Hollenberg v CYC Fitness Partners LLC
2026 NY Slip Op 30311(U)
January 23, 2026
Supreme Court, New York County
Docket Number: Index No. 151347/2019
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. HASA A. KINGO** **PART** **65M**

Justice

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ERIC HOLLENBERG

Plaintiff,

- v -

CYC FITNESS PARTNERS LLC,

Defendant.

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INDEX NO. 151347/2019

MOTION DATE N/A, N/A

MOTION SEQ. NO. 003 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164

were read on this motion for SPOLIATION.

Defendant Cyc Fitness Partners LLC ("Defendant") moves, pursuant to CPLR § 3212, for summary judgment dismissing the complaint in its entirety, asserting that Plaintiff Eric Hollenberg's ("Plaintiff") claims are barred by a written waiver and release and by the doctrine of primary assumption of risk.

Plaintiff cross-moves for spoliation sanctions pursuant to CPLR § 3126, seeking an order deeming the stationary bicycle and cycling shoes used on March 13, 2016 defective as a result of Defendant's destruction of the equipment, or, alternatively, the imposition of appropriate sanctions including an adverse inference at trial.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from an incident on March 13, 2016, at Defendant's indoor cycling facility located at 700 Eighth Avenue, New York, New York. Plaintiff, then 25 years old, attended a charity spin class and, for the first time, used a stationary bicycle with clip-in cycling shoes provided by Defendant. Plaintiff alleges that during the class the bicycle continued to spin

uncontrollably, that he was unable to disengage, and that he subsequently developed exertional rhabdomyolysis and compartment syndrome requiring multiple surgeries.

Plaintiff filed this negligence action on February 7, 2019, alleging that the equipment's defect and Cyc's negligence caused his injuries. Before the class, Plaintiff signed a "Rider Waiver" – a one-page release and assumption-of-risk form – at the entrance to the cycling room. Cyc later filed bankruptcy, stayed the case, and upon its reopening the parties exchanged document demands. In 2021 a Chapter 7 trustee took possession of the bike and shoes, which were eventually destroyed or discarded. During discovery, Plaintiff made inspection demands for the bike and shoes, which by then had been disposed of.

Plaintiff was deposed on July 13, 2020, and Defendant's representative was deposed on March 24, 2025. Plaintiff filed a note of issue on June 27, 2025, with discovery marked incomplete.

Defendant moved for summary judgment on August 25, 2025 (NYSCEF No. 69), arguing the signed waiver and the primary assumption-of-risk doctrine bar Plaintiff's claims. Plaintiff opposed (NYSCEF No. 73, received 10/10/25) and cross-moved to vacate the waiver and reject the assumption-of-risk defense. Plaintiff also cross-moved for spoliation sanctions (NYSCEF No. 138, received 11/12/25), alleging that Cyc failed to preserve the relevant equipment. Cyc opposed the spoliation motion and replied on its summary judgment motion on November 20–21, 2025 (NYSCEF Nos. 175–176).

ARGUMENTS

Cyc Fitness contends that (1) the Rider Waiver unambiguously bars Hollenberg's claims, and Plaintiff presents no valid legal basis (fraud, duress, mutual mistake, etc.) to avoid it; (2) Plaintiff assumed the known risks of participating in a strenuous stationary-bike class; and (3) in any event the record discloses no non-negligent basis for Cyc's liability.

In opposition, Plaintiff argues that the waiver is unenforceable because he signed it under pressure and without understanding its effect (fraud/misrepresentation, undue influence, and mistake), and that the class was a charitable event not commercial, so the release is unconscionable. He further asserts that he did not assume the risk of injury from a latent equipment defect, which he could not have anticipated.

Regarding spoliation, Plaintiff argues that Cyc had a duty to preserve the bike and shoes once litigation was foreseeable, that Cyc's conduct in disposing them (through its trustee) was culpable, and that the lost evidence was clearly material to his claim of a defect. He seeks sanctions (such as an adverse inference or striking of defenses) and specifically asks the court to treat the equipment as defective. Cyc counters that Hollenberg never requested inspection during discovery until it was too late, that Cyc (or its trustee) had no notice of an inspection duty beyond routine record-keeping, and that any failure was at most negligent. Cyc contends the missing evidence might not have shown anything, and it would be prejudicial to presume it did. Cyc further notes that New York law does not recognize an independent tort for spoliation and relies on CPLR § 3126 for any sanctions, which are discretionary and can range from an inference instruction to dismissal.

DISCUSSION

The court considers the motions separately. In each instance the moving party must make a prima facie showing entitling it to judgment as a matter of law, shifting the burden to the opposing party to show a triable issue. For summary judgment, Cyc must first show that no material fact issues exist as to the validity of the waiver and the applicability of assumption-of-risk. For spoliation sanctions, plaintiff must satisfy the three-part *VOOM* standard, as discussed below.

I. Cyc Ftiness' Motion for Summary Judgment

A motion for summary judgment "shall be granted if, upon all the papers and proofs submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of any party" (CPLR § 3212[b]). "The proponent of a motion for summary judgment must demonstrate that there are no material issues of fact in dispute, and that it is entitled to judgment as a matter of law" (*Dallas-Stephenson v Waisman*, 39 AD3d 303, 306 [1st Dept 2007]). The movant's burden is "heavy," and "on a motion for summary judgment, facts must be viewed in the light most favorable to the non-moving party" (*William J. Jenack Estate Appraisers & Auctioneers, Inc. v Rabizadeh*, 22 NY3d 470, 475 [2013][internal quotation marks and citation omitted]). Upon proffer of evidence establishing a *prima facie* case by the movant, the party opposing a motion for summary judgment bears the burden of producing evidentiary proof in admissible form sufficient to require a trial of material questions of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). "A motion for summary judgment should not be granted where the facts are in dispute, where conflicting inferences may be drawn from the evidence, or where there are issues of credibility" (*Ruiz v Griffin*, 71 AD3d 1112, 1115 [2d Dept 2010][internal quotation marks and citation omitted]).

Here, it is undisputed that Plaintiff signed the one-page Rider Waiver, which released "the Releases" (Cyc Fitness and related parties) from all claims arising out of his participation. Releases and waivers of this kind are generally enforced when their language is clear and unambiguous. "Generally, a valid release constitutes a complete bar to an action on a claim which is the subject of the release" (*Allen v Riese Org., Inc*., 106 AD3d 514, 516 [1st Dept 2013]). Here, the waiver's language (in capital letters) expressly informed Plaintiff that strenuous exercise can cause serious injury and that by signing he "will not sue or make a claim against" Cyc for any damages from his participation. Thus, Cyc has made the required prima facie showing: a written waiver signed by Plaintiff that on its face covers this accident.

Plaintiff attempts to vitiate the waiver on several grounds. First, he claims he signed under pressure and without an opportunity to read or understand the document. But New York law uniformly holds that a party is ordinarily bound by a signed release absent fraud, duress, overreaching, illegality or mutual mistake (*Allen*, 106 AD3d at 516). Mere haste or failure to read does not invalidate a release (*Blog v. Battery Park City Auth*., 234 AD2d 99 [1st Dept 1996]). Indeed, in *Blog*, the plaintiff argued she had no time to read the one-page waiver before a go-kart race. The Appellate Division, First Department, rejected this, explaining that "[a]s a general matter, a party will not be excused from reading a document that he or she has signed … "(234

AD2d at 101). The court found that a mistaken assumption or inadequate time to read does not excuse performance absent fraud or duress by the defendant. Here the waiver was on one page, clearly titled "READ CAREFULLY" and set out in capital letters key warnings. Plaintiff admitted he signed it, and nothing in the record shows any misrepresentation or concealment by Cyc as to the waiver's nature. Nor has Plaintiff alleged specific fraud or duress by Cyc: he cites only the "rushed" circumstances and a general statement by his attorney of "coercive and deceptive practice," which (even if credited) more properly suggests only Plaintiff's own unilateral misapprehension, not actionable fraud by Cyc. Under *Blog* and similar cases, signing under time pressure is no excuse (*Blog*, 234 AD2d at 100 [release "is enforceable '[w]here the language of the exculpatory agreement expresses in unequivocal terms the intention of the parties to relieve a defendant of liability for the defendant's negligence.'"] *quoting Lago v. Krollage*, 78 NY2d 95, 99-100 [1991]).

Second, Plaintiff alleges mistake or overreaching. However, under *Weissman v. Bondy & Schloss*, 230 AD2d 465, 469 (1st Dept 1997), only a mutual mistake of fact can void a contract; unilateral mistake (without fraud or unfairness by the other side) will not, unless the mistake is so fundamental as to render enforcement unconscionable. Here, Plaintiff's claim appears to be that he mistakenly thought the form was merely a sign-in sheet and did not understand he was waiving rights. That is a unilateral misunderstanding. "The mutual mistake must exist at the time the contract is entered into and must be substantial" (*id*. at 468). In other words, the agreement as expressed does not represent the meeting of the minds of the parties (*id*.) Plaintiff makes no showing of any mutual mistake or concealed fact shared by both parties; instead he relies on his own failure to read. Such unilateral error, without evidence of actual fraud or duress by Cyc, cannot rescind the waiver. Indeed, a Plaintiff's failure to read a release precludes a claim of unilateral mistake induced by fraud, and courts have refused to void releases on such grounds.

Third, even if Plaintiff had any intent issue or undue influence claim, he ratified the waiver by accepting its benefits and failing to rescind promptly. As the Appellate Division, First Department, noted in *Allen*, *supra*, once a release's clear terms are accepted and acted upon, a party cannot later repudiate it. In *Allen* the plaintiff waited years and enjoyed consideration (severance pay) before challenging the release. Here, Plaintiff participated in the class (for a charitable cause to which he contributed) after signing the waiver. In *Allen* and analogous cases (*e.g. Napolitano v. City of New York*, 12 AD3d 194 [1st Dept 2004]), a plaintiff who accepts the benefit (here, entry into the event) and delays repudiation may be deemed to have ratified the waiver. No evidence of prompt revocation exists.

Finally, as a matter of policy and controlling precedent, general waivers in recreational contexts are strongly upheld absent clear abuse. The Court of Appeals has held broadly that general releases cover all claims which were or might have been made against the released party (*Pimpinello v Swift & Co*., 253 NY 159, 162–163 [1930]). Cyc met its initial burden by producing the waiver, and Plaintiff has not produced admissible evidence of fraud or a legally cognizable mistake that would create a triable issue. Thus Cyc's waiver defense is entitled to be enforced as written.

Even if, *arguendo*, the waiver were invalid, Plaintiff's negligence claim would still be barred by the doctrine of primary assumption of risk. Participants in athletic events impliedly

assume the risks that are inherent in the sport, defined as those dangers which are not only characteristic of the activity itself, but are concomitant with participation therein (*Samuels v Town Sports Intl., LLC*, 174 AD3d 429 [1st Dept 2019]). The classic formulation (*Morgan v. State of New York*, 90 NY2d 471, 483-84 [1997]) is that the plaintiff must have been aware of the risk, appreciated its nature, and voluntarily chosen to encounter it. In *Samuels, supra*, the Appellate Division, First Department reiterated that an owner/operator owes no duty regarding the inherent risks of the sport – here, indoor cycling – as long as the participant knew of and accepted those risks.

Cyc's evidence shows that Plaintiff acknowledged the Rider Waiver's explicit warning that stationary cycling is strenuous and can cause injury. By participating, he assumed those open and obvious risks of exercise. His own testimony (deposition) was that he understood cycling could cause discomfort and that he had read that language. Accordingly, to the extent any injuries were caused by the "normal and inherent risk" of vigorous exercise, Cyc is not liable.

Plaintiff counters that he did not assume the risk of a latent equipment defect. This argument finds support in case law. In *Zelkowitz v. Country Group, Inc*., 142 AD3d 424 (1st Dept 2016), the Appellate Division, First Department, held that a participant does *not* assume the risk of injury from faulty equipment of which he was unaware. The plaintiff in *Zelkowitz* fell from a zipline that allegedly had a hidden defect; the court recognized that latent defects cannot be considered an "inherent" risk because they are not known or obvious to the participant. Here, if Plaintiff's harm was due to a defective tension mechanism on the bike (unknown to him), he did not consent to that risk. The mere fact that cycling is strenuous does not mean the user assumed a risk that the bike itself would malfunction. Thus, if there is any evidence of a non-obvious equipment failure, assumption of risk would not cover it.

However, summary judgment may still be appropriate even if that factual issue remains. The key is whether Plaintiff has raised a triable question that Cyc had any duty beyond providing a safe machine. If there is no evidence of a concealed defect (or if that evidence is lost), Cyc's duty would be limited to the ordinary standard of care, and any risk of mechanical failure might not be assumed. In *Samuels* and related cases, the assumption-of-risk doctrine is applied strictly: routine dangerous conditions or defects that could not have been anticipated are outside its scope. Whether the undisclosed defect exists and caused the injury is a fact issue for trial; as noted below, spoliation has made that question particularly hard to resolve.

In sum, Cyc's prima facie case is compelling on both waiver and assumption-of-risk grounds, since the waiver is broad and Plaintiff seems only to offer unilateral excuses, and he acknowledged the general risks of cycling. The burden now shifts to Plaintiff to show at least one triable issue. He has offered deposition testimony and evidence that he signed hurriedly, without reading or counsel, which may raise a fact question whether the waiver was procured by overreaching (a non-fraudulent inequitable practice) – though precedent suggests that likely fails as a matter of law (*Blog*, 234 AD2d at 100). On assumption-of-risk, Plaintiff points to an alleged defect (as yet unverified) and argues he did not assume that unknown risk. This creates a potential fact issue: if the bicycle indeed had a hidden malfunction, assumption-of-risk would not bar his claim (*Zelkowitz v. Country Grp., Inc*., 142 AD3d 424 [1st Dept 2016]). But absent the bicycle itself, proving that defect will be difficult. Thus, whether Cyc's summary judgment should be

granted depends partly on the spoliation ruling: if the court deems the missing evidence unreliable or prizes the waiver/assumption defenses over Plaintiff's speculation, the court may dismiss. If the court finds a genuine triable issue of fact as to a latent defect, summary judgment must be denied.

II. Spoliation

A movant for spoliation sanctions must satisfy a three-part test. Under *VOOM HD Holdings LLC v. EchoStar Satellite L.L.C.*, 93 AD3d 33, 38 (1st Dept 2012), the movant must show (1) the party with control of the evidence (Cyc and its trustee) had an obligation to preserve the evidence when it was destroyed; (2) that evidence was destroyed with a "culpable state of mind" (which may be mere negligence); and (3) that the destroyed evidence was relevant to a material issue in the case. Where these elements are satisfied, the court may impose sanctions pursuant to CPLR § 3126, including an adverse-inference jury charge, preclusion of evidence, striking of pleadings, or dismissal of claims or defenses (*Ortega v City of New York*, 9 NY3d 69, 76 [2007]; *MetLife Auto & Home v Joe Basil Chevrolet, Inc.*, 1 NY3d 478, 483 [2004]). A culpable state of mind encompasses ordinary negligence (*VOOM*, 93 AD3d at 45), and where the destruction is intentional or grossly negligent, relevance of the destroyed evidence may be presumed (*id*. at 45–46).

Here, Plaintiff seeks the severe sanction of deeming the bicycle and cycling shoes defective as a matter of law, a remedy functionally akin to striking Defendant's defenses on the issue of defect.

Once litigation is reasonably foreseeable, a party has a duty to preserve relevant evidence (*VOOM*, 93 AD3d at 41–42; *MetLife*, 1 NY3d at 482). That duty attached here no later than the commencement of this action and well before the destruction of the subject equipment. In *MetLife Auto & Home v Joe Basil Chevrolet, Inc.*, the Court of Appeals held that while New York does not recognize spoliation as an independent tort, a party may assume a duty to preserve evidence by agreement or through the pendency of litigation, and the failure to do so constitutes negligence remediable through CPLR § 3126 sanctions (1 NY3d at 482–483). There, the defendant's failure to preserve a vehicle after agreeing to do so was deemed negligent (*id.* at 483).

Similarly, in *Ortega v City of New York*, the Court of Appeals emphasized that "[o]ne traditional method of dealing with spoliation of evidence in New York has been CPLR § 3126, where sanctions, including dismissal, have been imposed for a party's failure to disclose relevant evidence" (9 NY3d at 76).

Here, Defendant had control over the bicycle and shoes for years after the incident and after the commencement of litigation. The fact that the equipment later came under the control of a bankruptcy trustee does not absolve Defendant of its preservation obligations, particularly where Defendant failed to notify Plaintiff or the Bankruptcy Court of the pendency of this action or the evidentiary significance of the equipment. Under *Ortega* and *MetLife*, Defendant's failure to preserve the bicycle and shoes placed it squarely within the ambit of CPLR § 3126.

In addition, the record demonstrates that Defendant's failure to preserve the bicycle and shoes was, at a minimum, negligent. After Defendant entered bankruptcy, the trustee sought

authority to abandon or dispose of assets in early 2021, including the stationary bicycle and cycling shoes. Defendant did not notify Plaintiff of the impending disposal, did not seek court guidance regarding preservation, and did not afford Plaintiff an opportunity to inspect the equipment.

Under *VOOM*, ordinary negligence satisfies the culpable state of mind requirement (93 AD3d at 45). A movant need not demonstrate willfulness or bad faith to obtain spoliation sanctions (*id*.; MetLife, 1 NY3d at 483). The evidence here—including Plaintiff's discovery demands and Defendant's eventual disclosure that the equipment had been discarded—supports the conclusion that the bicycle and shoes were treated as abandoned inventory rather than preserved evidence. This conduct satisfies the culpable-state-of-mind prong as ordinary negligence and arguably approaches gross negligence.

Defendant contends that Plaintiff cannot establish the relevance of the destroyed equipment. That argument is unavailing. The central issue in this case is whether the bicycle or its pedal mechanism was defective or improperly set, thereby causing Plaintiff's injuries.

Under *VOOM*, where spoliation is willful or grossly negligent, relevance may be presumed (93 AD3d at 45–46). Even where negligence is the culpable state of mind, relevance may be established circumstantially (*id*. at 46). Plaintiff has demonstrated that he used the specific bicycle on March 13, 2016, that he was unable to disengage or stop the pedals, and that he immediately thereafter suffered severe injuries. Plaintiff's expert opines that the pedal mechanism may have been stuck or malfunctioning. In the absence of the bicycle itself, Plaintiff has no direct means to prove or disprove defect.

The *VOOM* court recognized that destroyed evidence is often presumed unfavorable to the spoliator, particularly where its absence deprives the opposing party of the ability to prove its case (93 AD3d at 45–46). New York courts have consistently held that where relevant evidence is destroyed, an adverse inference is an appropriate remedy (*Ortega*, 9 NY3d at 76). Accordingly, Plaintiff has satisfied the relevance prong of the *VOOM* test.

New York courts possess broad discretion to fashion proportionate relief for spoliation under CPLR § 3126 (*Ortega*, 9 NY3d at 76; *MetLife*, 1 NY3d at 483). Sanctions range from adverse-inference instructions to preclusion, striking of pleadings, or default judgment in extreme cases (*id.*).

Courts generally favor the least severe sanction necessary to remedy the prejudice caused by the loss of evidence and to restore balance to the litigation (*VOOM*, 93 AD3d at 45). While the destroyed bicycle and shoes are central to Plaintiff's claims, the record does not establish willful or bad-faith destruction warranting the striking of Defendant's pleadings or entry of judgment.

An adverse-inference jury charge is therefore the appropriate and proportionate sanction. Such an instruction permits, but does not require, the jury to infer that the destroyed evidence would have been unfavorable to Defendant (*Ortega,* 9 NY3d at 76). Although Plaintiff seeks the functional equivalent of such an inference in the form of a judicial finding of defect, the court declines to impose that more drastic remedy. Balancing the substantial prejudice to Plaintiff

against the absence of willful misconduct, the court finds that an adverse-inference instruction adequately addresses the spoliation while preserving Defendant's ability to contest liability.

For the foregoing reasons, Defendant has met its prima facie burden on summary judgment by producing a clear and enforceable waiver barring Plaintiff's claims, and Plaintiff has failed to raise a triable issue of fact sufficient to defeat that defense (*Allen v Riese Org., Inc.*, 106 AD3d 514, 515 [1st Dept 2013]; *Centro Empresarial Cempresa S.A. v América Móvil, S.A.B. de C.V.*, 17 NY3d 269, 276 [2011]). Plaintiff also assumed the ordinary risks inherent in participating in a strenuous indoor cycling class (*Morgan v State of New York*, 90 NY2d 471, 484 [1997]).

Any remaining factual dispute concerns a latent defect, the proof of which has been materially impaired by Defendant's spoliation of evidence. Plaintiff's motion for spoliation sanctions is therefore granted to the extent of an adverse-inference jury instruction. Defendant's conduct breached its preservation duty and resulted in the negligent destruction of relevant evidence (*VOOM*, 93 AD3d at 45; *Ortega*, 9 NY3d at 76).

As such, Defendant's motion for summary judgment is granted as to claims barred by the waiver and assumption of risk, and Plaintiff's remaining negligence theory may proceed only subject to the spoliation sanction set forth herein.

Accordingly, it is hereby

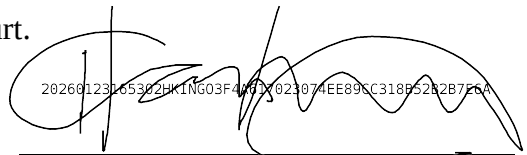
ORDERED that Defendant's motion for summary judgment is granted to the extent that Plaintiff's claims are barred by the written waiver and the doctrine of assumption of risk, except as limited by the spoliation ruling herein; and it is further

ORDERED that Plaintiff's cross-motion for spoliation sanctions is granted to the extent that, at trial, the jury shall be instructed that it may draw an adverse inference that the destroyed bicycle and shoes were defective and unfavorable to Defendant; and it is further

ORDERED that Plaintiff's request for a finding that the equipment was defective as a matter of law is denied; and it is further

ORDERED that the parties shall appear for a settlement conference before the court on Wednesday February 11, 2026 at 9:30 AM in Room 308 of the courthouse located at 80 Centre Street, New York, NY 10013.

This constitutes the decision and order of the court.



1/23/2026
DATE

HASA A. KINGO, J.S.C.

CHECK ONE:		**CASE DISPOSED**			**X**	**NON-FINAL DISPOSITION**	
		GRANTED		**DENIED**	**X**	**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**