) to provide security at the premises.

Plaintiff claims it has learned of seventeen other lawsuits against Allstar alleging similar claims of negligent supervision/training/security/hiring, which stem from assault related incidents which have occurred between 2014-2019. Plaintiff seeks to compel the following information:

- (1) “copies of all records depicting any and all security and/or security guard licenses and/or certifications.... that were held by...Defendant’s employees who were involved in the incidents that gave rise to the below referenced lawsuits”
- (2) “copies of all records depicting Defendant’s trainings, policies, procedures and/or employee handbooks that were in effect at the time of the incident(s) that gave rise to the below-referenced lawsuits.
- (3) “copies of all investigative documents and/or incident reports regarding the occurrence(s) that gave rise to the below referenced lawsuits.”

Allstar objected to all demands as improper, overly broad, vague, ambiguous, irrelevant, unduly burdensome, and as a “fishing expedition.” However, Allstar did concede that it would search for trainings, policies, procedures, and/or employee handbooks that were in effect at the time of the alleged incident. Despite numerous conferences and attempts at reaching a mutually agreed upon resolution to this dispute, the parties could not agree. Therefore, leave is granted for Plaintiff to file the instant discovery motion. Allstar cross-moved for a protective order.

Allstar argues that information related to the seventeen prior lawsuits is irrelevant and improper. Allstar argues that Plaintiff has failed to show any relevance of the information sought

to the issues in the instant litigation. Allstar argues that the other lawsuits involve different facilities, none of which are involved in the instant lawsuit, which had a different contract for security services from the subject facility. Moreover, Allstar argues that the security personnel at each of the facilities are different from the security personnel who were working at the time of the alleged incident. Allstar asserts that seeking personnel records for every employee of defendant, regardless of whether they were working with Defendant at the time of the incident is an abuse of the discovery process.

In reply, Plaintiff argues that the information from the other lawsuits is relevant because it is against the same entity and is based on similar facts and alleges similar claims. Allstar also submitted a reply, albeit reiterating many of the arguments originally made.<sup>1</sup>

“While discovery should be liberal, the information sought must be material and necessary, and meet a test of usefulness and reason” (*AQ Asset Management LLC v Levine*, 138 AD3d 635, 636 [1st Dept 2016] quoting *Manley v New York City Hous. Auth.*, 190 AD2d 600, 600 [1st Dept 1993]). A party seeking discovery must satisfy the threshold requirement that the request is reasonably calculated to yield information that is ‘material and necessary’ – i.e., relevant – regardless of whether discovery is sought from another party” (*Forman v Henkin*, 30 NY3d 656 [2018]). The request must be “appropriately tailored and reasonably calculated to yield relevant information.” (*id.* at 664).

A cause of action for negligent hiring and retention requires allegations that an employer knew of its employees’ harmful propensities, that it failed to take necessary action, and that this failure caused damage to others (*Waterbury v New York City Ballet, Inc.*, 205 AD3d 154 [1st Dept 2022]). Where a plaintiff seeks disclosure of certain prior assaults which happened in the location

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<sup>1</sup> Defendant New Lounge has submitted no papers either in support or in opposition.

of the accident or by the offending assaulter, disclosure may be appropriate to establish actual or constructive notice of similar conduct for purposes of a negligence claim (*see M.C. v City of New York*, 173 AD3d 728, 730 [2d Dept 2019]). However, the demands at issue in this case seek disclosure of incidents which happened at other locations and involve different employees from those involved in the incident giving rise to this lawsuit. Thus, to the extent Plaintiff seeks disclosure of this information, it is neither material nor necessary to prosecuting his negligent hiring/retention/training claim. What Plaintiff must prove in this action is that Allstar had notice of some dangerous propensity of the employees or venue involved in the incident giving rise to the case at bar (*see Waterbury, supra*). It is irrelevant if Allstar had notice of some dangerous propensity of employees who were not involved in the incident which caused Plaintiff injury. Therefore, to the extent the discovery demands seek information that (a) happened at another venue and (b) involve employees not involved in the case at bar, those demands are overbroad and irrelevant. The motion to compel as to that information is denied.

However, to the extent the discovery demands seek information involving the employees involved in the case at bar, those discovery demands may yield information relevant and material to prosecuting Plaintiff's negligent hiring/retention/training claim.<sup>2</sup> Therefore, Plaintiff's motion is granted to the extent it seeks records depicting the licenses and/or certifications held by the employees involved in the incident at issue, regardless of the venue those employees were working. Plaintiff's motion is also granted to the extent it seeks prior investigative documents/incident reports, but solely if it relates (a) to Bounce Sporting Club and/or (b) the employees who were involved in the incident giving rise to this lawsuit (*see generally Vega v Ramirez*, 57 AD3d 299 [1st Dept 2008] [finding that without evidence of either prior similar

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<sup>2</sup> Although Defendant Allstar has requested that this Court not "prune" Plaintiff's overbroad discovery demands, in the interest of streamlining discovery this Court elects to narrow Plaintiff's demands to an appropriate scope.

incidents at nightclub or threats of possible violence the night fight broke out, negligence action against nightclub and security company should be dismissed]).

Allstar's cross-motion seeking a protective order is granted to the extent Plaintiff seeks documentation regarding security licenses and incident reports involving Allstar employees who were not present at Bounce Sporting Club on October 19, 2019. Plaintiff also may not seek incident reports if they were generated at other venues and do not involve any of the employees present at Bounce Sporting Club on October 19, 2019. Allstar's cross-motion is denied to the extent Plaintiff seeks documentation regarding security licenses and incident reports involving Allstar employees who were present at Bounce Sporting Club on October 19, 2019, even if the incident report relates to another venue, as it may show notice of a dangerous propensity of those employees. Allstar's cross-motion is also denied to the extent Plaintiff seeks incident reports generated from incidents at Bounce Sporting Club prior to October 19, 2019.

In the interest of expediting discovery, the Court denies Allstar's motion seeking to vacate Plaintiff's supplemental demand for discovery and inspection, even though the Court agrees that the demands are overbroad. Rather, Allstar is directed to produce documentation, to the extent it exists, in compliance with the Court's directives contained in this Decision and Order.

Accordingly, it is hereby,

ORDERED that Plaintiff's motion is granted solely to the extent Allstar is directed to produce the requested documentation<sup>3</sup> only if it involves or relates to the employees who were involved in Plaintiff's incident at Bounce Sporting Club on October 19, 2019, or if it involves or relates to prior incidents At Bounce Sporting Club, and the Plaintiff's motion is otherwise denied; and it is further

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<sup>3</sup> i.e., security licenses, incident reports, or investigative reports, even if those reports were generated as a result of incidents at venues other than Bounce Sporting Club.

ORDERED that Defendant Allstar’s motion for a protective order is granted solely to the extent that Plaintiff may not seek disclosure of incident reports, investigative reports, or documentation regarding licensing to the extent those reports/documents (a) do not implicate or involve the employees who were involved in Plaintiff’s incident at Bounce Sporting Club on October 19, 2019 **and** (b) do not implicate prior incidents which may have occurred at Bounce Sporting Club. The remainder of Defendant Allstar’s cross-motion is denied; and it is further

ORDERED that Defendant Allstar shall produce all relevant documentation as directed herein, to the extent it exists, within forty-five (45) days of this Decision and Order; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties to this action.

This constitutes the Decision and Order of the Court.

6/26/2023  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE