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TRUDY MIRANDA,
Plaintiff,

v.

DR. CESAR PARRA,
Defendant.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: HUNTERDON COUNTY
: DOCKET NO.: HNT-L-000369-11
:
: Civil Action
:
: **BRIEF IN SUPPORT OF MOTION FOR**
: **SUMMARY JUDGMENT**

I. INTRODUCTION

This present Brief is being submitted on behalf of Defendant Dr. Cesar Parra (hereinafter “Defendant”), in support of Defendant’s Motion for Summary Judgment. We respectfully request that this Court grant Summary Judgment against Plaintiff and in favor of Defendant for reasons set forth herein.

II. STATEMENT OF MATERIAL FACTS

- A 1. On or around June 7, 2009, Plaintiff retained Defendant to train a horse she owned named William PFF (hereafter “the horse”). *See Pl.’s Compl. At 1.*
- A 2. On June 7, 2009, Plaintiff signed a General Release, Waiver and Hold Harmless Agreement (the “Agreement”). *See Agreement, attached hereto as Exhibit “B”*

(A) 3. On or around June 7, 2009, the horse owned by Plaintiff was alleged to have been injured while at Piaffe Performance, the offices of Defendant (hereafter "Piaffe"). *See Pl.'s Compl. At 2.*

A 4. Plaintiff alleges that Defendant was negligent in the care and training of the horse while same was at Piaffe. *See Pl.'s Compl.*

(A) 5. The terms of Plaintiff and Defendant's Agreement specified that Plaintiff would assume "all risk of loss to the Horse, including but not limited to death, damage or injury of any kind and from whatever cause, including but not limited to negligence or omission by Piaffe and/or any of its employees, subcontractors and/or agents." Plaintiff initialed her approval of these terms. *See Exhibit B at 1, ¶ 4.*

A 6. On June 13, 2011, Plaintiff filed a Complaint alleging negligence by Defendant resulting in injury to the horse. *See Pl.'s Compl.*

D 7. Plaintiff's claims for negligence and damages arising therefrom are specifically barred by the Agreement which she voluntarily signed. *See Exhibits A and B.*

D 8. Plaintiff has admitted to reading and reviewing the Agreement, reviewing the Risk of Loss paragraph, entering into the Agreement voluntarily, and agreeing to all terms therein. *See Certification of Counsel for Defendant, attached hereto as Exhibit "A".*

(A) 9. Plaintiff has also asserted a claim seeking punitive damages based on allegedly negligent actions. *See Pl.'s Compl. At 3-4*

(A) 10. Punitive damages, according to statute, cannot be established by any degree of negligence. *See Exhibit A at 2, ¶ 10*

11. Plaintiff has admitted to reading, reviewing and voluntarily signing an agreement assuming any and all risk to the horse based on the alleged negligence of Piaffe or any employee thereof. *See Exhibit A and Exhibit B at 1, ¶4.*
12. There exists no genuine issue with respect to Plaintiff's admission to this assumption of risk, waiver and hold harmless agreement. *See Exhibit A.*
13. Defendant therefore moves for Summary Judgment in favor of Defendant and against Plaintiff.

III. LEGAL ARGUMENT

A. There Exists No Genuine Issue Of Material Fact In This Case.

When presented with a motion for summary judgment pursuant to R. 4:46-2, the motion judge must "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. of America*, 142 N.J. 520, 540 (1995). The court's inquiry in such matters is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Liberty Surplus, Ins. Corp. v. Nowell Amoroso, P.A.*, 189 N.J. 436, 445-46 (2007) (quoting *Brill, supra* 142 N.J. at 536). In doing so, the judge "is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

In the case at bar, there exists no genuine issue for trial. Plaintiff has admitted she signed an agreement assuming all risk of loss to the horse. Plaintiff has likewise admitted to releasing Defendant from any and all liability for injury to the horse. For Plaintiff to attempt to present

any evidence which contradicts these admissions would be false and misleading. If, as required by law, the Court examines the evidence presented in this matter in a light most favorable to Plaintiff, there still would exist no genuine triable issue in this matter, no dispute of pertinent fact, as Plaintiff has admitted to releasing Defendant from all claims complained upon. Defendant therefore moves for Summary Judgment in favor of Defendant and against Plaintiff.

B. Punitive Damages Are Unavailable To Plaintiff In A Negligence Action.

Punitive damages in New Jersey are governed by *N.J.S.A. 2A:15-5.12*, which holds in pertinent part as follows:

Punitive damages may be awarded to the plaintiff only if the plaintiff proves, by clear and convincing evidence, that the harm suffered was the result of the defendant's acts or omissions, and such acts or omissions were actuated by actual malice or accompanied by a wanton and willful disregard of persons who foreseeably might be harmed by those acts or omissions. **This burden of proof may not be satisfied by proof of any degree of negligence including gross negligence.**

N.J.S.A. 2A:15-5.12(a), emphasis added.

Plaintiff, in her sole, non-specific paragraph regarding punitive damages, alludes to the alleged negligent conduct of Defendant. Plaintiff makes no allegations which would place the cause of these alleged injuries as anything other than negligence, alleging that the actions of Defendant were merely uncalled for. "To warrant a punitive award, the defendant's conduct must have been wantonly reckless or malicious. There must be an intentional wrongdoing in the sense of an 'evil minded act' or an act accompanied by a wanton and willful disregard of the rights of another." *Cavuoti v. N.J. Transit Corp.*, 161 N.J. 107, 121 (1999) citing *Rendine v. Pantzer*, 141 N.J. 292, 314 (1995).

Plaintiff has pled to no intentional act. Stating that Defendant "should have known better" does not rise to the level of wanton malice necessary to substantiate punitive damages.

Something more than the mere commission of a tort is always required for punitive damages. There must be circumstances of aggravation or outrage, such as spite or "malice," or a fraudulent or evil motive on the part of the defendant, or such a conscious and deliberate disregard of the interests of others that his conduct may be called wilful or wanton. Lacking this element, mere negligence, however "gross," is generally held not to be enough.

Di Giovanni v. Pessel, 55 N.J. 188, 190 (1970).

Punitive damages require more than negligence. Plaintiff has pled no causes of action beyond negligence. Punitive damages are therefore not available to Plaintiff. Compensatory damages are likewise unavailable to Plaintiff, as she has assumed all risk of loss to the horse and agreed to waive all claims against and hold harmless Piaffe and Defendant. As Plaintiff has admitted to reading, reviewing and voluntarily signing the Agreement and said Agreement serves to bar all of Plaintiff's claims, there cannot exist any genuine issue of material fact which would preclude Summary Judgment in this matter. Defendant therefore moves that Summary Judgment be granted in favor of Defendant and against Plaintiff.

IV. CONCLUSION

For all of the foregoing reasons, it is respectfully requested that this Honorable Court enter an Order granting Defendant's Motion for Summary Judgment.

Respectfully submitted,

LAW OFFICES OF DENNIS J. CRAWFORD

BY: 

JOEL COHEN

Dated: 1/16/12