

DeMatteo v Yoga Moments Studio

2007 NY Slip Op 31498(U)

May 14, 2007

Supreme Court, Suffolk County

Docket Number: 0029902/2004

Judge: Robert W. Doyle

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SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

PRESENT:

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 1-6-07
ADJ. DATE 3-14-07
Mot. Seq. # 003 - MD

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NINA DeMATTEO,	:	NEWMAN, O'MALLEY & EPSTEIN, LLC
	:	Attorneys for Plaintiff
Plaintiff,	:	217 Broadway
	:	New York, New York 10007
- against -	:	
	:	ANTHONY P. GALLO, P.C.
YOGA MOMENTS STUDIO, STEPHEN LEE,	:	Attys for Defts Yoga, Lee & Visconti
ROSEANNE VISCONTI and SUE LIEF,	:	6080 Jericho Turnpike, Suite 216
	:	Commack, New York 11725
Defendants.	:	
-----X	:	

Upon the following papers numbered 1 to 17 read on this motion for summary judgment; Notice of Motion/ Order to Show Cause and supporting papers 1 - 13; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 14 - 17; Replying Affidavits and supporting papers _____; Other _____; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion by defendants for summary judgment dismissing the complaint against them is denied.

This is an action to recover damages for injuries allegedly sustained by plaintiff, Nina DeMatteo, on August 17, 2004, while attending an yoga class at defendant Yoga Moments Studio ("Yoga Moments") in Islip, New York, which is owned and operated by defendant Stephen Lee. Plaintiff alleges in her verified complaint, *inter alia*, that defendants were negligent in hiring, training, supervising and retaining Stacy Young, who was teaching the yoga class at the time of the incident.

Defendants now move for summary judgment in their favor on the grounds that plaintiff assumed the risk of injury while attending the yoga class and has failed to demonstrate that they were negligent. Defendants also seek summary judgment dismissing the complaint against defendant Roseanne Visconti on the ground that she had no ownership, occupancy or control over Yoga Moments. In support, defendants submit. *inter alia*, the pleadings, the transcript of the deposition testimony given by plaintiff, defendant Stephen Lee and defendant Rosanne Visconti and a copy of "student release."

At her examination before trial, plaintiff testified to the effect that she had been a member of defendant Yoga Moments Studio since 2001. During the last six months prior to the incident, she went to Yoga Moments and attended a class twice or three times a week without “exercising on [her] own.” On the day of the incident, Stacy Young, an instructor of Yoga Moments, was teaching plaintiff with three other students in a yoga class. Ms. Young picked plaintiff as a subject to show a move to the class. Upon request of Ms. Young, plaintiff went into the “seated forward position, which is a yoga position,” where “[her] legs stretched out with [her] toes reaching the ceiling; and the top of [her] torso [came] completely forward and [her] hands touch[ed] [her] toes and [her] head [was] down.” Plaintiff had performed the position many times prior to the incident. While plaintiff was in the position, Ms. Young came in contact with plaintiff’s back without any warning or instruction, and plaintiff felt an “extreme impact *** causing [her] extreme pain; and [she] heard a cracking noise and [she] screamed and [she] said, ‘Stacy, get off me.’” In addition, plaintiff testified that, on the first time when she went to Yoga Moments at the first class in 2001, she was given a form, which indicated “student release,” by defendant Sue Lief, who was the owner of Yoga Moments at that time. Plaintiff filled the form out, signed it and handed it back to Ms. Lief. Plaintiff also testified that “[e]verything on this page [of the form] is my handwriting except for the year on the top and on the bottom.”

The “student release,” which is dated “7-15-04” at its top and dated “7-15-06” at its bottom, was signed by plaintiff. The release states that “I fully understand that should I injure myself in any manner as a result of my participation in any classes or workshops. I acknowledge that I understand the intent thereof, and I hereby agree and will absolve and hold harmless Yoga Moments, In Harmony and all instructors, from and against any blame and liability from injury, misadventure, harm loss, inconvenience or damage hereby suffered or sustained as a result of participation in any of the wellness/exercise programs offered.”

At his deposition, defendant Lee testified that he has started teaching Taiji at Yoga Moments in 2001 or 2002. In 2004 prior to the incident, he purchased Yoga Moments and has become the sole owner without any partner. Defendant Lee also testified that “students pay per class” and that, “every time they come into a class, *** they just check off the name.” Moreover, defendant Lee testified that he was not present when the incident occurred and that Stacey Young was the instructor for the class that plaintiff took on the day of the incident. The class was called “partner yoga” where two people are performing a yoga pose. On the next day of the incident or the day after, Ms. Young called defendant Lee and told him how the incident happened. On the day of the incident, plaintiff and Ms. Young “were doing a pose which involves two people” and “[plaintiff] had volunteered to help [Ms. Young] and she tried it the first time but [plaintiff] couldn’t do it.” Finally, defendant Lee testified that defendant Visconti, his girlfriend, is a student and helps him teach Taiji and that she has no connection with Yoga Moments.

At her deposition, defendant Visconti testified that she does not “have any ownership or proprietary interest in Yoga Moments.” She taught a Taiji class when Ms. Lief was a proprietor and has not taken any Taiji lessons at Yoga Moments. Defendant Visconti also testified that she had told defendant Lee that “I would go to the classes [at Yoga Moments] and make sure the teachers were giving out the release forms to the students, because [Ms. Lief] had not given us the release forms and we felt it was important to have something in writing from the student.” Moreover, defendant Visconti testified that “I went to the classes [to collect the release forms] because [defendant Lee] was working

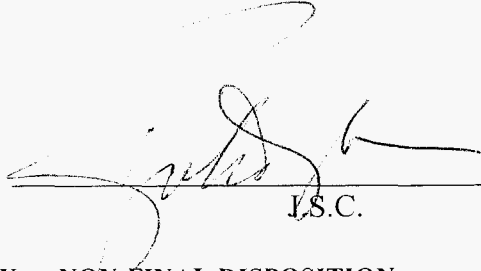
those hours I was off for the summer because I am a [kindergarten] teacher.” Defendant Visconti first met plaintiff in the class when she handed plaintiff the release form in front of the class. Plaintiff filled it out and gave it back to defendant Visconti, although plaintiff said that she has already signed a form with Ms. Leif.

General Obligation Law § 5-326 provides that a release of liability of the owner, operator, or person in charge of a place of amusement or recreation or similar establishment to a user of such facilities for a fee is void as against public policy and wholly unenforceable (*see, Fusco v Now & Zen*, 294 AD2d 466, 742 NYS2d 650 [2002]). The legislative intent of this statute is to prevent amusement parks and recreational facilities from enforcing exculpatory clauses printed on admission tickets or membership applications because the public is either unaware of them or not cognizant of their effect (*see, Lemoine v Cornell Univ.*, 2 AD3d 1017, 769 NYS2d 313 [2003], *lv denied* 2 NY3d 701, 778 NYS2d 459 [2004]). It is well established that, unless the intention of the parties is expressed in unmistakable language, an exculpatory clause will not be deemed to insulate a party from liability for his own negligent acts (*see, Gross v Sweet*, 49 NY2d 102, 424 NYS2d 365 [1979]; *Edge Mgt. Consulting v Blank*, 25 AD3d 364, 807 NYS2d 353 [2006], *lv dismissed* 7 NY3d 864, 824 NYS2d 608 [2006]). Generally, whether the plaintiff assumed a risk by participating in a sport is a question for the jury; dismissal of the complaint is appropriate only when the proof before the court reveals no triable issue of fact (*see, Samuels v High Braes Refuge*, 8 AD3d 1110, 778 NYS2d 640 [2004]; *Weller v Colleges of the Senecas*, 217 AD2d 280, 635 NYS2d 990 [1995]). Although participants properly may be held to have consented, by their participation, to those injury-causing events which are known, apparent or reasonably foreseeable consequences of the participation, a defendant generally has a duty to exercise reasonable care to protect participants from unassumed, concealed or unreasonably increased risks (*see, Lee v Maloney*, 270 AD2d 689, 704 NYS2d 729 [2000]; *Rutnik v Colonie Ctr. Court Club*, 249 AD2d 873, 672 NYS2d 451 [1998], *lv denied* 92 NY2d 808, 678 NYS2d 593 [1998]). “Liability for a dangerous or defective condition on property is generally predicated upon ownership, occupancy, control or special use of the property *** Where none is present, a party cannot be held liable for injuries caused by the dangerous or defective condition of the property” (*Saunders v Bryant’s Towing*, 27 AD3d 992, 812 NYS2d 670 [2006]; *Turrisi v Ponderosa, Inc.*, 179 AD2d 956, 578 NYS2d 724 [1992]).

Here, under the circumstances, this Court notes that General Obligation Law § 5-326 does not apply to defendants because plaintiff was at a yoga studio for instructional purposes and not recreational purposes (*see, Evans v Pikeway, Inc.*, 7 Misc 3d 348, 793 NYS2d 861 [2004]). Indeed, her injury occurred during a yoga class. The “student release” at issue is explicit and comprehensible. The release recites that plaintiff will hold defendants and their agents harmless “from and against any blame and liability from injury, misadventure, harm loss, inconvenience or damage hereby suffered or sustained as a result of participation in any of the wellness/exercise programs offered.” The release was silent, however, on the matter of any negligence on the defendants’ part. Thus, the release will not bar the claim that plaintiff was injured as a result of defendants’ own negligence (*see, Delaney v City of Mount Vernon*, 28 AD3d 416, 811 NYS2d 572 [2006]; *Edge Mgt. Consulting v Blank, supra*; *Barone v St. Joseph’s Villa*, 255 AD2d 973, 679 NYS2d 782 [1998]). Plaintiff’s testimony indicates that she had been a member of Yoga Moments since 2001; that she admitted that she signed the “student release” prior to the incident; and that, on the day of the incident, while she went into a yoga position in a class, defendants’ instructor came in contact with her back without any warning or instruction, and she felt an

extreme impact and screamed, "get off me." Although plaintiff assumed the risks that are generally inherent in and flow from her participation in a yoga class, she did not assume risks that were unique and resulted in a dangerous condition over and above the usual dangers inherent in the activity (*see, Morgan v State of New York*, 90 NY2d 471, 662 NYS2d 421 [1997]; *Rios v Town of Colonie*, 256 AD2d 900, 682 NYS2d 272 [1998]). When these facts are viewed in the light most favorable to the nonmoving party (*see, Daigle v West Mtn.*, 289 AD2d 838, 734 NYS2d 715 [2001]), there exist several questions of fact as to how plaintiff was injured, whether the risk of injury which plaintiff was to be exposed to by participating in this activity was known, apparent or reasonably foreseeable to her and whether the defendants exercised reasonable care to protect plaintiff from unassumed, concealed or unreasonably increased risks (*see, Rios v Town of Colonie, supra; Franco v Neglia*, 289 AD2d 838, 776 NYS2d 690 [2004]). Thus, defendants' motion for summary judgment dismissing the complaint against them on the ground that plaintiff assumed the risk of injury and has failed to demonstrate the negligence on the defendants' part is denied. In addition, the adduced evidence indicates that defendant Visconti helped defendant Lee teach Taiji at Yoga Moments and came to classes to collect the release forms from students. It is unclear from the testimony by defendants Lee and Visconti how much defendant Visconti has been involved in managing Yoga Moments. Thus, defendants failed to establish that defendant Visconti was not in control of Yoga Moments at the time of the incident. Accordingly, defendants' request for summary judgment dismissing the complaint against defendant Visconti is also denied.

Dated: MAY 14 2007



I.S.C.

 FINAL DISPOSITION X NON-FINAL DISPOSITION