

Ortiz v Equinox Wall St. Inc.

2025 NY Slip Op 35056(U)

December 24, 2025

Supreme Court, Kings County

Docket Number: Index No. 520984/2024

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 24th day of December 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

=====
DAVID ORTIZ,

Plaintiff,

-against-

EQUINOX WALL STREET INC., EQUINOX HOLDINGS, INC., EQUINOX HOLDINGS LLC, and EQUINOX INVESTMENTS, INC.,

Defendants.
=====

DECISION & ORDER

Index No.: 520984/2024

Calendar No.: 31

Return Date: 9/25/25

Motion Seq.: 1

Recitation of the following papers as required by CPLR 2219 (a):

NYSCEF
Papers Numbered

Notice of Motion and Supporting Documents..... 16-27
Affirmation of in Opposition and Supporting Documents 29-33
Reply Affirmation..... 35

Upon the foregoing papers, the decision and order of the Court is as follows:

Plaintiff DAVID ORTIZ (“Plaintiff”) seeks an Order sanctioning Defendants EQUINOX WALL STREET INC. and EQUINOX HOLDINGS, INC. (“Defendants”) for the admitted spoliation of pertinent evidence.

Plaintiff moves for spoliation sanctions based on Equinox’s admitted destruction of surveillance footage from an August 25, 2023, slip-and-fall at the Equinox Wall Street gym. Plaintiff alleges that he slipped on dangerously wet interior stairs that were in direct view of front-desk employees, sustaining serious spinal injuries. Although Equinox preserved only a 15-second “video of a video” showing the fall itself, it is alleged that Equinox destroyed the original surveillance footage that would have depicted conditions before and after the accident, including how long water was present, employee visibility, and post-incident remedial measures. Plaintiff argues that Defendants were on notice that the video was material to litigation, as evidenced by their selective preservation, and that the destruction prejudices

Plaintiff's ability to prove actual and constructive notice. Plaintiff seeks sanctions including striking Defendants' pleadings or, at minimum, a negative inference charge at trial.

According to Natasha Almanzar, Equinox's Maintenance Manager, Equinox's standard practice in 2023 was to retain surveillance video for a maximum of 90 days before automatic overwriting. She affirms that on the day of the accident she personally reviewed and copied the footage depicting Plaintiff's fall and the moments immediately prior, attaching that copy to the incident report. Almanzar asserts that no additional footage of the accident or stairway before or after exists because it was overwritten pursuant to routine policy, and that preserving video by recording it externally was customary and considered secure.

Defendants oppose Plaintiff's spoliation motion, arguing that there was no intentional or negligent destruction of evidence and no resulting prejudice. They assert that the preserved video captures the accident and immediately preceding events, which is all that was requested or required at the time. Defendants emphasize that Plaintiff did not request preservation of additional footage until May 2025, long after the routine retention period expired, and that Plaintiff's October 2023 notice letter did not seek video preservation. They further contend that incident reports indicate that the stairs were inspected and found dry, and that Plaintiff declined medical assistance at the scene. Defendants argue that Plaintiff can fully present his case through testimony and the existing video, rendering sanctions unwarranted.

Defendants argue that the motion is procedurally defective for failure to include a good-faith affirmation under 22 NYCRR § 202.7 and substantively meritless under New York spoliation law. They assert that the produced video is the best and most probative evidence, showing Plaintiff safely ascending the stairs moments earlier, his partner descending without incident, and Plaintiff's fall resulting from a misstep rather than a hazardous condition. Defendants contend any earlier footage would be irrelevant, that they lacked notice to preserve non-accident footage beyond standard retention, and that routine

overwriting does not constitute spoliation. Further, Defendants argue that Plaintiff cannot establish willful destruction, negligence, or prejudice necessary to justify sanctions or a negative inference charge.¹

In reply, Plaintiff maintains that Defendants' own submissions confirm spoliation, as they consciously chose to preserve only a small excerpt of the video while allowing the remainder to be destroyed. Plaintiff argues that this selective preservation demonstrates recognition of the video's importance and resulted in the loss of crucial evidence regarding duration of the wet condition, employee notice, and post-accident conduct. Plaintiff contends that the destruction irreparably prejudices his case, and that Defendants should not benefit from their actions.

The video submitted by Defendants shows Plaintiff, along with his partner and young child, walking up the stairs with no issue. After Plaintiff speaks with an individual at the front desk (located right near the stairs), he turns around, starts to descend the stairs, and misses a step, causing him to fall. Based on the video evidence submitted, which depicts Plaintiff descending the staircase, missing a step, and falling without any visible accumulation of liquid, obstruction, or barrier on the stairs, the Court finds that the footage does not corroborate Plaintiff's claim that a hazardous wet condition caused the accident.² The video instead shows a misstep occurring on an otherwise unobstructed stairway. In the absence of proof that Defendants created or had notice of a dangerous condition and given that the preserved video captures the accident and the moments immediately preceding it, Plaintiff has not demonstrated prejudice sufficient to warrant spoliation sanctions or a negative inference charge.

Defendants' arguments are misplaced because they are arguing the merits of Plaintiff's claim and asking the Court to implicitly decide that Plaintiff did not slip on a defective condition, a material

¹ Defendants cite to, *inter alia*, the following case law. *Peters v Hernandez*, 142 AD3d 980, 981 [2d Dept 2016]; *Cordero v Mirecle Cab Corp.*, 51 AD3d 707, 709 [2d Dept 2008], sanctions are improper where the missing evidence does not prevent the movant from proving the case; *Klein v Ford Motor Co.*, 303 AD2d 376, 377 [2d Dept 2003], severe sanctions are inappropriate where the loss was inadvertent, the evidence was not central, and no prejudice was shown; *Kelly v Empire Rolling Skating Rink, Inc.*, 34 AD3d 533, 534 [2d Dept 2006], the movant must show that the opponent intentionally or negligently failed to preserve evidence after being placed on notice it might be needed for litigation.

² Moreover, even if a hazardous wet condition did cause the accident, this would be visible when the three individuals (Plaintiff, his partner, and the young child) were going up the stairs. However, this was not present on the submitted video.

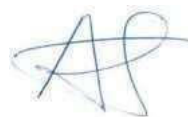
question of fact that must be decided upon a motion for summary judgment or by a jury at trial. However, the motion is denied because Plaintiff's claim letter placing Defendants on notice of the accident did not include a request for them to preserve video footage for future litigation (*Kelly v Empire Rolling Skating Rink, Inc.*, 34 AD3d 533, 534 [2d Dept 2006]).

Accordingly, it is hereby

ORDERED that Plaintiff's motion seeking an order imposing sanctions on Defendants is DENIED, and issues concerning liability, if any, remain to be resolved on the merits.

This constitutes the decision and order of the Court.

E N T E R:



Hon. Anne J. Swern, J.S.C.

Dated: 12/24/2025

<p>For Clerks use only:</p> <p>MG _____</p> <p>MD _____</p> <p>Motion seq. # _____</p>
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