

SUPREME COURT - STATE OF NEW YORK
DUTCHESS COUNTY

Present:

Hon. MARIA G. ROSA

Justice.

RICHARD C. EDELSON and CHRISTINE EDELSON, x

Plaintiff,

DECISION AND ORDER

-against-

Index No: 50602/2015

ROBERT A. AZUD, CAPITOL ENTERPRISES, INC.,
THE CAPITOL THEATER, THE CAPITOL THEATRE,
LLC, GARCIA'S AT THE CAPITOL THEATRE,
and GREEN MOUNTAIN CONCERT SERVICES, INC.

Defendants.

x
The following papers were read and considered on the Capitol defendants' motion for various order of preclusion and to quash subpoenas, and on plaintiffs' application for so ordered subpoenas for certain Portchester Police Officers' testimony and/or related reports and/or records:

NOTICE OF MOTION *IN LIMINE*
AFFIRMATION IN SUPPORT
EXHIBITS A-U

AFFIRMATION IN OPPOSITION
EXHIBITS A-E

AFFIRMATION IN OPPOSITION
EXHIBITS 1-7

NOTICE OF MOTION
AFFIRMATION IN SUPPORT
EXHIBIT 1

AFFIRMATION IN OPPOSITION

EXHIBITS A-F

AFFIRMATION IN OPPOSITION

Based upon the arguments raised in the papers and at the conference held in chambers on September 19, 2017, it is hereby

ORDERED that the motion to preclude expert testimony as to defendant Azud's blood alcohol level at approximately 12:30 a.m. to 12:45 a.m. (or any other time) is denied. It is further

ORDERED that the motion to preclude the plaintiffs from issuing subpoenas for the testimony and/or reports and/or records of the Portchester Police relative to prior incidents where patrons were allegedly intoxicated within the subject premises of the Capitol Theater is denied, without prejudice. The subpoenas are being "so ordered" but defendants may renew their motion if it is appropriate to do so at trial. It is further

ORDERED that the motion to quash the trial subpoenas served by plaintiff Richard Edelson on the Capitol Theatre employees demanding production of documents is granted as such is an improper attempt to obtain further discovery. It is further

ORDERED that as the parties agree that the collateral source records and Westchester Medical Center records previously sought have now been provided, defendants' motion to preclude in this regard is denied as moot. It is further

ORDERED that the motion to preclude bartender Danielle Clowe's Facebook post(s) regarding drinking and/or getting drunk as notice and/or an advertisement for her prior place of employment is denied to the extent that any application to use such collateral evidence to impeach her credibility may be renewed at trial. It is further

ORDERED that whether to preclude admission at trial of 18 photos plaintiff intends to use to demonstrate plaintiff's pre- and post- accident enjoyment of life relative to damages is deferred to the time of trial on the issue of damages. It is further

ORDERED that no party may introduce evidence at trial or make arguments that the Capitol defendants had a legal obligation to prevent defendant Azud from leaving the Capitol Theatre as the Capitol defendants had no such legal duty. See Kowalski v St. Francis Hosp. & Health Ctrs., 21 NY3d 480 (2013); Martino v Stolzman, 18 NY3d 905 (2012). It is further

ORDERED that plaintiffs are barred from introducing any evidence pertaining to negligent hiring, training and/or supervision claims. Liability for claims sounding in common law negligence may not be imposed upon a tavern owner for conduct of an intoxicated person where injury occurs off the premises of the tavern. See D'Amico v Christie, 71 NY2d 76 (1987). The court further rejects plaintiff's claims that the motion for preclusion is the equivalent of a

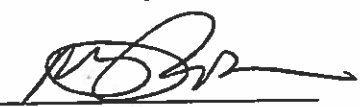
summary judgment motion. If plaintiffs are barred from pursuing a common law negligence claim against the Capitol defendants, any evidence solely relevant to such claims is not admissible at trial. It is further

ORDERED that the motion to preclude admission of the letter written in March of 2016 regarding Diego Pardo's termination of employment is deferred to the time of trial when a determination as to its relevance, admissibility and probative value can be made.

This constitutes the decision and order of the court.

Dated: September 22, 2017
Poughkeepsie, New York

ENTER:


MARIA G. ROSA, J.S.C.

Richard R. Mogg, Esq.
The Law Office of Richard R. Mogg, P.C.
5 Walden Street
Somers, NY 10589

David B. Lever & Associates, PLLC
120 Bloomingdale Road, Suite 401
White Plains, NY 10605

Rende, Ryan & Downes, LLP
202 Mamaroneck Avenue
White Plains, NY 10601

O'Connor Redd, LLP
242 King Street/PO Box 1000
Port Chester, NY 10573

Law Office of Anthony R. Tirone, Esq., P.C.
202 Mamaroneck Avenue
White Plains, NY 10601

Voute, Lohrfink, Magro & McAndrew, LLP
170 Hamilton Avenue
White Plains, NY 10601-1789

Scanned to the E-File System only

FILED: DUTCHESS COUNTY CLERK 10/24/2017 04:38 PM**FILED: DUTCHESS COUNTY CLERK 09/22/2017 01:58 PM**

RECEIVED NYSCEF 2016/24/2017

NYSCEF DOC. NO. 726

RECEIVED NYSCEF: 09/22/2017

Pursuant to CPLR §5513, an appeal as of right must be taken within thirty days after service by a party upon the appellant of a copy of the judgment or order appealed from and written notice of its entry, except that when the appellant has served a copy of the judgment or order and written notice of its entry, the appeal must be taken within thirty days thereof.