SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3908-15T3

JANET CROSSING-LYONS,

Plaintiff-Appellant,

v.

TOWNS SPORTS INTERNATIONAL, INC., d/b/a NEW YORK SPORTS CLUB,

Defendant-Respondent.

Argued June 19, 2017 – Decided July 11, 2017

Before Judges Fisher and Fasciale.

On appeal from Superior Court of New Jersey, Law Division, Essex County, Docket No. L-2024-14.

Daniel R. Danzi argued the cause for appellant.

Eric Evans argued the cause for respondent (Gordon & Rees, L.L.P., attorneys; Donald G. Derrico and Allyson Avila, of counsel and on the brief; Mr. Evans, on the brief).

PER CURIAM

Plaintiff Janet Crossing-Lyons appeals from an April 1, 2016 order granting summary judgment to defendant TSI Livingston,

L.L.C. d/b/a New York Sports Clubs (the fitness club).[1] In dismissing the case, the judge relied on Stelluti v. Casapenn Enterprises, L.L.C., 203 N.J. 286 (2010). We conclude Stelluti is distinguishable and reverse.

Plaintiff is a member of the fitness club. As part of her gym membership, the fitness club required plaintiff to sign a waiver and release (the exculpatory clause), which states in part that

> [y]ou . . . agree that if you engage in any physical exercise or activity, or use any club amenity on the premises or off premises, including any sponsored club event, you do so entirely at your own risk[.] You agree that you are voluntarily participating in these activities and use of these facilities and premises and assume all risks of injury, illness or death[.]
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> This waiver and release of liability includes, without limitation, all injuries which may occur as a result of . . . (a) your use of all amenities and equipment in the facility[;] (b) your participation in any activity, including, but not limited to, classes, programs, personal training sessions or instruction[;] and (c) the sudden and unforeseen malfunctioning of any equipment.
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> [(Emphasis added).]

Plaintiff's accident, which caused a substantial injury requiring hip surgery, was unrelated to using physical fitness

[1] Improperly pleaded as Town Sports International, Inc. d/b/a New York Sports Club.

equipment or engaging in strenuous exercises involving an inherent risk of injury. Rather, she tripped over a weight belt on her way to meet a trainer, which another member had left on the floor for an unknown amount of time. The trainer had known of the existence of the weight belt on the floor, but did not remove it despite the fitness center's policy to keep the place "hospital clean" by picking up items that members leave on the fitness club's floor.

On appeal, plaintiff argues primarily that the judge misapplied the Stelluti decision. Relying on our opinion in Walters v. YMCA, 437 N.J. Super. 111 (App. Div. 2014), plaintiff contends that the exculpatory clause is unenforceable. Plaintiff urges us to reverse the order granting summary judgment to the fitness center, and allow a jury to decide the ordinary issues associated with negligence cases.

When reviewing an order granting summary judgment, we apply "the same standard governing the trial court." Oyola v. Liu, 431 N.J. Super. 493, 497 (App. Div.), certif. denied, 216 N.J. 86 (2013). We owe no deference to the motion judge's conclusions on issues of law. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Applying these standards, we respectfully conclude the judge erred.

It is a longstanding principle of law that business owners in New Jersey have well-established duties of care to patrons that

enter their premises. Stelluti v. Casapenn Enters., 408 N.J. Super. 435, 446 (App. Div. 2009), aff'd, 203 N.J. 286 (2010). An owner has a duty to guard against any dangerous conditions that the owner knows about or should have discovered; and to conduct reasonable inspections to discover latent dangerous conditions. See Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 434 (1993). Any attempt to limit these duties by directing patrons to sign exculpatory agreements requires careful attention by our courts. Indeed, our Supreme Court has stated that exculpatory agreements "have historically been disfavored in law and thus have been subjected to close judicial scrutiny." Stelluti, supra, 203 N.J. at 303.

An exculpatory agreement is enforceable if:

> (1) it does not adversely affect the public interest; (2) the exculpated party is not under a legal duty to perform; (3) it does not involve a public utility or common carrier; or (4) the contract does not grow out of unequal bargaining power or is otherwise unconscionable.
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> [Id. at 298 (quoting Stelluti, supra, 408 N.J. Super. at 454); See also Gershon v. Regency Diving Ctr., Inc., 368 N.J. Super. 237, 248 (App. Div. 2004).]

Applying these principles, we concluded in Walters that his exculpatory agreement with the YMCA was unenforceable. Walters, supra, 437 N.J. Super. at 120. Pursuant to that agreement, Walters

released the YMCA for injuries he sustained while he was on the YMCA premises or from YMCA-sponsored activity. Id. at 116. Walters slipped on a step leading to an indoor pool at the YMCA. Id. at 116-17. Like plaintiff, Walters was not using physical fitness equipment or engaging in strenuous exercises involving an inherent risk of injury.

Applying the Gershon factors here, we also conclude the exculpatory agreement is unenforceable. It adversely affects the public interest by transferring the redress of civil wrongs from the responsible tortfeasor to either an innocent injured party or society-at-large. It eviscerates the common law duty of care that the fitness center owes to its invitees. And it is unconscionable, as the fitness center has attempted to shield itself from all liability based on a one-sided agreement that offered no countervailing or redeeming societal value.

Like in Walters, we conclude Stelluti is factually distinguishable. The Court's holding in Stelluti is grounded on the recognition that health clubs are engaged in a business that offer their members a place to use physical fitness equipment by performing strenuous exercises involving an inherent risk of injury. Stelluti, supra, 203 N.J. at 311. Plaintiff did not use the weight belt, or engage in any activity involving an inherent risk of injury. She simply walked to meet a personal trainer who

was waiting for her. Unlike the plaintiff in Stelluti, who injured herself while riding a spin bike, Walters had injured himself by slipping on a step and plaintiff injured herself while tripping over an item left on the floor, incidents that could have occurred in any business setting. Id. at 291. Whether plaintiff ultimately prevails will depend on the evidence produced at trial.

Reversed.