SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: Hon. Nancy M. Bannon **PART 42**
Justice

BENAL SERIN

- v -

SOULCYCLE, LLC

INDEX NO. 161810/13

MOTION DATE 5/6/15

MOTION SEQ. NO. 001

The following papers, numbered 1 to 4, were read on the defendant's motion for summary judgment.

Notice of Motion/ Order to Show Cause — Affirmation — Affidavit(s) — Exhibits — Memorandum of Law	No(s). 1
Answering Affirmation(s) — Affidavit(s) — Exhibits	No(s). 2
Replying Affirmation — Affidavit(s) — Exhibits	No(s). 3
Sur-Reply — Affidavit(s) — Exhibits	No(s). 4

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

In this action to recover damages for personal injuries, the plaintiff alleges that On October 27, 2013, she sustained a fractured ankle during a spin class at the defendant's indoor cycling studio when she unsuccessfully attempted to slow the stationery bicycle she was using. The defendant now moves pursuant to CPLR 3212 for summary judgment dismissing the complaint. The motion is granted.

It is well settled that the proponent of a motion for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any triable issues of fact. See Winegrad v New York Univ. Med. Ctr., 64 NY2d 851 (1985). Once the movant meets this burden, it becomes incumbent upon the nonmoving party to demonstrate by admissible evidence the existence of a triable issue of fact in opposition. See CPLR 3212; Alvarez v Prospect Hospital, 68 NY2d 320 (1986); Zuckerman v City of New York, 49 NY2d 557 (1980).

The defendant made a prima facie showing of its entitlement to summary judgment on its affirmative defense of waiver based upon the "New Rider Waiver Form" signed by the plaintiff. The defendant submitted the one-page form, which provides for "Assumption of Risk, Waiver and Release" of liability in favor of the defendant and states that the plaintiff read the bike safety instructions and acknowledged the "inherent risks and dangers in indoor cycling and exercise equipment in association with the Classes and Facilities" ranging from "scratches, bruises and sprains" to "heart attacks" and "paralysis and death." By signing, she agreed to "assume full responsibility for any and all injuries or damages which are sustained or aggravated by [her] in relation to the Classes and Facilities." The defendant also submitted the plaintiff's deposition testimony, in which she admits to reading and

signing the waiver form prior to the spin class and having done the same in prior spin classes at other locations.

Under the circumstances of this case, the waiver form, which releases the defendant from any liability for any injuries sustained by the plaintiff "arising out of or in any way related to participation in the Classes or use of the Facilities," is enforceable. Although the language of the waiver form may not be "sufficiently clear and specific to relieve [the defendant] of liability arising from [its] own negligence," (Trummer v Niewisch, 17 AD3d 349, 349 [2nd Dept. 2005]), the defendant established that the plaintiff's injuries were caused by reasons other than its negligence. See Trummer v Niewisch, supra; Conteh v Majestic Farms, 292 AD2d 485 (2nd Dept. 2002).

The defendant submitted proof establishing that the bike was properly maintained, not in disrepair, and did not present any hazardous condition (see Vasquez v Gun Hill Assocs., LLC, 122 AD3d 723 [2nd Dept. 2014]) and that, even if one existed, it neither created nor had actual or constructive notice of its existence. See generally Amendola v City of New York, 89 AD3d 775 (2nd Dept. 2011). The bicycle maintenance records submitted by the defendant show that there were no repairs related to the brake or the resistance on the subject bike for the nearly six months prior to the plaintiff's accident and the incident report filed contemporaneously with the accident makes no reference to brake failure. Indeed, the instructor who led the class immediately following the plaintiff's states in his affidavit that the same bike was used by another rider without any complaints about the bike or the brake.

The plaintiff submitted no proof to refute that proffered by the defendant. Indeed, the plaintiff concedes that there is no evidence to support her claim that the brake was defective or failed to work properly. Nor does the plaintiff submit any evidence to show that she was improperly instructed on how to use the bike. In her deposition, the plaintiff conceded that she was instructed on how to use the bike and how to stop it. Contrary to her contention, any lack of instruction on the part of the instructor as to what the class itself would be like, including the volume of the music and the pace of the workout, fails to raise a triable issue of fact, as there is absolutely no indication that this caused or contributed in any way to her injury. Indeed, the plaintiff, who was had taken a number of spin classes prior to this one, did not know what caused the fracture.

Further, the defendant established that the waiver form was not void or unenforceable pursuant to General Obligations Law § 5-326. That statute provides that owners or operators of recreational facilities that charge a fee for their use are prohibited from enforcing a written waiver and release. See General Obligations Law § 5-326; Boateng v Motorcycle Safety School, Inc., 51 AD3d 702 (2nd Dept. 2008). However, the defendant established that their indoor cycling studio fell into an exception to that rule, in that it was used for instructional, rather than recreational or amusement, purposes. See Boateng v Motorcycle Safety School, Inc., supra; Baschuk v Diver's Way Scuba, Inc., 209 AD2d 369 (2nd Dept. 1994). The defendant established the instructional nature of the spin class through the deposition transcript of Lori Abeles, the instructor for the plaintiff's class, who testified as to the training required to become a cycling instructor, her certifications in, inter alia, personal training and CPR, and

the manner in which she conducted all spin classes at the defendant's studio. Further, the plaintiff's testimony established that the $20 fee the plaintiff paid constituted tuition for the course of fitness instruction given by Abeles, rather than a fee for general use of a recreational facility. The plaintiff testified that when she first sought to try a cycling class at the defendant's studio, she was turned away and not permitted to enter the facility because the classes that morning were fully booked. She was not permitted to use the defendant's facilities until an opening in a class became available. Therefore, the fee paid was not a fee for general use of a recreational facility, so as to bring the waiver within the prohibitions of the statute. See Boateng v Motorcycle Safety School, Inc., supra [waiver and release form signed before motorcycle course enforceable]; Baschuk v Diver's Way Scuba, Inc., supra [scuba diving class waiver not void or unenforceable under GOL § 5-326].

The defendant having met its burden in the first instance, the burden then shifted to the plaintiff to raise a triable issue of fact. She failed to do so. She submitted only her own affidavit, which is consistent with her deposition testimony submitted by the defendant, and a physician's affirmation, which raises no triable issue as to the defendant's liability. The physician merely opines that the fracture occurred as a result of the accident on October 27, 2013, a fact which is not in dispute.

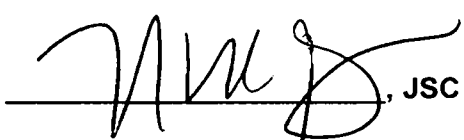
Accordingly, it is

ORDERED that the defendant's motion for summary judgment pursuant to CPLR 3212 is granted, and the complaint is dismissed, and it is further,

ORDERED that the Clerk shall enter judgment accordingly.

This constitutes the Decision and Order of the court.

Dated: October 9, 2014



, JSC

HON. NANCY M. BANNON

1. Check one: ..... ■ **CASE DISPOSED** ☐ **NON-FINAL DISPOSITION**

2. Check as appropriate: MOTION IS: ■ **GRANTED** ☐ **DENIED** ☐ **GRANTED IN PART** ☐ **OTHER**