PREPARED BY THE COURT

TRUDY MIRANDA, Plaintiff(s), v. **DR. CESAR PARRA,** Defendant(s).	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – CIVIL PART HUNTERDON COUNTY DOCKET NO.: HNT-L-369-11 **CIVIL ACTION** **ORDER**

THIS MATTER having been opened to the Court on a motion filed by the attorneys for the Defendant, Dr. Cesar Parra, represented by Crawford & McElhatton, (Joel Cohen, Esq., appearing) and by Scholl, Whittlesey & Gruenberg, LLC (Donald Scholl, Esq. appearing); and with notice given to the Plaintiff, Trudy Miranda, represented by Berman Rosenbach, P.C., (William Berman, Esq., appearing); and the Court having considered the papers; and the Court having heard oral argument; and for good cause shown;

It is on this 8th day of August, 2014, **ORDERED** as follows:

1. Defendant's motion for summary judgment enforcing the limitation on recoverable damages is **DENIED**.

Reasons. This matter arises out of an action alleging negligence on the part of Defendant, Dr. Cesar Parra, in training Plaintiff's horse. On June 7, 2009, Plaintiff brought her then four year old stallion, William PFF, to Defendant's training facility, Piaffe Performance, Inc., located in Whitehouse Station, New Jersey. Plaintiff states that she left her home in Johnsonville, New York at 8:00 a.m. and arrived at Defendant's facility at 12:00 p.m. Upon her arrival, Plaintiff

was directed to place her horse in a stall because Defendant was not yet prepared to begin training. After two hours, Defendant directed Plaintiff to remove her horse from the stall and walk him over to the cross-ties. Plaintiff states that, at this point, the horse was under the control of Piaffe Performance and prepared for training. While on the cross-ties Plaintiff states that the horse became excited. Plaintiff states that she gave the horse a slap on its girth area to distract it. After the horse repeated the behavior, an employee of Piaffe Performance named "American Anna" tapped the horse's penis with a sweat scraper several times. At this point, Plaintiff objected and demanded the American Anna stop her behavior. American Anna then departed and later returned with the Training Agreement and General Release ("Agreement"). Plaintiff alleges that this was the first time she was presented with these documents. Plaintiff states that she informed American Anna that, due to the length of the documents and the fact that the horse was ready for training, she would not be able to read it all. Plaintiff claims that American Anna advised Plaintiff that her signature on the documents was only a technicality and that if she did not sign the documents Piaffe Performance could not work with her. Plaintiff alleges that if she had known what the treatment of the horse would be, she never would have executed any portion of the agreements. Plaintiff asserts that while training the horse, Defendant improperly lunged the horse causing it to sustain serious injuries such that the horse can no longer be safely ridden, compete in equestrian competitions or be used as a stud. Plaintiff alleges that the horse is now commercially valueless.

On June 9, 2014, Defendant moved for summary judgment seeking to enforce Section 4 of the Agreement, namely; its exculpatory clause. The Court found that provision unenforceable. The Court incorporates its June 9, 2014 findings here. However, to recap those findings for a later discussion here, in the most general, categorical sense, the Court's June 9, 2014 Order

found that the Equine Activities Act, N.J.S.A. 5:15-1 et seq., did not apply to injuries to the horse, but to suits brought against operators for injuries to or caused by human participants; (2) the exculpatory clause in Section 4 of the parties' Agreement mirrored the intent of the Equine Activities Act and therefore did not apply to the horse; (3) the exculpatory clause was unenforceable because Equine Activities are matter of public importance; and (4) no credible evidence of coercion of Plaintiff compelling her to execute the Agreement existed in the record.

Defendant now moves for summary judgment on Section 5 of the Agreement, which states:

> For purposes of this Agreement, Student represents to PIAFFE and agrees that the value of the Horse is limited to ten thousand dollars ($10,000). PIAFFE recommends that Student insure the Horse, at Student's expense, for bodily injury, surgery, mortality and all other risk of loss for the value that Student assigns to the Horse, which may be more than the $10,000 value agreed to for purposes of this Agreement. The value of the Horse agreed to under this Section 5 creates no liability or responsibility on the part of PIAFFE and does not affect the Student's assumption of all risk of loss to the Horse and the Student's indemnity, hold harmless and release of liability set forth in Section 4 above.

See Defendant's Ex. B. In moving for summary judgment, Defendant argues that the Agreement entered into by the parties is valid and enforceable, specifically Section 5 of the Agreement, which limits the value of Plaintiff's horse and hence her damages to $10,000. Defendant asserts that the Agreement was prepared at arm's length, its terms were clear and unambiguous and that Plaintiff was free to proceed with the training or not. Defendant points out that Plaintiff initialed and signed the Agreement. Defendant asserts that this Court as well as the Court previously assigned to this case, the Hon. Peter Buchsbaum, J.S.C., found that there was no evidence of coercion or duress that Plaintiff executed the Agreement involuntarily.[1]

[1] Defendant's claim in this regard is true. See pg. 4 the March 2, 2012 Order.

Defendant argues that the Agreement constitutes a bailment under which the value of Plaintiff's horse was stipulated to be $10,000. Defendant asserts that Plaintiff chose to place her horse in his custody to have him evaluate her horse. Defendant states that Section 5 of the Agreement places a ceiling on the value of the Horse for purposes of liability and puts Plaintiff on notice that she should insure her horse for injuries that may be more than $10,000. Defendant asserts that, as a horse trainer herself, Plaintiff cannot assert that she was unfamiliar with such agreements or that she did not appreciate the significance of signing one.

Defendant argues that provision limiting the value of the horse is not unconscionable and does not violate public policy. Defendant asserts that the subject matter of the agreement was within Plaintiff's ken. Defendant argues that the parties had relatively equal bargaining power because Plaintiff was under no obligation to contract, Defendant was not providing an essential service, and Plaintiff was always free to execute the Agreement or not. Defendant asserts that this is a commercial contract entered into by two sophisticated business owners privately and there are no public interest implications. Lastly, Defendant asserts that economic compulsion cannot be shown here because Plaintiff's expert cannot support her damages calculations.

Defendant asserts that the value limiting provision does not violate public policy because it is not an exculpation clause. Defendant states that there was sufficient economic compulsion for Defendant to perform under the contract because he stood to lose realizing any fee at all under the Agreement as compared with being liable for $10,000 under the contract.

In opposition, Plaintiff argues that $10,000 contractual limitation is unenforceable. She asserts that Defendant's prior motion for summary judgment to enforce the terms of the exculpatory provision of the Agreement was denied, in part, based on genuine issues raised by her sworn statement that she was presented with the Agreement under questionable

circumstances. Plaintiff asserts that the Agreement did not create a bailment because it was entered into for the purpose of providing instruction in the art of horsemanship. Plaintiff asserts because that Judge Buchsbaum found that there was no evidence of duress on the record before him, does not mean he found the contract to be enforceable.

Plaintiff asserts that she was in a poor bargaining position when the Agreement was signed. She states that she had already driven four hours and waited two additional hours before training started. She claims that she was told that signing the Agreement was merely a technicality. Plaintiff states that she had no reason to and was in no position to negotiate any terms of the Agreement.

Plaintiff asserts that public policy is implicated by the Agreement. She points to N.J.S.A. 5:15-1, which states that "the Legislature therefore determines ta the allocation of the risks and costs of equine activities is an important matter of public policy and it is appropriate to state in law those risks that the participant voluntarily assumes for which there can be no recovery." Plaintiff states that the legislation makes clear that a contract that purports to limit liability in the context of equine activities raises a substantial public interest.

Lastly, Plaintiff asserts that the $10,000 limitation is unconscionable and contrary to public policy. She relies on Lucier v. Williams, 366 N.J. Super. 485 (App. Div. 2004), for the proposition that "the amount of the cap on a party's liability must be sufficient to provide a realistic incentive to act diligently." Id. at 492. Plaintiff states that the limitation here is approximately 1.6% of her asserted damages, which makes it unconscionable and tantamount to an exculpatory clause.

Pursuant to R. 4:46-2(c), a party is entitled to summary judgment if "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any,

show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." PRESSLER & VERNIERO, Current N.J. COURT RULES (GANN). The New Jersey Supreme Court has stated that "a determination whether there exists a 'genuine issue' of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co., 142 N.J. 520, 530 (1995). Accordingly, "when the evidence is 'so one-sided that one party must prevail as a matter of law,' the trial court should not hesitate to grant summary judgment." Id. Furthermore, where the moving party makes the requisite showing, it is incumbent upon the opposing party to come forward with competent proofs indicating that the facts are not as the moving party asserts. Spiotta v. Wm. H. Wilson, Inc., 72 N.J. Super. 572, 581 (App. Div. 1962), certif. denied, 37 N.J. 229 (1962). In considering the evidential materials presented, this Court's function is not to weigh the evidence and determine the truth of the matter, rather this Court is to determine whether there is a genuine issue for trial. Brill, supra, 142 N.J. at 540.

A contract arises from offer and acceptance, and must be sufficiently definite "that the performance to be rendered by each party can be ascertained with reasonable certainty." West Caldwell v. Caldwell, 26 N.J. 9, 24-25 (1958); Friedman v. Tappan Dev. Corp., 22 N.J. 523, 531 (1956); Leitner v. Braen, 51 N.J. Super. 31, 38-39 (App. Div.1958). It is generally understood that "courts should enforce contracts as made by the parties." Vasquez v. Glassboro Serv. Ass'n, 83 N.J. 86, 1010 (1980). Our Courts enforce contracts whose terms are clear and that have been negotiated at arm's length without coercion or duress. See Levison v. Weintraub, 215 N.J.

Super. 273, 276, (App. Div. 1987), certif. denied, 107 N.J. 650, (1987). See also Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960). Our law holds that "[w]here the terms of a contract are clear and unambiguous there is no room for interpretation or construction" the Court must enforce those terms as written. Levison v. Weintraub, 215 N.J. Super. 273, 276 (App. Div.), certif. denied, 107 N.J. 650 (1987). See also Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960). However, where a valid contract exists, the Court cannot make a better one for the parties. See James v. Federal Insurance Co., 5 N.J. 21 (1950); Sons of Thunder, Inc. v. Borden, Inc., 285 N.J. Super. 27 (App. Div. 1995).

The provision of the Agreement now at issue is Section 5, which states that:

> For purposes of this Agreement, Student represents to PIAFFE and agrees that the value of the Horse is limited to ten thousand dollars ($10,000). PIAFFE recommends that Student insure the Horse, at Student's expense, for bodily injury, surgery, mortality and all other risk of loss for the value that Student assigns to the Horse, which may be more that the $10,000 value agreed to for purposes of this Agreement. The value of the Horse agreed to under this Section 5 creates no liability or responsibility on the part of PIAFFE and does not affect the Student's assumption of all risk of loss to the Horse and the Student's indemnity, hold harmless and release of liability set forth in Section 4 above.

See Defendant's Ex. B (emphasis added).

Both parties rely upon the Courts June 9, 2014 findings to argue the enforceability of this provision. Defendant asserts that this provision is enforceable because the Court found no evidence of coercion or duress in the facts Plaintiff alleged to claim the Agreement was unconscionable. Plaintiff asserts that the Court made no definitive finding of coercion, only that material issues existed on that issue.

The Court did not conclude, as Plaintiff asserts, that there were material issues as to the execution of the Agreement by Plaintiff. To the contrary, the Court found that the coercion

alleged was not sufficient to invalidate the Agreement. Indeed, the Court expressly stated that Plaintiff was not made to sign the Agreement and her allegation of coercion did not rise to the level that the Court can invalidate the Agreement on such grounds. Similar findings were made by Judge Buchsbaum on March 2, 2012. Thus, the claims of involuntariness is not grounds or a basis to deny summary judgment sought on Section 5 of the Agreement.

Defendant argues that the Agreement constituted a bailment. Generally, a bailment relationship is created by contract, whether express or implied. Cerreta v. Kinney Corp., 50 N.J. Super. 514, 517 (App. Div. 1958). Our law holds that:

> a bailment is established when property is turned over into the possession and control of the bailee. When a bailment has mutual benefit for the bailor and bailee, the bailee has a duty to exercise reasonable care for the safekeeping of the chattel bailed. Once a bailment exists and the loss of the goods while in the bailee's possession is established, a presumption of negligence arises, requiring the bailee to come forward with evidence to show that the loss did not occur through its negligence or that it exercised due care.

Jasphy v. Osinsky, 364 N.J. Super. 13, 18-19 (App. Div. 2003) (citations omitted).

At oral argument, Plaintiff argued that she brought her horse to Defendant for the purpose of an evaluation that, if successful, would lead to later training. Plaintiff therefore asserted that the Agreement was only a training agreement and was not yet applicable and does not cover the injuries sustained by Plaintiff's horse during its "evaluation" by Defendant. Whatever distinction there may have been between the horse's evaluation and its training has not been made known in terms of the facts presented to the Court and the discovery at bar. What has been revealed however, is that Plaintiff signed the Agreement indicating that training was to begin on the same day that she brought the horse to Piaffe. Further, Section 20 of the Agreement is a merger clause indicating that the "Agreement and its attachments represent the entire agreement

of the parties and there are no other representations or understandings that are not contained [therein]." See Defendant's Ex. B (emphasis added). Therefore, the paucity of facts notwithstanding, any outside representations that may have been made cannot modify the express terms of the Agreement. See Ocean Cape Hotel Corp. v. Masefield Corp., 63 N.J. Super. 369 (App. Div. 1960)

At oral argument, Plaintiff also asserted that it was infeasible to heed the Agreement's suggestion that she obtain insurance on the horse. She asserted that it was not possible to obtain horse insurance on the short notice that was provided to her when presented with the Agreement. However, the fact that Plaintiff may have been unable to obtain insurance at that time does not relieve her of her own failure to have obtained insurance prior to her arrival as a general precautionary measure. And because the Court has twice found that Plaintiff contracted with Defendant voluntarily also negates her claim about insurance because she could have returned home with her horse before giving Defendant custody of it.

Here, by contract, Plaintiff turned her horse over to Defendant for the purpose of training it. This was clearly an agreement for mutual benefit of the parties. Additionally, the loss of the "goods" (the horse) while in Defendant's possession has already been established, giving rise to the presumption of his negligence. Defendant has always argued that he was not negligent, and so this material dispute of fact would not be a basis for summary judgment. But, the Agreement here was clearly a bailment.

The crux of Defendant's claims on this motion for summary judgment is that his liability is limited by Section 5 of the Agreement to $10,000. Plaintiff asserts that the provision is unconscionable. The real issue on summary judgment before the Court here is whether the limitation on liability clause is enforceable or if it is unenforceable as an exculpatory clause. A

limitation on liability clause is where parties agree on a maximum amount of damages recoverable for future breaches of the contract. However, such clauses are not immutable and a clause that is tantamount to an exculpation clause and limits any liability violates public policy and is unenforceable.

Our law holds that:

> A limitation of liability is unenforceable where it is unconscionable or violates public policy. Although unconscionability escapes precise definition, it is generally described as the antithesis to appropriate business ethic, or a lack of good faith, honesty in fact, and . . . fair dealing. To judge the validity of an allegedly unconscionable contract, the court should consider 'the subject matter of the contract, the parties' relative bargaining positions, the degree of economic compulsion motivating the adhering party, and the public interests affected by the contract.'

66 VMD Assocs., LLC v. Melick-Tully & Assocs., P.C., 2011 N.J. Super. Unpub. LEXIS 2164, *7-8 (App. Div. 2011) (citing Marcinczyk v. State of New Jersey Police Training Com'n, 203 N.J. 586, 539-94 (2010); Lucier, supra, 366 N.J. Super. at 493; and Rudbart v. New Jersey Dist. Water Supply Com, 127 N.J. 344, 356 (1992)).

In 66 VMD Assocs., the plaintiff contracted with the defendant to provide an environmental remediation plan for a piece of property they intended to purchase. Id. at *1. The contract limited defendant's liability to $25,000 for any professional negligence. The defendant issued a report indicating that remediation would cost between $13,000 and $17,000. Id. at *2. Thereafter, the plaintiff's efforts to sell the property fell through because the prospective buyer discovered that remediation costs for the property could exceed $100,000. Ibid. The Plaintiff sued the defendant asserting $2,000,000 in damages. The trial court granted summary judgment enforcing the limitation on liability provision. Relying on Lucier, supra, the Appellate Division affirmed the trial court and held that the contract's limitation of liability to 25% of the contract price was not unconscionable because it provided sufficient economic compulsion to perform

under the contract. Id. at *10; see also Lucier, supra (reversing the grant of partial summary judgment that limited plaintiff's recovery to $500 where plaintiff was damaged in the amount of $10,000).

Here, the subject matter of the contract was known, namely; the training of the horse and is not grounds to deny summary judgment. And the parties' relative bargaining positions also is not a basis to grant summary judgment. As noted above, in the Court's June 9, 2014 Order and in the March 2, 2012 Order, there is no basis to claim that Plaintiff was compelled to sign the Agreement. Although she drove four hours and waited two hours after arriving at Piaffe, she could have, if dissatisfied, returned to her home in New York well before dinner time. Instead, she admittedly, hurriedly perhaps, signed the Agreement in order to see her horse trained. And the fact that Defendant's staff produced the Agreement after Plaintiff objected to the treatment of her horse is not unusual. Plaintiff, similar to Defendant, is a business person and experienced in horse training. See Defendant's Ex. A and F. It is not unusual to require a client to sign a contract before providing services. As noted in the Court's March 2, 2012 Order, Plaintiff's will was not overcome and she did not, by signing the Agreement, do something she would not otherwise have done. See footnote 2 of the March 2, 2012 Order. The parties' bargaining position does not prevent summary judgment.

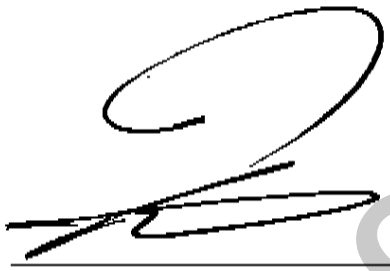
The degree of economic compulsion, however, does not permit summary judgment. Our law declares that an inadequate degree of economic compulsion is where the limit on damages is far less that the expected compensation under the contract. See Lucier, supra, 366 N.J. Super. at 495. Here, the Training Agreement did provide Defendant with sufficient motivation to perform diligently under it. The value of Plaintiff's horse was stipulated to be $10,000. See Defendant's Ex. B. In her damage calculations, Plaintiff asserts that the value of the horse was $33,000. See

Defendant's Ex. D. Additionally, because the fee section of the Agreement was left blank, Defendant stood to receive no compensation. But what is problematic is that Defendant had no concomitant exposure to liability of up to $10,000 if Plaintiff's horse suffered an injury because Section 5 releases him from any liability. This sort of total release from liability is precisely the sort of limitation on liability that our law abhors.

For these same reasons, the Court finds that Section 5 of the Agreement is void for public policy reasons. Contrary to Defendant's claims, the test of agreements for public policy purposes is not whether the parties have contracted privately. Within the context of contracts placing limits on liability, our law holds that public policy is violated if the Agreement is tantamount to an exculpation clause, which is a provision limiting any liability. Id. at *12 (citing Lucier, supra, 366 N.J. Super. at 495). Section 5 is unenforceable, not for the stipulated value of the horse, but because it says it "creates no liability or responsibility on the part of PIAFFE and does not affect the Student's assumption of all risk of loss to the Horse . . ." See Defendant's Ex. B. (emphasis added). It is true that the remainder of this sentence from Section 5 reads ". . . and the Student's indemnity, hold harmless and release of liability set forth in Section 4 above." Id. But a reading of the whole sentence does not lend to Defendant's interpretation that it applies as a whole to Section 4. Instead, as noted by the Court at oral argument, the structure of the sentence (particularly the usage of the word "and") is that: it creates no liability or responsibility on behalf of Piaffe; does not affect the assumption of all risk of loss to the horse; and also includes the indemnity asserted in Section 4. But for this sentence (and the economic compulsion considerations noted above), Section 4 might pass muster for public policy purposes. However, because the Court cannot pick and choose which part of an agreement to enforce or

not, thereby making a better contract for the parties than they have, it cannot uphold the $10,000 limitation of liability as a matter of summary judgment.

For these reasons, Defendant's motion is denied.



HON. HANY A. MAWLA, J.S.C.