

<b>Tung v Bowery Presents LLC</b>
2026 NY Slip Op 31954(U)
May 7, 2026
Supreme Court, New York County
Docket Number: Index No. 161325/2019
Judge: Arlene P. Bluth
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART 14

Justice

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BELLE TUNG, as administrator of the estate of CANDICE CHEN, deceased, and BELLE TUNG, individually Plaintiff,

INDEX NO. 161325/2019

MOTION DATE 04/02/2026

MOTION SEQ. NO. 009 010

- v -

THE BOWERY PRESENTS LLC, AEG PRESENTS NY, LLC D/B/A PLAYSTATION THEATER, PARADOCS WORLDWIDE INC., CONCERT SERVICE SPECIALISTS, INC. D/B/A CSS SECURITY, INC., DUVAN DIAZ, JENNIFER VALENCIA,

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 009) 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 258, 260, 261, 263, 266, 268, 276, 277, 278, 279, 280, 281, 282, 283

were read on this motion to/for STRIKE PLEADINGS

The following e-filed documents, listed by NYSCEF document number (Motion 010) 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 259, 262, 264, 267, 269, 270, 271, 272, 273, 274, 275, 284, 285

were read on this motion to/for STRIKE PLEADINGS

Motion Sequence Numbers 009 and 010 are consolidated for disposition.

Plaintiff's motion (MS009) to strike the answers of defendant The Bowery Presents LLC and AEG Presents NY LLC d/b/a PlayStation Theater (hereinafter, the "Venue Defendants") due to spoliation of evidence is denied. Plaintiff's motion (MS010) to strike the answers of defendants Paradocs Worldwide, Inc., Duvan Diaz and Jennifer Valencia ("Paradocs Defendants") based on spoliation is denied.

Background

Plaintiff, Belle Tung, commenced this action following the death of her daughter Candice Chen from a drug overdose after attending an EDM concert at the then PlayStation Theatre with

her boyfriend, Anson Huynh, and other friends on May 12, 2018. Mr. Huynh stated that Ms. Chen took MDMA or “molly” at some point during the night. Shortly before midnight, Ms. Chen told Mr. Huynh that she was not feeling well and Mr. Huynh reported seeing Ms. Chen’s eyes roll back in her head and saw her collapse. Ms. Chen was taken off the main dance floor and her friends went to find help.

Ms. Chen received medical care from defendants Diaz and Valencia and, as noted by the judge previously assigned to this case, there are significant disputes about the “precise timeline of events” as well as Ms. Chen’s precise medical condition when she was brought to the medical area at the concert venue. Defendants insist that emergency services were called and that FDNY EMS arrived at 12:22 a.m. Ms. Chen was taken to the hospital at 12:58 a.m. and she was pronounced dead at 1:26 a.m. The coroner determined the cause of death to be “acute methylenedioxymethamphetamine intoxication.”

In a decision dated January 22, 2024, the judge previously assigned to this case denied all defendants’ motions for summary judgment (NYSCEF Doc. No. 208). The case is scheduled for a pre-trial conference in June 2026.

### **MS009**

In this motion, plaintiff seeks to strike the answers of the Venue Defendants because they failed to turn over surveillance videos. She insists that the failure to turn over security videos constitutes spoliation for which a severe sanction is required. Plaintiff argues that she made four separate requests for this discovery and the Court issued two orders for the disclosure of these videos. She contends that defendants have repeatedly said they did not have any video footage but have not explained or justified this absence of evidence.

In opposition, the Venue Defendants complain that this motion was filed without any attempt to conference the issue or resolve it. On the merits, they claim that plaintiff did not make any argument that the Venue Defendants destroyed or lost the security footage after receiving notice of the lawsuit. They contend that the decedent collapsed on the dance floor and that they were not on notice of a lawsuit based on that fact as there are no allegations that the Venue Defendants caused the decedent to collapse. Their argument is that a medical emergency does not inevitably mean that a party is going to get sued.

The Venue Defendants also point out that they provided the NYPD with whatever video footage they could find. They add that the absence of any video footage does not foreclose plaintiff's ability to pursue her claims, which sound mostly in medical malpractice in that the on-site paramedics failed to properly diagnose her condition and timely call for additional emergency services. They also stress that they have always represented, even in responses from 2022, that they did not possess the security camera footage.

In reply, plaintiff insist that the Venue Defendants were on notice and that they even generated an incident report and so they had a duty to preserve surveillance footage.

“Under the common-law doctrine of spoliation, a party may be sanctioned where it negligently loses or intentionally destroys key evidence. The party requesting sanctions for spoliation has the burden of demonstrating that a litigant intentionally or negligently disposed of critical evidence, and fatally compromised its ability to prove its claim or defense. The Supreme Court has broad discretion in determining what, if any, sanction should be imposed for spoliation of evidence and may, under appropriate circumstances, impose a sanction even if the destruction occurred through negligence rather than wilfulness, and even if the evidence was destroyed before the spoliator became a party, provided the spoliator was on notice that the evidence might

be needed for future litigation” (*Doviak v Finkelstein & Partners, LLP*, 137 AD3d 843, 845-46, 27 NYS3d 164 [2d Dept 2016] [internal quotations and citations omitted]).

Here, there is no dispute that the lack of security footage is not due to wilfulness as plaintiff does not allege that the Venue Defendants intentionally destroyed the surveillance videos. And they have always responded throughout this litigation that they did not possess the footage—this is not a situation in which they suddenly claimed they lacked possession of this evidence. The question, then is, whether spoliations are appropriate for a purported negligent destruction of evidence that is relevant.

Based on this record, the Court finds that there is no basis for any imposition of sanctions. The Venue Defendants correctly pointed out that they were not necessarily on notice that they would be sued because of a medical emergency. The undisputed facts suggest that Ms. Chen passed away after an overdose which, at least initially, did not appear to have anything to do with the Venue Defendants. Under plaintiff’s view of spoliation, every single incident at a venue would require video surveillance to be kept indefinitely in case there was a possible future lawsuit even in situations that, at least on their face, would not obviously suggest a litigation.

Moreover, plaintiff did not show that she is “fatally compromised” from proving her case. There are ample documents and accounts concerning the alleged timeline of the treatment provided to Ms. Chen before she was transported to the hospital. In other words, she will still be able to prove her case and the surveillance footage would, at best, provide cumulative evidence. There were many, many witnesses on scene who can shed light on what happened that evening.

**MS010**

In this motion, plaintiff argues that the Paradocs Defendants were required to turn over a copy of the decedent's medical records. She complains that they repeatedly insisted they were not in possession of any medical records. Plaintiff argues that the Paradocs employees (defendants Valencia and Diaz) were the EMTs who provided the initial care to Ms. Chen at the venue and that they admittedly took her vital signs. Plaintiff maintains that these medical records would show the results of their efforts to monitor Ms. Chen's vitals and that it would have been recorded in a Paradocs App.

In opposition, the Paradocs Defendants contend that there was an agreement between Paradocs and defendant AEG Presents NY, LLC that EMTs were supposed to report their interactions and medical interventions to an employee of AEG who would transcribe the care and treatment into an incident report. They insist that defendant Valencia insisted she reported her findings to an AEG employee and that while she recorded vital signs on gloves, those gloves were later discarded for sanitary reasons. The Paradocs Defendants claim that defendant Valencia could not recall at her deposition if she actually recorded any records in the app from the night of the incident. They contend that they followed their agreement with AEG and turned over all relevant records.

In reply, plaintiff argues that the Paradocs Defendants cannot evade spoliation sanctions by blaming another party and that they had an obligation to preserve relevant records.

The Court denies the motion for sanctions against the Paradocs Defendants. To be sure, the practice of verbally reporting interactions to an AEG employee is probably not the most efficient way to document care provided to concert attendees. But plaintiff is certainly entitled to question those practices and procedures at trial. However, there is nothing whatsoever to suggest

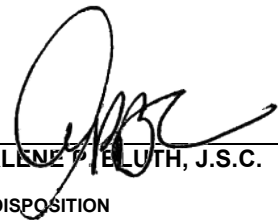
that there was a willful or even negligent effort on the part of the Paradocs Defendants to destroy relevant evidence. As with the Venue Defendants, there is no question that the Paradocs Defendants have consistently denied possession of the specific records sought by plaintiff. And plaintiff will surely be able to pursue her theory that substandard medical care was provided, possibly by exploring the record keeping procedures discussed. But the Court, in its discretion, finds that drastic sanctions such as striking a pleading are not appropriate.

Accordingly, it is hereby

ORDERED that both motions for sanctions based on purported spoliations are denied.

5/7/2026

DATE



ARLENE FELUTH, 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