

Avila v Planet Fitness Equip., LLC
2019 NY Slip Op 33249(U)
October 31, 2019
Supreme Court, New York County
Docket Number: 151298/16
Judge: Lynn R. Kotler
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. LYNN R. KOTLER, J.S.C.

PART 8

JOSE AVILA

INDEX NO. 151298/16

- v -

MOT. DATE

MOT. SEQ. NO. 006

PLANET FITNESS EQUIPMENT, LLC

The following papers were read on this motion to/for SJ
Notice of Motion/Petition/O.S.C. — Affidavits — Exhibits
Notice of Cross-Motion/Answering Affidavits — Exhibits
Replying Affidavits

This personal injury action arises from an accident on a treadmill. Defendant now moves for summary judgment (CPLR § 3212). Plaintiff opposes the motion. Issue has been joined and the motion was timely brought after note of issue was filed. Therefore, summary judgment relief is available. For the reasons that follow, the motion is granted.

On February 18, 2015 at approximately 5pm, plaintiff claims that he sustained an injury at defendant's gym located at 177 Dyckman Street, New York, New York. Defendant had been a member of defendant's gym for approximately one month prior to his accident. According to his verified bill of particulars, his injury was caused by a due to a "broken, obstructed, misaligned, raised, depressed, defective treadmill." While defendant had approximately 30-40 treadmills at his facility on the date of plaintiff's accident, there is no dispute that plaintiff does not know which treadmill he was on when he was injured. Defendant's witness, Joseph Franco, also confirmed that defendant replaced all the treadmills at defendant's gym after plaintiff's accident later in 2015. Therefore, the treadmill which caused plaintiff's accident is also lost.

At his deposition, plaintiff testified that he did not have any problems with any of defendant's treadmills prior to his accident. While plaintiff testified that he had overheard other gym members complain about the treadmills, he was not specifically aware of any complaints made by himself or anyone else regarding them prior to his accident. Plaintiff testified:

- Q. Did you ever hear of any problems with the machines?
A. Yes, I heard that sometimes people would complain about the machines not working correctly.
Q. When you say the machines, are you referring to treadmills or something else?

Dated: 10/31/19

HON. LYNN R. KOTLER, J.S.C.

- 1. Check one: [X] CASE DISPOSED [] NON-FINAL DISPOSITION
2. Check as appropriate: Motion is [X] GRANTED [] DENIED [] GRANTED IN PART [] OTHER
3. Check if appropriate: [] SETTLE ORDER [] SUBMIT ORDER [] DO NOT POST
[] FIDUCIARY APPOINTMENT [] REFERENCE

- A. The treadmills as well as the machines you do crunches or abs.
- Q. What specifically did you hear about with regard to the treadmills?
- A. My friend had been going to that longer than I had, and he told me that he had heard numerous times that there had been problems with the machines.
- Q. So anything that you heard, you heard from Juan Carlos; is that correct?
- A. Yes, but I also saw people complaining at the reception of the gym.
- Q. What do you mean when you say you saw them complaining?
- A. That the machines -- that they expressed that the machines were having problems.
- Q. What machines?
- A. The treadmills as well as the machines you do crunches on.
- Q. What did you hear?
- A. Sometimes they would say that they were damaged, and the people who worked there sometimes would put signs on the machines indicating they weren't working correctly.
- Q. Just listen to my question, sir. It will make today's deposition go a lot faster. I'm just asking you, what did you hear when you say that you saw people complaining at the front desk?
- A. That there was a machine that was broken downstairs.
- Q. You said earlier that the treadmills were upstairs, correct?
- A. Yes.
- Q. Notwithstanding what you might have heard, did you ever experience any mechanical problems with any of the treadmills in the month before this accident?
- ...
- A. No.
- Q. And did you yourself make any complaints prior to February 18th, 2015 to anyone regarding the condition of those treadmills?
- A. No.
- Q. And are you aware of any specific complaints made by anyone else regarding the condition of those treadmills before your accident occurred?
- ...
- A. No.

At the time of his accident, plaintiff was working out with a friend who was using another treadmill adjacent to his. Plaintiff explained how his accident occurred as follows:

Q. Okay. So why don't you just describe for me what happened after those 10 or so minutes that you were running at a pretty fast pace. What happened that caused you to sustain an injury to the ligaments in your right knee?

A. First I started walking for 5 minutes.

Q. Right.

A. And then after those 5 minutes we started to bring the speed up. And then I ran for about 5 minutes, and I ran for about 5 minutes a little faster. Then after that, something happened to the machine and that's when I hurt my knee. So what happened was the accident occurred and my friend helped me. I grabbed the sides of the machine and he stopped the machine, and I walked just for a little bit. And after that, I wasn't able to walk.

Q. You say that something happened to the machine and that's when you hurt your knee. What exactly happened to the machine?

A. When I was running?

Q. Yes.

A. So what happened was when I stepped forward with my right leg, the machine moved from side to side. That's when my friend grabbed me and helped me.

Q. When you say that the machine moved from side to side, can you describe what it did or what you felt?

A. It -- it was like it fell towards a side, the right side where I had put my leg.

On February 19, 2015, plaintiff sought and received treatment for pain stemming from his injury. Plaintiff's bill asserts that his injuries include a full thickness ACL tear, bucket-handle medial meniscal tear with meniscal fragment flipped medially, and posterior horn lateral meniscal root tear. On March 24, 2015, the Plaintiff was caused to receive a right knee surgery.

Also on February 19, 2015, after he received treatment, plaintiff went to defendant's gym and made a complaint about the incident. Plaintiff spoke to an unidentified male employee who he claims "filled out a piece of paper." Plaintiff testified that he told the employee: "I was running on a treadmill upstairs and that something happened, and I thought that it was due to a problem with the machine." The employee told plaintiff he would tell the manager.

Defendant produced Joseph Franco, its director of maintenance and maintenance manager at the time of plaintiff's incident. Franco testified that he performed repair and maintenance service for defendant's sports equipment, including the treadmills at several of defendant's locations, including the gym at 177 Dyckman Street. He visited each of defendant's gyms on a weekly basis, would perform a visual inspection and do "general" preventative maintenance every six to eight weeks. As to the latter, Franco stated that "[g]eneral maintenance on a treadmill would be to clean inside the covers, and do a visual inspection."

Franco explained that if there was a complaint made about defendant's equipment, the complaint would be reported to the general manager of the gym who would then notify Franco via email or phone. According to Franco, the treadmills were numbered "[r]ight on the consoles", so if a complaint was made, "someone c[ould] say treadmill number whatever it is, ten, eleven, has an issue." Franco testified that he did not receive any information regarding plaintiff's accident nor did defendant keep a complaint log.

Maintenance and repair records for defendant's treadmills were kept at defendant's premises in a logbook, but Franco testified that he was unable to locate it:

- Q. Do you know what happened to that logbook?
- A. I do not know.
- Q. Do you first know when you noticed that the logbook was missing?
- A. No.
- Q. Was it subsequent to 2015?
- A. No, it was there after that. I don't know when it went missing.
- Q. Was it there at the time of Plaintiff's accident?
- A. Yeah. Again, it was definitely there in all of 2015. It's almost like it went missing when the new equipment arrived. I don't know if the manager or somebody cleaned up, disposed of it, we didn't need it.

Otherwise, Franco testified that all of defendant's employees were each responsible for performing "floor walks and inspections and managers were in charge of inspecting equipment." Franco also stated that each of defendant's gyms has a cleaner who performed "janitorial services" and would "vacuum, mop, clean the locker rooms, et cetera."

Parties' arguments

Defendant argues that it is entitled to summary judgment because there is no evidence of a defective or dangerous condition nor is there any evidence of notice. Further, defendant argues that plaintiff's inability to identify the treadmill or cause of his accident is fatal to his claim. Finally, defendant contends that plaintiff assumed the risk of his injury.

In opposition, plaintiff argues that defendant has inappropriately shifted its burden to him on this motion and otherwise that triable issues of fact preclude summary judgment. He maintains that defendant has failed to establish that it neither caused nor created the defective or dangerous condition nor had notice of same. Further, he maintains that he has clearly identified the cause of his injury. Finally, he maintains that he did not assume the risk of being injured by faulty equipment.

Discussion

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v. NYU Medical Center*, 64 NY2d 851 [1985]; *Zuckerman v. City of New York*, 49 NY2d 557, 562 [1980]). The party opposing the motion must then come forward with sufficient evidence in admissible form to raise a triable issue of fact (*Zuckerman, supra*). If the proponent fails to make out its *prima facie* case for summary judgment, however, then its motion must be denied,

