SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **05M**

Justice

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HECTOR LORENZO,

Plaintiff,

- v -

GREAT EXPECTATIONS CATERING LLC, CPS 5 LLC,

Defendants.

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INDEX NO. 161170/2013

MOTION DATE 12/01/2025

MOTION SEQ. NO. 019

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 019) 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 905

were read on this motion *In limine*.

Plaintiff, Hector Lorenzo ("plaintiff"), moves *in limine* for an order directing that the jury be given an adverse inference charge at trial arising from defendants Great Expectations Catering, LLC and CPS 5, LLC's (collectively CPS 5 or defendants) failure to preserve and produce surveillance video depicting the Plaza Hotel's third-floor event space and surrounding areas on the evening of the September 14, 2012 wedding at which plaintiff was injured. Plaintiff further seeks an order precluding CPS 5 from introducing any portion of the deposition testimony of CPS 5 manager Vincent Palumbo ("Palumbo") that recounts statements allegedly made by bartender Andre Cepero ("Cepero") concerning the appearance, demeanor, or sobriety of nonparty assailant John Yahara ("Yahara") on the night in question. Finally, plaintiff seeks to preclude defendants from eliciting or offering any testimony or argument referring to vague, unattributed "stories" or "rumors" about plaintiff's alleged behavior at the wedding, including non-specific assertions that plaintiff may have said or done something that upset or provoked Yahara prior to the assault.

Defendants oppose the motion, contending that any loss of surveillance footage occurred in the ordinary course of business without a culpable state of mind or prejudice sufficient to warrant an adverse inference; that Palumbo's testimony concerning his conversation with bartender Cepero is admissible, or at least may be used for non-hearsay or impeachment purposes; and that testimony about post-event "stories" or "rumors" provides relevant context as to motive and causation and should be admitted subject to cross-examination.

For the reasons that follow, the motion is granted in substantial part.

BACKGROUND AND PROCEDURAL HISTORY

This action arises out of a violent assault that occurred on September 14, 2012, during a wedding reception ("the Thobani wedding") held in the third-floor event space of the Plaza Hotel. Plaintiff, an invited guest, alleges that he sustained catastrophic injuries when he was struck by the

bride's brother, nonparty Yahara. The record reflects that plaintiff suffered severe head trauma, including multiple comminuted skull fractures requiring open reduction and reconstruction, obliteration of the frontal nasal duct, bone grafting, abdominal fat grafting, and a traumatic brain injury. Plaintiff alleges that these injuries were proximately caused by Yahara's intoxication and that such intoxication, in turn, resulted from defendants' unlawful service of alcohol while Yahara was visibly intoxicated.

Plaintiff asserts claims sounding in negligence and under New York's Dram Shop Act. He contends that CPS 5 and related entities continued to serve alcoholic beverages to Yahara despite his visible intoxication and that such overservice was a substantial factor in causing the assault and plaintiff's resulting injuries.

During discovery, plaintiff served document demands dated October 21, 2014, in which he specifically requested production of surveillance video from the security system covering those portions of the Plaza Hotel leased and operated by CPS 5, including the third-floor event space foyer, cocktail area, and adjacent hallways, for the night of the Thobani wedding. CPS 5 responded with boilerplate objections and represented that it did not have access to the requested video or to the system that recorded it.

As the case progressed, the court conducted multiple status conferences and issued a series of orders directed at the surveillance footage. On September 23, 2015, the court directed that defendants with access or control over any surveillance or digital-video-recording system covering the subject location, adjacent areas, and means of egress were to provide such video within thirty days, or, if such video was no longer available, to provide documentation of the policy or procedure that resulted in the destruction of the footage within the same thirty-day period. That directive was reiterated in subsequent status conference orders dated November 2, 2016, and May 24, 2017, which again required defendants with access, custody, or control of any relevant surveillance to produce the footage or to provide a sworn statement attesting to its unavailability and explaining why it no longer existed.

On August 3, 2018, CPS 5 manager Palumbo was deposed. Palumbo testified that CPS 5 owned and controlled the DVR-based surveillance system covering the CPS 5–leased areas of the Plaza Hotel both at the time of the Thobani wedding and thereafter. The DVR unit was located in CPS 5's sales office, and CPS 5 employees and managers had the ability to review and preserve footage. Palumbo further testified that CPS 5 had, on prior occasions, preserved relevant footage by copying segments to CDs and that many of the same cameras used on the date of the Thobani wedding remained in service at the time of his deposition. He also acknowledged that he reported the incident to CPS 5's insurer on the first business day following the wedding.

Following Palumbo's deposition, the court entered additional status conference orders dated May 7, 2019, July 11, 2019, November 7, 2019, and February 13, 2020. Those orders directed CPS 5 to provide documents identifying the surveillance system, cameras, and DVR in place at the time of the wedding, and to provide an affidavit concerning the existence, preservation, or destruction of any surveillance video during the subject event. CPS 5 did not timely comply with these directives.

On April 24, 2020—approximately six years after the initial demand and after repeated court orders—CPS 5 produced an affidavit from Palumbo stating, in substance, that CPS 5 did not have any surveillance video of the subject incident because CPS 5 does not keep surveillance recordings in its regular course of business. The affidavit offered no further factual detail regarding when or how any footage was overwritten or destroyed, what retention policies governed the system, or what, if any, steps were taken to preserve the recordings once CPS 5 became aware of the incident and the potential for litigation.

In a prior motion for summary judgment, CPS 5 argued that there was no admissible proof that Yahara was visibly intoxicated. Among other things, CPS 5 relied on a portion of Palumbo's deposition in which he described a conversation he had, approximately six years after the incident and in preparation for his deposition, with bartender Cepero. According to Palumbo, Cepero told him that Yahara was "quiet," "kept to himself," and did not appear intoxicated on the night of the wedding. Palumbo acknowledged that Cepero, as a CPS 5 employee, could face discipline if he admitted to having served an intoxicated patron.

Separately, the bride and groom each testified at deposition that, years after the wedding, they heard "stories" or "rumors"—apparently originating from members of Yahara's family—that plaintiff may have been "obnoxious" or "talking about" Yahara "in a bad way" prior to the assault. Neither witness could identify the original source of these statements, recall when the alleged comments by plaintiff were supposed to have been made, or specify what plaintiff supposedly said or did. The bride described her recollection as "patchy" and testified that she heard the rumor through her sister, who in turn may have heard it from a boyfriend. Both bride and groom, however, testified that, based on their own observations, their interactions with plaintiff at the wedding were pleasant and that they had no personal knowledge of any improper or provocative conduct by plaintiff toward Yahara.

Plaintiff now seeks pretrial rulings addressing, first, the consequences of CPS 5's failure to preserve the surveillance footage and, second, the admissibility of Palumbo's testimony recounting Cepero's statements and any testimony or argument concerning the vague "rumors" about plaintiff's alleged behavior.

ARGUMENTS

Plaintiff contends that CPS 5's destruction or loss of the surveillance footage warrants a spoliation sanction pursuant to CPLR § 3126 and that, at a minimum, the jury should be instructed that it may draw an adverse inference that the missing video would have been unfavorable to CPS 5 on the issues of Yahara's intoxication and the events leading up to the assault. Plaintiff argues that CPS 5 indisputably owned and controlled the DVR system that recorded the CPS 5–leased areas where Yahara was drinking and where the events leading up to the assault unfolded; that CPS 5's duty to preserve the footage arose as soon as it became aware of the serious incident and the likelihood of litigation, particularly in light of Palumbo's notice to CPS 5's insurer; that CPS 5's initial denial of access to the system was false; and that CPS 5 repeatedly violated this court's orders directing production of the footage or a fulsome explanation of its unavailability. Relying on authorities including *Ortega v City of New York* (9 NY3d 69 [2007]), *Pegasus Aviation I, Inc. v Varig Logistica S.A.* (26 NY3d 543 [2015]), *VOOM HD Holdings LLC v EchoStar Satellite*

L.L.C. (93 AD3d 33 [1st Dept 2012]), *Arbor Realty Funding, LLC v Herrick, Feinstein LLP* (140 AD3d 607 [1st Dept 2016]), *Parkis v City of Schenectady* (211 AD3d 1444 [3d Dept 2022]), and *Rosengarten v Born* (161 AD3d 515 [1st Dept 2018]), plaintiff argues that this conduct, at a minimum, constitutes negligent spoliation and approaches willful or grossly negligent noncompliance, such that an adverse inference is warranted to restore a fair balance between the parties.

With respect to the Cepero statements, plaintiff argues that Palumbo's deposition testimony recounting what Cepero allegedly told him is classic hearsay—consisting of out-of-court statements by a nonparty, made years after the event in a context of self-interest, offered for the truth of the matters asserted, namely that Yahara did not appear intoxicated. Plaintiff notes that CPS 5 has not produced an affidavit from Cepero, has not indicated that he will be produced for trial, and has not demonstrated that his alleged statements fall within any recognized exception to the hearsay rule. Plaintiff relies, in particular, on *Costa v 1648 Second Ave. Rest. Inc.* (221 AD2d 299 [1st Dept 1995]), *Cohen v Bread & Butter Ent. LLC* (73 AD3d 600 [1st Dept 2010]), and *Tratt v Washington Bldg. Mgt. Co.* (15 Misc. 3d 1136[A] [Sup Ct, N.Y. County 2007]), which hold that dram shop defendants may not rely on hearsay accounts by managers or owners of what bartenders allegedly said about a patron's sobriety in place of competent testimony from the bartenders themselves.

As to the "rumors," plaintiff contends that they are neither competent evidence nor sufficiently concrete to qualify as coherent statements. The testimony reflects vague, unattributed assertions concerning plaintiff's supposed "obnoxious" behavior or allegedly derogatory comments about Yahara, relayed through multiple layers of hearsay, without any witness having personal knowledge of the underlying events. Plaintiff argues that such "rumors" are speculative, unfairly prejudicial, and devoid of probative value, and that they therefore should be excluded. In support of this position, plaintiff cites *Bielak v Plainville Farms, Inc*. (299 AD2d 900 [4th Dept 2002]), *Wilbur v Wilbur* (266 AD2d 535 [2d Dept 1999]), *Bellafiore v L & K Holding Corp*. (244 AD2d 443 [2d Dept 1997]), *Agoglia v Sterling Foster & Co., Inc*. (237 AD2d 549 [2d Dept 1997]), *Rosenthal v Village of Quogue* (205 AD2d 745 [2d Dept 1994]), and *New York State Labor Rels. Bd. v Frank G. Shattuck Co*. (260 AD 315 [1st Dept 1940]). Plaintiff also relies on *Catania v 124 In-To-Go Corp.* (287 AD2d 476 [2d Dept 2001]) to argue that he is required only to show a "reasonable or practical connection" between overservice and the assault and that speculative and unsubstantiated rumor evidence does not negate that connection.

Defendants, in opposition, argue that any loss of surveillance footage occurred pursuant to routine business practices before litigation was reasonably anticipated and that plaintiff has failed to establish a culpable state of mind or that any particular footage existed and would have been favorable to plaintiff. Defendants emphasize that plaintiff has access to extensive testimonial and photographic proof about Yahara's conduct and appearance and argue that any prejudice from the absence of video is therefore limited. With respect to Palumbo's testimony about Cepero's statements, defendants contend that the testimony should not be categorically excluded because it reflects the recollection of an employee who served drinks at the event; that it may fall within the scope of a party admission or business record; and that, at a minimum, it may properly be introduced to explain the basis for Palumbo's understanding and actions rather than for its truth. Finally, defendants submit that the "stories" or "rumors" about plaintiff's alleged conduct, while

imperfect, are relevant to motive and causation, in that they may support an argument that plaintiff's own conduct provoked the assault and broke or attenuated the causal chain. Defendants contend that any weaknesses in this testimony go to weight rather than admissibility and can be explored through cross-examination before the jury.

DISCUSSION

A. Spoliation of Surveillance Video and Adverse Inference

New York's disclosure rules require "full disclosure of all matter material and necessary in the prosecution or defense of an action." (CPLR § 3101 [a]). In *Allen v Crowell-Collier Publ. Co.* (21 NY2d 403 [1968]), the Court of Appeals emphasized that the phrase "material and necessary" must be interpreted liberally to require disclosure of any facts bearing on the controversy that will assist preparation for trial by sharpening the issues and reducing delay. When evidence that ought to have been disclosed is destroyed or withheld, CPLR § 3126 vests the court with broad discretion to impose sanctions, including an adverse inference charge, preclusion of evidence, or even striking of pleadings (*Ortega v City of New York*, 9 NY3d 69, 76 [2007]).

To obtain spoliation sanctions, the moving party must establish that the party against whom sanctions are sought had an obligation to preserve the evidence at the time it was destroyed, that the evidence was destroyed with a culpable state of mind, and that the destroyed evidence was relevant to the moving party's claim or defense (*Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 543, 547 [2015]). A culpable state of mind for spoliation purposes includes ordinary negligence; when destruction is willful or grossly negligent, relevance is presumed (*VOOM HD Holdings LLC v EchoStar Satellite L.L.C.*, 93 AD3d 33, 45 [1st Dept 2012]; *Arbor Realty Funding, LLC v Herrick, Feinstein LLP*, 140 AD3d 607, 609–610 [1st Dept 2016]). Any sanction imposed must be commensurate with the misconduct and tailored to restore balance to the litigation and to ensure that the spoliating party does not obtain an unfair advantage (*Ortega*, 9 NY3d at 76; *see also De Los Santos v Polanco*, 21 AD3d 397 [2d Dept 2005]; *Ortiz v Bajwa Dev. Corp.*, 89 AD3d 999 [2d Dept 2011]; *New York Cent. Mut. Fire Ins. Co. v Turnerson's Elec., Inc.*, 280 AD2d 652 [2d Dept 2001]).

In this case, there is no serious dispute that CPS 5 both controlled and had a duty to preserve the surveillance video. Palumbo's deposition testimony establishes that CPS 5 owned the DVR system in place at the time of the Thobani wedding; that the DVR was physically located in CPS 5's sales office; that CPS 5 had 18 to 20 cameras covering the CPS 5–leased portions of the Plaza, including the third-floor foyer and adjacent hallways; and that CPS 5 employees had the ability to review and copy footage to CDs and had previously done so in connection with other incidents. That testimony directly contradicts CPS 5's earlier representation that it did not have access to the requested video and demonstrates that the system, and the footage it produced, were within CPS 5's possession, custody, and control.

CPS 5's duty to preserve the footage arose as soon as it became aware of the incident and the reasonable prospect of litigation, which occurred no later than when Palumbo reported the matter to CPS 5's insurer on the first business day after the wedding. Under *VOOM HD*, once litigation is reasonably anticipated, a party must suspend its routine document destruction policies

and put in place a litigation hold to ensure the preservation of relevant documents and data, including electronic data (*VOOM HD Holdings LLC*, 93 AD3d at 36.) That principle has been applied to surveillance video in numerous decisions (*see, e.g., Jennings v Orange Regional Med. Ctr.*, 102 AD3d 654, 656 [2d Dept 2013]; *Giuliano v 666 Old Country Rd., LLC*, 100 AD3d 960 [2d Dept 2012]; *Mendez v La Guacatala, Inc.*, 95 AD3d 1084 [2d Dept 2012]; *Shayovich v 800 Ocean Parkway Apt. Corp.*, 77 AD3d 814 [2d Dept 2010]; *Barone v City of New York*, 52 AD3d 630 [2d Dept 2008]; *Suazo v Linden Plaza Assoc., L.P.*, 102 AD3d 570 [1st Dept 2013]). The duty was later reinforced by this court's orders, which repeatedly and explicitly directed defendants with access or control of the surveillance to produce the recordings or to provide a sworn and detailed explanation of their disposition.

The record also supports a finding that CPS 5 acted with at least ordinary negligence and, in significant respects, approached willful or grossly negligent disregard of its preservation and discovery obligations. CPS 5 did not merely fail to preserve evidence through inadvertence. It initially denied having access to the footage, only for its own manager later to acknowledge extensive control over the system and its output. It then failed, over a period of years, to comply with multiple court orders directed specifically to the surveillance. When CPS 5 finally produced an affidavit in April 2020, the affidavit was spare, conclusory, and devoid of concrete facts, stating only that CPS 5 does not keep surveillance recordings in its regular course of business, without indicating when or how any footage was overwritten or destroyed, what the retention period was, or what specific steps, if any, had been taken to preserve recordings after CPS 5 learned of the incident and anticipated litigation or after it was ordered by the court to do so.

In *Parkis v City of Schenectady*, the Appellate Division, Third Department, concluded that defendants who were aware of the need to preserve video of an incident, yet inexplicably failed to do so, acted in a manner that was, "at a minimum, negligent" (211 AD3d at 1446.) In *Rosengarten v Born*, the Appellate Division, First Department, upheld the striking of a pleading where a party repeatedly disregarded discovery orders, finding the conduct willful and contumacious (161 AD3d at 515–516.) The conduct here, while not as extreme as in *Rosengarten*, goes beyond a mere failure to appreciate a preservation duty: it reflects misleading discovery responses, prolonged noncompliance with court orders, and an ultimately inadequate explanation for the loss of unquestionably relevant material.

The missing surveillance footage is plainly relevant. The cameras covered the third-floor event space foyer, cocktail area, and surrounding hallways where the wedding reception occurred and where Yahara allegedly consumed alcohol and moved about prior to the assault. The footage could have depicted the frequency and nature of Yahara's visits to the bar, his gait and demeanor, his interactions with staff and guests, and any observable changes in his comportment as the night progressed. All of these matters bear directly on whether Yahara was visibly intoxicated and on the causal chain under the Dram Shop Act. Where destruction of evidence is willful or grossly negligent, the relevance of the destroyed material is presumed (*Arbor Realty Funding, LLC*, 140 AD3d at 609–610.) Even if CPS 5's conduct is viewed as merely negligent, the record comfortably supports a finding that the footage, had it been preserved, would have been both discoverable and highly probative.

The remaining question concerns the appropriate sanction. The drastic remedy of striking a pleading is reserved for extreme cases where spoliation utterly frustrates the movant's ability to prove its claim or defense (*see Squitieri v City of New York*, 248 AD2d 201 [1st Dept 1998]). Here, although the loss of the video is serious and prejudicial, plaintiff retains access to live witnesses, photographs, and other evidence. The court therefore concludes that an adverse inference instruction is the appropriate remedy. Such an instruction will permit the jury to consider CPS 5's failure to preserve the footage in evaluating the evidence, without foreclosing CPS 5 from defending the case on the merits.

At trial, the court will therefore instruct the jury that it may, but is not required to, infer that any surveillance footage of the CPS 5–leased areas of the Plaza Hotel on the night of the Thobani wedding, which CPS 5 failed to preserve and produce, would have been unfavorable to CPS 5 on the issues of Yahara's intoxication and the events leading up to the assault. The precise language of the charge will be settled at the charge conference, in light of this decision, CPLR § 3126, and the applicable pattern jury instructions and case law.

B. Palumbo's Testimony Regarding Statements Attributed to Bartender Cepero

The court next addresses whether CPS 5 may introduce Palumbo's deposition testimony recounting what bartender Cepero allegedly told him about Yahara's appearance and sobriety.

There is no real dispute that Palumbo's account of Cepero's statements—namely that Yahara was quiet, kept to himself, was not particularly social, and did not appear intoxicated—is offered for the truth of those statements. As such, the testimony is hearsay unless it falls within a recognized exception.

In *Costa v 1648 Second Ave. Rest.*, the Appellate Division, First Department, considered a dram shop case in which the defendant restaurant moved for summary judgment and relied on the deposition testimony of its manager, who recounted what a bartender had allegedly told her regarding the patron's sobriety. The court held that the defendant failed to meet its prima facie burden because its motion was supported solely by hearsay and therefore lacked sufficient evidentiary support. (221 AD2d at 299–300.) Similarly, in *Cohen v Bread & Butter Ent. LLC*, the Appellate Division, First Department, rejected a dram shop defendant's attempt to carry its burden with evidence that did not include affidavits or testimony from the actual bartenders or servers who observed and served the patron (73 AD3d at 600). And in *Tratt v Washington Bldg. Mgmt. Co.*, the court held that a co-owner's deposition testimony that merely relayed what his bartender relatives had told him about the patron's condition consisted of hearsay and lacked evidentiary value. (15 Misc. 3d 1136[A])

The factual posture here is materially indistinguishable from *Costa* and *Tratt*. CPS 5 seeks to have its manager serve as a conduit for a bartender's self-serving, *post hoc* narrative concerning an allegedly intoxicated patron, relayed years later in anticipation of litigation and under the shadow of discipline if the bartender were to admit overservice. That is precisely the type of unreliable, layered hearsay that New York courts have refused to credit.

Nor has CPS 5 demonstrated that Cepero's statements fall within any exception to the hearsay rule. They were not made contemporaneously with the events in question or in the regular course of business in a manner that would satisfy the business-record exception. There is no showing that Cepero, as a bartender, occupied a position that would render his statements binding party admissions. To the extent CPS 5 suggests that the statements are offered merely to explain "steps taken" in preparation for Palumbo's deposition, the incremental probative value of that limited purpose is minimal and is substantially outweighed by the danger that the jury would treat the statements as substantive proof, in contravention of *Costa* and its progeny.

Given the clear hearsay nature of the testimony, the absence of an applicable exception, and the pronounced risk of confusion and unfair prejudice if a manager's recital of a subordinate's self-protective narrative is presented to the jury instead of live testimony subject to cross-examination, the court concludes that Palumbo will not be permitted to testify at trial as to what Cepero allegedly told him about Yahara's demeanor or apparent sobriety.

This ruling does not preclude CPS 5 from calling Cepero himself as a witness and eliciting his observations regarding Yahara, subject to the rules of evidence and cross-examination. It simply prevents CPS 5 from introducing Cepero's purported account indirectly through Palumbo or any other intermediary.

C. "Rumors" and Speculative Accounts of Plaintiff's Conduct

The court turns finally to defendants' anticipated reliance on deposition testimony from the bride and groom regarding "stories" or "rumors" they heard, years after the wedding, suggesting that plaintiff may have been "obnoxious" or "talking about" Yahara in a negative way prior to the assault.

The record makes clear that this proposed testimony consists of multiple layers of hearsay. Neither the bride nor the groom witnessed any such conduct by plaintiff. Both described their own interactions with plaintiff at the wedding as pleasant and testified that they did not personally observe plaintiff engage in any inappropriate or provocative behavior toward Yahara. Their knowledge of the purported "stories" or "rumors" derives from unspecified statements allegedly made by unidentified members of Yahara's family, filtered through at least one additional intermediary. The bride described her recollection as "patchy," and the groom similarly lacked any direct knowledge of the underlying events.

New York courts have repeatedly held that uncorroborated, unattributed rumors lack evidentiary value. In *Agoglia v Sterling Foster & Co., Inc*., the Appellate Division, Second Department, recognized that hearsay testimony about what unnamed individuals had said, where those individuals had not witnessed the underlying events, was insufficient to create a triable issue of fact (237 AD2d at 549–550). In *Bellafiore v L & K Holding Corp*., the court explained that statements that merely recount what another person had told the witness, without any personal knowledge of the facts, constitute inadmissible hearsay (244 AD2d at 443–444). *Wilbur v Wilbur* similarly characterized such testimony as "unsubstantiated hearsay" that may properly be disregarded (266 AD2d at 535–536). And in *New York State Labor Rels. Bd. v Frank G. Shattuck*

Co., the Appellate Division, First Department, famously held that "[m]ere uncorroborated hearsay or rumor does not constitute substantial evidence" (260 AD at 317).

The testimony at issue here fits squarely within these principles. The bride and groom have no personal knowledge of plaintiff engaging in any provocative conduct. The "rumors" they describe are vague in content, remote in time, unattributed to any specific declarant, and unsupported by any independent corroboration. To admit such testimony would invite the jury to speculate about what was said, by whom, and under what circumstances, and to base its assessment of plaintiff's conduct and comparative fault on gossip rather than on competent evidence.

Moreover, the marginal probative value of this testimony is outweighed by its capacity to mislead and unfairly prejudice the jury. Even if the "rumors" were afforded some arguable relevance as to motive or causation, they would do little to illuminate whether Yahara's assault was reasonably connected to his intoxication or to the alleged overservice of alcohol, which is the central inquiry under the Dram Shop Act. In *Catania v 124 In-To-Go Corp.*, the Appellate Division, Second Department, explained that a plaintiff in a Dram Shop action need not establish proximate cause in the strict negligence sense, but instead must show only that the unlawful sale of alcohol had "some reasonable or practical connection" to the resulting injuries (287 AD2d at 477). The court in *Catania* held that where the assault was sudden and unprovoked, the only reasonable conclusion was that a practical connection existed between the assailant's intoxication and the attack (*id*. at 478.) Here, the record reflects that plaintiff's only interaction with Yahara prior to the assault was a simple introduction, and that plaintiff received no indication of hostility from Yahara until he was struck. Under these circumstances, vague and unsubstantiated "rumors" that plaintiff may have been "obnoxious" or "talking about" Yahara do not meaningfully alter the causal analysis, but they do pose a significant risk of unfairly shifting the jury's focus from defendants' alleged overservice to a collateral and speculative narrative about plaintiff's supposed misconduct.

Accordingly, the court exercises its gatekeeping function to preclude defendants, their counsel, and their witnesses from offering testimony or argument referring to these "stories" or "rumors" as substantive evidence. This ruling does not bar defendants from offering otherwise admissible, non-hearsay testimony by witnesses with personal knowledge regarding specific observations of plaintiff's behavior, provided that such testimony has been properly disclosed and is otherwise admissible. It simply excludes the described hearsay-laden and speculative rumor evidence from the jury's consideration.

For all of the foregoing reasons, it is hereby

ORDERED that plaintiff's motion *in limine* is granted in substantial part; and it is further

ORDERED that, at the trial of this action, the court will instruct the jury that it may, but is not required to, draw an adverse inference that any surveillance video footage of the CPS 5–leased areas of the Plaza Hotel on the evening of September 14, 2012, which CPS 5 failed to preserve and produce, would have been unfavorable to CPS 5 on the issues of John Yahara's intoxication and the events leading up to the assault, with the precise wording of such charge to be settled on the record at the charge conference; and it is further

ORDERED that defendants, their counsel, and their witnesses are precluded from offering at trial any testimony or documentary evidence recounting or describing statements allegedly made by bartender Andre Cepero to CPS 5 manager Vincent Palumbo, or to any other intermediary, concerning Yahara's demeanor or apparent sobriety at the Thobani wedding, unless Cepero is called as a witness and testifies directly, in which event his testimony shall be subject to the usual rules of evidence and cross-examination; and it is further

ORDERED that defendants, their counsel, and their witnesses are precluded from offering at trial any testimony, argument, or evidence referring to vague, unattributed "stories" or "rumors" about plaintiff's alleged behavior at the Thobani wedding, including non-specific assertions that plaintiff was "obnoxious" or "talking about" Yahara "in a bad way," where such assertions are not based on the personal knowledge of the testifying witness; and it is further

ORDERED that nothing in this decision and order shall preclude defendants from offering otherwise admissible, non-hearsay testimony by witnesses with personal knowledge concerning specific observations of plaintiff's or Yahara's conduct, subject to appropriate objections and rulings at trial; and it is further

ORDERED that all remaining branches of plaintiff's motion that are not expressly granted herein are denied; and it is further

ORDERED that, as discussed at the pre-trial conference held on December 2, 2025, the trial in this matter is adjourned to January 20, 2026, for jury selection, and that this trial date shall not be adjourned absent extenuating circumstances; and it is further

ORDERED that, in light of the adjournment of the trial date, the court's pre-trial order dated December 1, 2025 (NYSCEF Doc No. 904), is modified to the extent that the parties shall submit, by email to SFC-Part5-Clerk@nycourts.gov and sfc-part5@nycourts.gov, copying all parties, no later than 9:30 a.m. on December 15, 2025, the following information concerning trial duration: the estimated number of trial days required; the estimated time for direct and cross-examination of each proposed witness; a statement as to whether each witness is a fact or expert witness; and any anticipated need for interpreters, specifying the required language and dialect; and it is further

ORDERED that the court's pre-trial order dated December 1, 2025 (NYSCEF Doc No. 904), is further modified to the extent that the parties shall submit, in Word format, by email to SFC-Part5-Clerk@nycourts.gov and sfc-part5@nycourts.gov, copying all parties, no later than 9:30 a.m. on December 15, 2025, proposed jury-related materials, including (i) proposed jury verdict sheets and (ii) proposed jury instructions, which shall include the text of any relevant Pattern Jury Instructions (PJI), using the most recent version of the PJI, and which shall identify any instructions to which the parties have stipulated, and any proposed deviations from PJI instructions shall be clearly highlighted and accompanied by an explanation and citations to relevant legal authority; and it is further

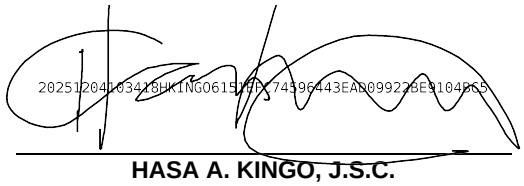
ORDERED that the parties shall also submit, by email to the Part Clerk at SFC-Part5-Clerk@nycourts.gov and to the Part at sfc-part5@nycourts.gov, copying all parties, no later than 9:30 a.m. on December 15, 2025, the following documents: (i) all marked pleadings and bills of particulars; (ii) all notices to admit and responses thereto; (iii) all prior decisions in this case, including any appellate decisions; and (iv) a joint statement of stipulated facts and procedural history; and it is further

ORDERED that plaintiff's opposition, if any, to defendants' *motions in limine* (NYSCEF Doc Nos. 906, 907, and 908) shall be submitted by email in the same manner described above and shall also be uploaded to NYSCEF no later than 9:30 a.m. on Monday, December 8, 2025; and it is further

ORDERED that the remaining provisions of the court's pre-trial order dated December 1, 2025 (NYSCEF Doc No. 904), remain in full force and effect and shall be strictly adhered to by the parties; and it is further

ORDERED that, if the parties wish to engage in settlement discussions with the court at any time prior to the January 20, 2026 trial date, they may jointly contact the court by email, copying all parties, at SFC-Part5-Clerk@nycourts.gov and sfc-part5@nycourts.gov, and shall in that correspondence propose several dates and times when all counsel are available to appear for a settlement conference.

This constitutes the decision and order of court.



12/4/2025
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	**X**	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**