

Alcantara v Blink Fitness

2023 NY Slip Op 31097(U)

April 7, 2023

Supreme Court, New York County

Docket Number: Index No. 159112/2019

Judge: James E. d'Auguste

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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: Hon. James d'Auguste

PART 55

Justice

-----X

AURORA ALCANTARA,

Plaintiff,

- v -

BLINK FITNESS, BLINK HOLDINGS, INC.

Defendants.

-----X

INDEX NO. 159112/2019
MOTION DATE 06/02/2022
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 95, 96, 99, 100 were read on this motion to/for SUMMARY JUDGMENT.

Motion by defendant Blink Fitness (“Blink”) seeking summary judgment dismissing the complaint of plaintiff Aurora Alcantara (“Alcantara”) is granted.

Alcantara is a former gym member of Blink. In Alcantara’s application for gym membership she affirmed the absence of adverse health conditions (NYSCEF Doc. Nos. 35 at Exh. D; 55). On April 19, 2019, Alcantara was injured while using a Freemotion Incline Trainer, which Blink’s witnesses characterized as an advanced treadmill. Alcantara asserts that the accident occurred after it allegedly sped up beyond her ability to maintain a speed correlating to the treadmill’s pace (NYSCEF Doc. No. 47). As a result, Alcantara was thrown off the back of the treadmill to the ground (NYSCEF Doc. No. 47). Alcantara claims she generally used the standard treadmills and has walked on them without issue (NYSCEF Doc. No. 47). Alcantara has also used a Freemotion Incline Trainer prior to the incident without any issues (NYSCEF Doc. Nos. 35 at Tr. 36:24-25, 37:2-14; 55). Alcantara allegedly attributed to Vanessa Brown, a Blink personal trainer, that she pressed the wrong button on the treadmill (NYSCEF Doc. Nos.

36, 45, 55). In this regard, Alcantara asserts that she was never provided instructions or warnings regarding the incline trainer's operation, nor on the emergency stop safety features, with which she was purportedly unfamiliar.

After the accident, the Freemotion Incline Trainer that Alcantara was using at the time of her accident was inspected by Blink staff. One of the individuals that inspected the treadmill was Phillip Eddy, Director of Facilities, who oversees the maintenance and repair of equipment. The inspection of the treadmill revealed no defects or issues. A search of Blink's records also found no issues reported or observed concerning the machine except for a lift motor – inapplicable here as it has no effect on the speed of the treadmill, only adjustment of the incline – that was repaired] (NYSCEF Doc. Nos. 30, 44). An inspection of the treadmill and full diagnostic of it by Gym Tech Fitness found the machine in good working order (NYSCEF Doc. Nos. 30, 44).

In this motion for summary judgment, Blink is required to affirmatively demonstrate either (1) the absence of a defective or dangerous condition or (2) that it did not launch an instrument of harm and that they lack actual or constructive notice of a dangerous or defective condition (*Dwoskin v Burger King Corp.*, 249 AD2d 358 [2d Dep't 1998]). Here, Blink sufficiently established the absence of a dangerous condition or defective condition, as well as the lack of notice to the extent one was deemed to have existed.

On the first issue, there is no evidence that the treadmill malfunctioned. Rather, Alcantara apparently pressed a control button that caused the machine to operate at a pace that apparently exceeded her ability to safely utilize the treadmill. Alcantara asserts that the treadmill's controls somehow required Blink to provide her with special instructions prior to using the machine. Initially, Alcantara never requested any special instructions from Blink staff

and did not engage the services of a personal trainer. Further, Alcantara previously used the type of treadmill upon which she was injured and then voluntarily exposed herself to the machine's alleged increased risk associated with it by again using the machine. Finally, the risk of potential injury associated with using the treadmill was an obvious risk inherent in using this type of fitness equipment (*Colorado v. YMCA of Greater N.Y.*, 2017 NY Slip Op. 30987(U), 2017 N.Y. Misc. LEXIS 1784 (Sup. Ct., N.Y. County May 10, 2017) (Edwards, J.); *DiBenedetto v. Town Sports Int'l, LLC*, 118 A.D. 3d 663 [2d Dep't 2014]; *Ingram v. Life Fitness*, 140 A.D. 3d 628 [1st Dep't 2016]).

Next, there is no evidence that Blink either launched an instrument of harm or had actual or constructive notice of a defective or dangerous condition. As noted above, there is no evidence that the treadmill malfunctioned. Further, there are no records of complaints, or repair to the treadmill (except the lift motor, inapplicable to the issue of speed here), and no history of prior accidents or defects that is supported by the evidence proffered by the parties (NYSCEF Doc. Nos. 30, 44). After oral arguments, Blink submitted, as directed by the Court, supplemental affidavits attesting to the lack of incident reports involving the subject treadmill since the date of Alcantara's accident by any other gym member, nor reported issues or defects with the treadmill (NYSCEF Doc. Nos. 95, 96). The Court directed this supplemental evidence as the existence of post-accident incidents or complaints would potentially demonstrate the existence of a malfunctioning machine on the date of the accident.

Next, Blink has demonstrated that it did not create a dangerous condition or launched an instrument of harm, and that it lacked actual or constructive notice of a purportedly defective or dangerous condition for a sufficient period before the incident sufficient to allow Blink to remedy same (*Gordon v. American Museum of Natural History*, 67 N.Y. 2d 836 [1986]). As

noted above, there is no evidence that the treadmill malfunctioned in any manner and Alcantara assumed any increased risk in using the type of treadmill at issue. Moreover, there is no evidence that Blink had prior or constructive notice of any issues with the machine. Nor was Blink on notice of any issues with Alcantara's ability to use Blink's equipment. Her membership application represented her fitness to use the gym, and she never affirmatively notified gym staff that she needed specialized instructions using the type of treadmill upon which she was injured.

In the end, the Court has considered all of Alcantara's arguments and find them unavailing. Accordingly, Blink's motion for summary judgment is granted and the complaint is dismissed. The Clerk is directed to enter judgment dismissing the action with prejudice and without costs or disbursements. This constitutes the decision and order of this Court.

4/7/2023
DATE

Hon. James d'Auguste, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: