

Tapia v Tao Group Inc.

2025 NY Slip Op 34245(U)

October 30, 2025

Supreme Court, New York County

Docket Number: Index No. 159157/2022

Judge: Leslie A. Stroth

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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. LESLIE A. STROTH PART **12M**

Justice

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INDEX NO. 159157/2022

EDWIN TAPIA,

MOTION DATE 12/26/2024

Plaintiff,

MOTION SEQ. NO. 003

- v -

TAO GROUP INC, PHD ROOFTOP NEW YORK, NINTH AVENUE HOSPITALITY LLC, ALLSTAR SECURITY & CONSULTING INC, 346 LOUNGE LLC, AG SECURITY GROUP INC, XYZ SECURITY COMPANY, JOHN DOE EMPLOYEE

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 110, 111, 112, 113, 114, 115

were read on this motion to/for JUDGMENT - SUMMARY

FACTUAL BACKGROUND

This action arises from an incident that allegedly occurred on the night of October 2, 2022, at the PHD Rooftop Lounge and building lobby located at 355 West 16th Street, New York, New York. Plaintiff pleads causes of action sounding in negligence, false imprisonment, and negligent hiring, training, and supervision.

Plaintiff Edwin Tapia testified that he arrived alone at the subject building around 10:00–11:00 p.m. after driving from New Jersey. After presenting identification, he took the elevator to PHD Rooftop, socialized, and later attempted to exit through the lobby. Plaintiff states that when he tried to leave, security guards blocked his path at multiple doors, prompting him to record the incident on his cellphone.

Plaintiff testified at his deposition on April 9, 2024 that one of the security guards at the premises grabbed him in a bear hug, twisted him, and forced him to the ground. (NYSCEF Doc No. 91). He alleges that he landed on his right knee, foot, shoulder, and ear. Plaintiff asserts he was unlawfully detained, tackled without justification, and only released after a manager intervened. He denies initiating any physical contact and maintains that his cellphone recording accurately depicts the incident.

Defendants state through affidavits and production of employee files of security guards Dave-Kinate Brutus McGhie and Gregory Fanduiz that AG Security provided contracted security services at PHD Rooftop. (NYSCEF Doc Nos. 100-102). Security guard McGhie observed Plaintiff earlier in the evening with an unconscious female patron, which Defendants claim raised concern. McGhie allegedly reported the incident to his supervisor, who instructed him to obtain Plaintiff's identification to assist emergency medical personnel.

McGhie and another guard, Gregory Fanduiz, allegedly encountered Plaintiff in the lobby. Defendants assert Plaintiff became agitated, threw his identification, and pushed McGhie. They claim that as Plaintiff attempted to exit through a door, he pulled rather than pushed, lost balance, and fell accidentally while McGhie attempted to assist with the door. They further contend that Plaintiff was never told he was detained and that the video shows he left the premises of his own accord within about a minute. Moreover, George Rubio, a Tao Group security manager, testified he was briefed that Plaintiff fell when mishandling the exit door. (NYSCEF Doc No. 92). McGhie testified to positioning himself between Plaintiff and the door at one point, but maintained he did not order Plaintiff to stay. (NYSCEF Doc No. 93).

Defendants now bring the instant motion (Motion Sequence 003) seeking summary judgment and dismissal of Plaintiff's complaint.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

DISCUSSION

General Negligence / Excessive Force

Defendants argue that Plaintiff's claims sound in "negligent assault," a cause of action not recognized under New York law, and should therefore be dismissed. They contend that Plaintiff's allegations describe intentional, offensive contact by security personnel, not negligent conduct.

However, the Court does not find that Plaintiff alleges "negligent assault". Plaintiff has pleaded negligence and excessive force and provides sworn deposition testimony that he was unlawfully restrained, tackled, and injured without justification. Plaintiff testified that one of the security guards, who was significantly larger than him, placed him in a bear hug, twisted his body, and forced him to the ground, causing injuries to his knee, shoulder, foot, and ear. By contrast, Defendants' Witness George Rubio Jr. testified at his deposition that that Plaintiff lost

balance while attempting to pull, rather than push, on an exit door, and fell on his own while a guard attempted to assist with the door. (NYSCEF Doc No. 92).

The video evidence, while referenced by both sides, has been described as supporting conflicting narratives: Plaintiff asserts it shows he was forcibly detained and thrown to the ground, while Defendants contend it confirms he left the premises freely within about one minute. At minimum, whether the force used was negligent, intentional, or accidental cannot be resolved as a matter of law. Given the foregoing, issues of fact remain as to how the alleged incident unfolded and as to the reasonableness the force employed. Such issues of fact render summary judgment unwarranted as to negligence and excessive force.

False Imprisonment

The parties also present conflicting versions of whether Plaintiff was unlawfully detained. Plaintiff testified that multiple security guards blocked his path at different exit doors, trapping him in the lobby, and that he felt like he was “stuck in an elevator.” He further stated that he was not allowed to leave until a manager instructed the guards to release him.

By contrast, Defendants assert that no one told Plaintiff he could not leave, that security staff only attempted to obtain his identification to aid an emergency investigation, and that one guard can be heard on the video expressly stating, “I am not detaining you”. They emphasize that Plaintiff exited the premises under his own power within about one minute.

The deposition testimony is likewise conflicting. Guard McGhie admitted at points that he placed himself between Plaintiff and the door and positioned himself to block Plaintiff’s exit, while simultaneously asserting that he never told Plaintiff he had to remain. Plaintiff, however, testified he was physically restrained and only released when directed by a manager. These contradictions cannot be reconciled on paper and instead raise a material issue of fact as to

whether Plaintiff was detained against his will, and as such summary judgment is not warranted as to Plaintiff's false imprisonment claim.

Negligent Hiring, Training, and Supervision

Defendants also move for summary judgment dismissing Plaintiff's claim for negligent hiring, training, retention, and supervision. To sustain such a claim, a plaintiff must demonstrate (1) the existence of an employee-employer relationship; (2) 'that the employer knew or should have known of the employee's propensity for the conduct which caused the injury'; and (3) "a nexus or connection between the defendant's negligence in hiring and retaining [or supervising] the offending employee and the plaintiff's injuries" (*Sokola v Weinstein*, 78 Misc 3d 842, 847 [Sup Ct 2023], *appeal withdrawn*, 219 AD3d 1185 [1st Dept 2023]) (internal citations omitted).

First, Defendants do not dispute that McGhie and Fanduiz were employed by AG Security, and Plaintiff sufficiently alleges such a relationship. As such, the first element of establishing an employee relationship is satisfied.

However, Defendants have shown that they did not know, nor had any reason to know of any propensity for the conduct which caused the alleged injury. Here, the uncontroverted record establishes that both McGhie and Gregory Fanduiz had no prior disciplinary issues, complaints, or incidents suggesting violent or improper propensities. The affidavit of AG Security's principal, Michael Hesekiel, confirms that both guards' personnel files were maintained in the ordinary course of business and contained no reports, violations, or incidents of prior misconduct.

Plaintiff has offered no evidence to the contrary, nor any indication that Ninth Avenue Hospitality or 346 Lounge (the parties who contracted with AG Security) had prior notice of any risk that either guard would use excessive force.

While Plaintiff asserts that AG Security and the venue should have implemented better supervision and training protocols, such general claims are insufficient to raise a triable issue of fact absent proof of prior notice or a demonstrated pattern of similar conduct. There is also no evidence in the record that the use of an independent contractor such as AG Security was improper or that the contracting entities exercised day-to-day control over the guards' methods or training. On these facts, Plaintiff has failed to establish the necessary elements of negligent hiring, training, or supervision.

The court has considered the remaining arguments of the parties and finds such unavailing.

Accordingly, it is hereby

ORDERED that Defendants' motion for summary judgment (Motion Seq. 003) is granted in part, solely to the extent of dismissing Plaintiff's claims for negligent hiring, training, retention, and supervision and is otherwise denied.

10/30/2025

DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE


HON. LESLIE A. STROTH
J.S.C.