

GUEST COLUMN

CONTRACTS

Muscling Up an Effective Contract

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Court Report - An Update

After publishing the following story in the August Problem-Solver Guide Book that took a closer look at *Stelluti v. Casapenn Enterprises LLC*, there were some new developments in the case. The authors, David S. Blatteis, Esq., and Andrew D. Linden, Esq., would like to update you as follows:

The Supreme Court of New Jersey recently re-visited Stelluti v. Casapenn Enterprises, LLC to determine whether Powerhouse Gym's exculpatory agreement protected it from liability after a client was injured as a result of an indoor cycling bike malfunction. New Jersey's highest court, after considering whether the public interest would be adversely affected, affirmed the Appellate Division's ruling, finding that the club can insulate itself from liability for negligence with a properly drafted agreement. The Court likened a health club to other athletic facilities, such as ski areas and skating rinks, which are entitled to the protection of an exculpatory agreement. The Court further reasoned that gym patrons do assume some risk by engaging in strenuous activities that have the potential to result in injury. Like the Appellate Division's ruling (as discussed in the article), the Supreme Court's decision is favorable to gym owners. It does not, however, grant health clubs a license to abandon regular maintenance practices or permit a health center to act with 'willful blindness.'

If a court finds that you were grossly negligent, you are still on the hook, even a well drafted exculpatory agreement will not protect you.

Fitness centers certainly need to have the best exercise equipment, classes and instructors in order to attract lifelong customers. But, they also need to make sure they are legally protected if fitness machines break down and cause injury to clients.

Take the decision in a case involving *Gina Stelluti v. Casapenn Enterprises, LLC d/b/a Powerhouse Gym*, 408 N.J. Super. 435 (App. Div. 2009). The outcome in this lawsuit, which was in favor of the defendant, emphasizes the importance of a well-drafted exculpatory agreement and proper business operations. An exculpatory agreement is a waiver or release within a document that limits or releases a business or individual from liability.

In this case, the plaintiff, *Stelluti*, visited the defendant, *Powerhouse Gym*, for the first time, signed the gym's membership agreement and made her way to an exercise room to participate in a Spinning class. When the plaintiff entered the room, she had informed the instructor that she had never taken an indoor cycling class before. The instructor assisted the plaintiff onto the stationary bike and advised the plaintiff to watch her throughout the class.

After beginning in a seated position, the instructor told the class to assume a standing position. As the plaintiff attempted to assume a standing position, the bike's handlebars suddenly detached, causing her to fall forward to the floor while her feet remained strapped into the bike's pedals. As a result, the plaintiff sustained injuries to her neck, back and mouth. The plaintiff sued the defendant fitness center, alleging that the defendant: failed to properly maintain and set up the bike; failed to properly instruct the plaintiff how to use the bike; did not exercise sufficient care; failed to provide proper and safe equipment; failed to provide proper safeguards and warnings; acted in a reckless manner by causing an unsafe condition and failed to provide adequate safeguards and warnings; and failed to adequately train its employees.

The defendant asked the court for judgment in its favor, contending that the exculpatory clause in the plaintiff's membership agreement protected it from liability. The exculpatory clause provided, among other things, that: members exercised at their own risk; members voluntarily participated in the use of the facilities and assumed all risks of injury; the waiver applied to a member's use of the defendant's equipment, the sudden and unforeseen malfunctioning of equipment, the defendant's supervision and instruction, and a member's slipping and falling on the defendant's premises; the member fully read and understood the agreement and waived all liability against the defendant; and the agreement released the defendant from negligence to the fullest extent permitted by law. The plaintiff stated that she had not read the exculpatory agreement before signing it and that the defendant's employees did not tell her she was signing a release.

The trial court found in favor of the defendant, reasoning that the exculpatory agreement protected the defendant from liability. The trial court stated that the defendant had no duty to the plaintiff and it was no consequence that the plaintiff failed to read the agreement. The plaintiff appealed, asserting that the exculpatory agreement was contrary to public policy and unenforceable. The plaintiff further claimed that the defendant's actions were grossly negligent and, therefore, the defendant could not disclaim liability from such acts.

The Appellate Division began its review by noting that a fitness center generally owes a duty of reasonable care to invitees and must provide a safe environment to conduct the business. A fitness center and its employees are in a better position than its members to ensure that equipment is provided in safe condition. A fitness center also has a duty to correct and warn its members about any dangerous conditions.

Recognizing a fitness center's duties, the court addressed whether the defendant's exculpatory agreement would shield it from liability. The court began its analysis by describing the physical attributes of the exculpatory agreement. The agreement was a two-page document that was one of several pre-printed forms. The top of the first page displayed the words "Waiver & Release Form" in larger font. It contained only three phrases in bold-faced font and there were no places for an individual to initial particular sections of the form, except for the signature line which the plaintiff admitted to signing.

The court then explained that because the exculpatory agreement was non-negotiable and those who did not sign it could not use the gym's facilities, the agreement constituted a contract of adhesion. Although the agreement was a contract of adhesion, that fact alone did not make the agreement unenforceable. A court typically will consider four factors when determining whether the adhesion contract is "unconscionable" and, therefore, unenforceable: the subject of the contract; the parties' bargaining power; the degree of economic compulsion motivating the adhering party; and the public interest implicated by the contract. A court also will consider the procedure that led to the execution of the contract.

In this case, the court had reservations concerning the "procedural context of the plaintiff's execution of the exculpatory agreement;" more specifically, the defendant failed to explain the terms of the agreement to the plaintiff at the time she signed it, the agreement lacked examples of events that would have helped her understand its scope and the agreement did not have any spaces to initial the form. Nevertheless, the court found that the agreement was not unconscionable; this was not a situation of manifestly unequal bargaining power. The plaintiff could have found a different gym, or another place to exercise. Additionally, she could have left with the agreement and had it reviewed by counsel.

Finding that the agreement was not inherently unenforceable, the court then considered the specific provisions of the agreement. The agreement's first paragraph primarily concerned personal health, and the general risks associated with any form of strenuous exercise. For example, the agreement stated that: "[I]f you engage in any physical exercise or activity or use any club amenity . . . you do so entirely at your own risk." The court explained that such provisions informed a prospective member that the fitness center did not guarantee a patron's medical health.

The next paragraph went beyond health and physical fitness, extending the disclaimer of liability to the safety of the gym's equipment, training and instruction from the gym's employees, and safety of the premises. The defendant specifically relied on the provision providing a waiver and release for "the sudden and unforeseen malfunctioning of any equipment [and] our instruction, training or supervision . . ."

The Appellate Division was clear that "there is no doubt that the exculpatory agreement, in several respects, covers the substance of the plaintiff's bike accident." The agreement's language adequately informed a prospective member about the risks one assumed by using the fitness center's facilities, including a "spin" bike. Therefore, the court had to determine whether the agreement was legally enforceable, and whether it covered the defendant's actions, if any, that went beyond ordinary negligence.

Exculpatory agreements, and adhesion contracts, such as the defendant's agreement, are closely scrutinized and invalid if they violate public policy. An exculpatory agreement does not violate public policy if: the agreement does not adversely affect public interest; the exculpated party does not have a legal duty to perform; it does not pertain to a utility or common carrier; and it is not the product of unequal bargaining power or otherwise unconscionable.

Concentrating on the first and second factors, the Appellate Division again recognized that all business establishments owe a

duty of care to their patrons. The court further acknowledged, however, that physical fitness was an important policy objective, which was beneficially promoted by fitness centers.

The court agreed with the defendant that health clubs need the protection of exculpatory agreements due to the potential for significant financial liability stemming from injuries that could occur in the safest of fitness centers. There is simply no way to avoid all injuries associated with working out and exercise. If health clubs were not protected from lawsuits for injuries, membership costs could become excessive or health clubs could ultimately be eliminated from the marketplace. If not for exculpatory agreements, the fitness centers would likely face a barrage of lawsuits related to accidents arising from ordinary wear-and-tear of exercise machines. This would undermine the public policy of promoting physical fitness. The court concluded that the defendant's exculpatory agreement was legally enforceable and consistent with public policy—but would it protect the defendant under the circumstances?

Although the exculpatory agreement was valid and enforceable, it did not give rise to a complete waiver of liability for the defendant. The defendant's exculpatory agreement could not protect it from acts or omissions that went beyond mere negligence and entered the realm of reckless behavior. Accordingly, the court evaluated the degree of the defendant's fault.

The proofs submitted by the parties failed to explain why the bike's handlebars became detached. The plaintiff's expert did not allege that the defendant's omissions were reckless and it was likely that the design of the bike caused the handlebars to become detached. The court explained that the instructor's failure to check the plaintiff's handlebars could be no worse than a careless omission. Likewise, if the defendant's cleaning or maintenance crew inadvertently caused the handlebars to become unsecured, this could only be simple negligence. There was no evidence that the defendant repeatedly failed to maintain the safety of its equipment. Thus, the court found that the defendant's acts were not reckless, and could only be described as negligent. Because the defendant's acts were merely negligent, the defendant was protected by its exculpatory agreement, and the trial court's order in favor of the defendant was affirmed.

This case serves as a reminder to fitness center owners about the value of proper exculpatory agreements and taking the proper precautions to protect their business from liability. **RM**

ABOUT THE AUTHORS

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