

**Caldone v JRM Constr. Mgt., LLC**

2025 NY Slip Op 30393(U)

January 30, 2025

Supreme Court, New York County

Docket Number: Index No. 160485/2021

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*

-----X

JOHN CALDONE,

Plaintiff,

- v -

JRM CONSTRUCTION MANAGEMENT, LLC, 2 RECTOR STREET (NY), LLC, PIERPONT MECHANICAL CORPORATION,

Defendant.

-----X

JRM CONSTRUCTION MANAGEMENT, LLC

Plaintiff,

-against-

PIERPONT MECHANICAL CORPORATION, ASHLAR MECHANICAL CORP.

Defendant.

-----X

2 RECTOR STREET (NY), LLC

Plaintiff,

-against-

CONVENE, SENTRY CENTERS HOLDINGS LLC

Defendant.

-----X

INDEX NO. 160485/2021  
MOTION DATE 08/21/2024  
MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

Third-Party  
Index No. 595516/2023

Second Third-Party  
Index No. 595822/2024

The following e-filed documents, listed by NYSCEF document number (Motion 001) 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 114, 115, 116, 117, 118, 119, 120, 121, 122

were read on this motion to/for DISCOVERY

Upon the foregoing documents, and after a conference on January 29, 2025, Third-Party Defendant Ashlar Mechanical Corp.’s (“Ashlar”) motion to compel Plaintiff to produce certain

discovery is granted in part, denied in part, and otherwise resolved pursuant to the status conference order entered by the parties on January 29, 2025.

All issues in this motion have been resolved by the parties except for three requested categories of disclosure:

First, Ashlar seeks e-mails between Plaintiff and his attorneys who represented him in a Workers' Compensation Board matter relating to his C-3 report on January 13, 2021. Ashlar argues these e-mails are not privileged pursuant to the crime-fraud exception.

Second, Ashlar seeks authorizations to access Plaintiff's Instagram account to rebut Plaintiff's claims of loss of enjoyment of life.

Third, Ashlar seeks videos on Plaintiff's cell phone that either he made or received from his children and other individuals of the MMA fights of his son, John Caldone, which purportedly show Plaintiff shadowboxing and jumping, to also rebut claims of loss of enjoyment of life.

Ashlar's request for access to Plaintiff's Instagram account is granted, as this information is discoverable "to the extent it "contradicts or conflicts with [a] plaintiff's alleged restrictions, disabilities, and losses, and other claims"" (*Doyle v Temco Service Industries, Inc.*, 172 AD3d 554 [1st Dept 2019] quoting *Patterson v Turner Constr. Co.*, 88 AD3d 617, 618 [1st Dept 2011]). For the same reason, Ashlar is entitled to videos on Plaintiff's cell phone from his son's MMA tournaments to the extent it shows him travelling to his son's interstate tournaments and engaging in other physical activity in contravention to his alleged disabilities.

However, at this moment, Ashlar is not entitled to Plaintiff's communications with his attorneys in a Workers' Compensation Board matter relating to his C-3 report. These communications are privileged and although Ashlar alleges a fraudulent conspiracy, these are

merely allegations. Absent an adjudication and finding of fraud by some authority, allegations alone are insufficient to overcome the protections of the attorney-client privilege.

Accordingly, it is hereby,

ORDERED after a conference on January 29, 2025, Third-Party Defendant Ashlar Mechanical Corp.'s ("Ashlar") motion to compel Plaintiff to produce certain discovery is granted in part, denied in part, and otherwise resolved pursuant to the status conference order entered by the parties on January 29, 2025; and it is further

ORDERED that Third-Party Defendant Ashlar Mechanical Corp.'s motion is granted to the extent Plaintiff is directed to produce an authorization for Ashlar to access his Instagram account, and to produce videos on his cell phone depicting Plaintiff at his son's MMA tournaments, to the extent it shows him travelling to his son's interstate tournaments and engaging in other physical activity in contravention to his alleged disabilities, within thirty-days of entry of this Decision and Order; and it is further

ORDERED that Third-Party Defendant Ashlar Mechanical Corp.'s motion is denied, without prejudice, to the extent he seeks e-mail correspondence between Plaintiff and his Workers' Compensation Board attorneys relating to his C-3 report; and it is further

ORDERED that in all other respects, the motion is resolved in accordance with the status conference order entered by the parties at the January 29, 2025 status conference; and it is further

*[The remainder of this page is intentionally left blank.]*

ORDERED that within ten days of entry, counsel for Third-Party Defendant Ashlar Mechanical Corp. shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

1/30/2025			<i>Mary V Rosado JSC</i>
DATE			HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>
		<input type="checkbox"/> DENIED	<input type="checkbox"/>
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>
			<input checked="" type="checkbox"/>
			NON-FINAL DISPOSITION
			GRANTED IN PART
			<input checked="" type="checkbox"/> OTHER
			SUBMIT ORDER
			<input type="checkbox"/>
			FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE