DOCKET NO. CV16-6009509-S	:	SUPERIOR COURT
ROBERT PLOURDE	:	JUDICIAL DISTRICT OF NEW HAVEN
V.	:	AT MERIDEN
GEORGE J. BUTLER, ET AL.	:	SEPTEMBER 17, 2019

MEMORANDUM OF DECISION
RE: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT #119 & #125
AND PLAINTIFF'S OBJECTION #123

The court, having reviewed and considered the Defendants' Motion for Summary Judgment and supporting exhibits and the Plaintiff's Objection with supporting exhibits, and having considered the oral arguments presented at short calendar on September 9, 2019, hereby DENIES the Defendants' summary judgment motion and SUSTAINS the Plaintiff's objection to such.

The court bases its ruling on the following.

PROCEDURAL BACKGROUND

By a four count Complaint dated July 19, 2016 and returnable on August 30, 2016, Plaintiff Robert Plourde brings suit against the Defendants George Butler, Kevin Lemay, Moonshine Boys LLC, Brandon Webb and Kyle Laurendeau as a result of an incident on August 5, 2014 at the Double Play Café located at 278 West Main Street in Meriden, Connecticut.

Plaintiff Plourde alleges that he was severely attacked and permanently injured at the Double Play when he was punched and kicked repeatedly by intoxicated patrons. He seeks compensatory and punitive damages against the defendants. Plaintiff claims serious physical

JDNO + copy mailed to [illegible]

Judicial District of New Haven at Meriden
SUPERIOR COURT
FILED

injuries from this incident including but not limited to traumatic brain injury, subdural hematoma, traumatic brain hemorrhaging, facial fractures, impaired cognitive function, memory loss and permanent loss of life's enjoyment.

In Counts One and Two, he brings suit against the Defendants Butler, Lemay and Moonshine Boys LLC alleging that they were the permittee, owner, backer, manager and operator of the Double Play Café.

In Count One, he specifically asserts a claim of negligence against these defendants claiming that the incident and his resulting injuries and losses were caused by their negligence in that: (1) they failed to establish and/or follow adequate procedures for removing drunk, violent and/or unruly patrons from the premises; (2) they failed to properly train its employees to remove drunk, violent and/or dangerous patrons from the premises; (3) they failed to adequately supervise and maintain the premises so as to prevent assaults on the premises; (4) they failed to provide adequate security on the premises; (5) they knew that Brandon Webb and Kyle Laurendeau were having verbal altercations with other patrons, yet failed to remove him or call the police; (6) they failed to warn the plaintiff that the premises was dangerous; (7) they failed to properly train the bartender and staff; (8) they knew that Brandon Webb and/or Kyle Laurendeau were intoxicated and that he had violent propensities, yet allowed him to enter, remain and consume alcohol on the premises and/or (9) they allowed the assault to continue and failed to aid the plaintiff.

In the Second Count, the Plaintiff asserts a claim of recklessness, willful and/or wanton misconduct against these same defendants. At paragraph 6 of the Second Count, he specifically alleges that the defendants were responsible as follows: (a) they maintained an alcohol service policy within the bar and/or restaurant in which intoxicated patrons would not be refused service;

(b) they knew that patrons often fought within the bar yet failed to have staff prevent these fights; (c) they knew that the visibly intoxicated persons were interacting with other patrons in an aggressive manner, yet failed to address the situation; (d) they allowed the visibly intoxicated patrons to remain on the premises when they knew he was a danger to other patrons; (e) they knew fights were a problem at the Double Play Café yet failed to enact and/or follow any procedures for security and service of alcohol; and/or (f) they served Brandon Webb and Kyle Laurendeau alcohol when they were visibly intoxicated and having verbal confrontations with other patrons.

Plaintiff in the Third and Fourth Counts has asserted negligence claims versus Defendant Webb and Defendant Laurendeau. These counts and these defendants are not involved with this current Motion for Summary Judgment.

By Answer and Special Defense dated January 10, 2017 the Defendants Butler, Lemay and Moonshine Boys LLC generally deny all claims of negligence, recklessness and willful wanton misconduct and deny causing the plaintiff's incident and/or his claimed injuries, losses and damages.

In three Special Defenses, they allege that they are not responsible because: (1) plaintiff's own comparative negligence was the cause or substantial cause of his own injuries; (2) the negligence of a third person not a party to this action was the cause or a substantial cause of his own injuries; and (3) plaintiff's injuries were caused by the intervening acts or superseding negligence of persons, parties or entities over whom the defendant had no control or responsibility, and for whose actions the defendants are not liable. They further claim plaintiff

was injured as a result of violent and unlawful acts of the codefendants Webb and Laurendeau and/or other unknown individuals.

The Plaintiff replied to said Special Defenses on or about March 15, 2017.

By Motion for Summary Judgment dated March 12, 2019 (#119) and amended and updated to June 20, 2019 (#125), the defendants move for judgment, arguing that they did not owe the plaintiff any duty of care with regards to the altercation and thus the claims of negligence and recklessness cannot stand. They submit a memorandum of law dated February 6, 2019 and supplemental filing as of June 20, 2019 with exhibits in support of this motion. Those exhibits include: (1) Deposition transcript of Kyle Laurendeau taken on August 17, 2017; (2) Arrest Warrant for Brandon Webb dated September 18, 2014; and (3) Meriden Police Department Case Supplemental Report dated September 2, 2014.

Plaintiff objects to this Motion for Summary Judgment by Objection dated May 6, 2019 (#123) along with supporting exhibits. Those exhibits include Defendant Lemay Compliance dated December 8, 2017 and signed as of November 14, 2017 to written discovery questions.

The parties presented for oral argument at short calendar on September 9, 2019.

LEGAL STANDARD OF REVIEW - SUMMARY JUDGMENT GENERALLY

"Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . The motion for summary judgment is designed to eliminate the delay and expense of litigating an issue when there is no real issue to be tried. . . . However, since litigants ordinarily have a constitutional right to have issues of fact decided by a jury . . . the moving party for summary judgment is held to a strict standard . . . of

demonstrating his entitlement to summary judgment." (Citation omitted; footnote omitted; internal quotation marks omitted.) *Grenier* v. *Commissioner of Transportation*, 306 Conn. 523, 534-35, 51 A.3d 367 (2012).

"Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner." (Internal quotation marks omitted.) *Fogarty* v. *Rashaw*, 193 Conn. 442, 446, 476 A.2d 582 (1984). "Summary judgment procedure is especially ill-adapted to negligence cases, where . . . the ultimate issue in contention involves a mixed question of fact and law, and requires the trier of fact to determine whether the standard of care was met in a specific situation. . . . [T]he conclusion of negligence is necessarily one of fact . . ." (Citations omitted; internal quotation marks omitted.) *Michaud* v. *Gurney*, 168 Conn. 431, 434, 362 A.2d 857 (1975).

"[T]he issue of whether a defendant owes a duty of care is an appropriate matter for summary judgment because the question is one of law." (Internal quotation marks omitted.) *Mozeleski* v. *Thomas*, 76 Conn. App. 287, 290, 818 A.2d 893, cert. denied, 264 Conn. 904, 823 A.2d 1221 (2003). "The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand." (Internal quotation marks omitted.) *Sic* v. *Nunan*, 307 Conn. 399, 407, 54 A.3d 553 (2012).

In this case based on negligence and recklessness theories, the defendants ask this court to apply the above analysis and to find that there are no genuine issues of material fact; and to find that no duty is owed to the Plaintiff Plourde to protect him from an altercation that occurred outside of Double Play on August 5, 2014. They do not cite any Connecticut appellate court

DOCKET ALARM

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts

Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research

With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips

Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS
Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS
Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS
Sync your system to PACER to automate legal marketing.