COPY SENT

CERTIFIED TO BE A TRUE COPY

PREPARED BY THE COURT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART

TRUDY MIRANDA,

Plaintiff(s),

v.

DR. CESAR PARRA,

Defendant(s).

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 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 9th day of June, 2014, ORDERED as follows:

1. Defendant's motion for summary judgment dismissing Plaintiff's negligence claim 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. Plaintiff alleges that this is 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. American Anna advised Plaintiff that her signature on the documents was only a technicality and that if she did not sign the documents they 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.

In moving for summary judgment, Defendant argues that the Exculpatory Agreement of the contract is enforceable and precludes Plaintiff from bringing her claims. Defendant argues that the Agreement should be assessed based on the standard set in Gershon v. Regency Diving Ctr., 368 N.J. Super. 237 (App. Div. 2004). Defendant asserts that the agreement does not adversely affect public policy. Defendant states that N.J.S.A. 5:15-1 et seq. provides immunity to equestrian facility operators for injuries to business invitees. Defendant asserts that the

provision limiting liability for damage to property is in conformity with public interest. Defendant asserts that the agreement does not arise out of unequal bargaining power. Defendant asserts that Plaintiff was free to proceed or not proceed with the training exercises. Defendant states that it was Plaintiff who voluntarily sought him out. Defendant states that he was not providing an essential service, but one that was offered by a number of professions that Plaintiff was free to select from. Defendant states that Plaintiff's interrogatory responses evidence her concern with respect to delaying training in order for her to review the Training Agreement and she opted not to do so.

Defendant argues that the fact that the Agreement was not signed does not bar its enforcement. Defendant states that the Court (the Hon. Peter Buchsbaum, J.S.C.) held that "Defendant need not sign the Agreement for purposes of the present motion, which seeks to enforce the provisions of the Agreement against Plaintiff, the party to be charged." Plaintiff's Exhibit C.

In opposition, Plaintiff argues that the Exculpatory Agreement does not bar her claims. Even if it did, Plaintiff asserts that the provision is void as against public policy under Marcinczyk v. NJ Police Training Com'n., 203 N.J. 586 (2009). In Marcinczyk, the New Jersey Supreme Court held that an agreement is against public policy if it is injurious to the interest of the public, contravenes some established interest of society, violates some public statue, is against good morals, tends to interfere with the public welfare or safety or is at war with the interest of society and in conflict with public morals. Plaintiff states that Defendant's reliance on Stelluti v. Casapenn Enterprises, LLC., 203 N.J. 286 (2010), is misplaced because the facts differ from this case and because in that case the Court enforced an exculpatory clause because it was concerned that not doing so would have a chilling effect on the operation of fitness centers.

Plaintiff asserts that non-enforcement here would have no chilling effect. Plaintiff states that Defendant was more than capable of preventing the individual act of negligence that occurred.

Plaintiff asserts that Defendant was under a duty to act without negligence based on N.J.S.A. 4:22-26. Plaintiff states that the statute relied on by Defendant actually exempts from limitations on liability for operators "an act or omission on the part of the operator that constitutes negligent disregard for a participant's safety". N.J.S.A. 5:15-9(d).

Plaintiff asserts that Stoffels v. Harmony Hill Farms, 389 N.J. Super. 207 (App. Div. 2006), where the Appellate Division overturned the trial court's grant of summary judgment finding that an exculpatory clause and Equine Act, N.J.S.A. 5:15-1 et seq., did not shield Defendant from liability due to their direct acts of negligence, controls this case. Plaintiff argues that the Stoffels holding is the correct outcome because exculpatory release provisions violate public policy when they absolve Defendant of a legal duty.

Plaintiff also argues that the provision is unconscionable because of the party's unequal bargaining power. She states that Defendant had the assistance of counsel to draft the agreement. Plaintiff states that she was not shown the Exculpatory Agreement until after she witnessed Defendant's staff treating her horse in a manner that she objected to. Plaintiff states that she informed Defendant's staff that she could not read the entire agreement in the short period of time allotted to her between her arrival and the horse's training. The staff person told her that the agreement was just a technicality and that if she didn't sign it they could not work with her horse. Plaintiff states that, by this point, the horse was already under Defendant's control. Plaintiff states that while she did print her name on the agreement, the signature is not her own and she did not initial in all the required locations. For these reasons, Plaintiff claims that she was coerced. Plaintiff asserts that the Court previously discounted her claims as to

coercion because, at that time, there was no evidence of duress in the record. Plaintiff asserts that now that discovery has occurred, evidence of coercion is proved by the fact that she executed the Agreement without knowledge of the rights she was giving away.

Plaintiff also argues that the absence of Defendant's signature on the Agreement bars enforcement it. Plaintiff states that Defendant's reliance on Synnex Corp v. ADT Services, Inc., 394 N.J. Super. 577 (App. Div. 2007), is misplaced because that case held that it applied only in situations involving exculpatory clauses regarding the buyer of an alarm system who may obtain his own insurance, which is not the case here. Additionally, Plaintiff states that there was no performance expected on her part - only the Defendant.

In reply, Defendant asserts that the exculpatory agreement is enforceable. Defendant states that Stelluti, and Allen v. LA Fitness Int'l, LLC, 2001 N.J. Super. Unpub. LEXIS 1542 (June 15, 2011), support enforcement of the Agreement. Defendant asserts that Plaintiff's reliance on Stoffels is misplaced because that case involved an injury to the rider - not to the horse - and relied on a specific exception within the Equine Activities Act in invalidating the exculpatory agreement. Defendant further asserts that Plaintiff's reliance on Marcinczyk is misplaced because, there, the Supreme Court relied on an exception in the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. that is not applicable here.

Defendant next asserts that the Training Agreement and Release are enforceable despite the fact that he did not sign it. Defendant further states that Plaintiff's assertion that the agreement is invalid because she did not perform is without merit because it was an agreement for Defendant's performance not Plaintiff's. Lastly, Defendant asserts that there is no indication of any unequal bargaining power or duress.

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.

Both parties argue that this matter is, in part, governed by the Equine Animals Activities Act, N.J.S.A. 5:15-1 et seq. Under the Act, "[t]he Legislature [declared] that equine animal activities involve risks that are essentially impractical or impossible for the operator to eliminate; and that those risks must be borne by those who engage in those activities." Ibid. To that end, "[a] participant and spectator are deemed to assume the inherent risks of equine animal activities

created by equine animals, weather conditions, conditions of trails, riding rings, training tracks, equestrians, and all other inherent conditions." N.J.S.A. 5:15-3. "The assumption of risk set forth in section 3 of this act shall be a complete bar of suit and shall serve as a complete defense to a suit against an operator by a participant for injuries resulting from the assumed risks." N.J.S.A. 5:15-5. Section 2 defines the inherent risks of an equine animal activity to include:

> a. The propensity of an equine animal to behave in ways that result in injury, harm, or death to nearby persons;
>
> b. The unpredictability of an equine animal's reaction to such phenomena as sounds, sudden movement and unfamiliar objects, persons or other animals;
>
> c. Certain natural hazards, such as surface or subsurface ground conditions;
>
> d. Collisions with other equine animals or with objects; and
>
> e. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, including but not limited to failing to maintain control over the equine animal or not acting within the participant's ability

N.J.S.A. 5:15-2.

This Court agrees with Plaintiff that the Act does not immunize Defendant's alleged conduct in this case from suit. The statute is clear that it applies to suits by operators or participants arising out of injuries to individuals not injuries suffered by the horse itself. Here, the facts show that Plaintiff was not an operator or participant at the time of the alleged injury to the horse. An operator is defined as "a person or entity who owns, manages, controls or directs the operation of an area where individuals engage in equine animal activities whether or not compensation is paid." N.J.S.A. 5:15-2. A participant is defined as:

> any person, whether an amateur or professional, engaging in an equine animal activity, whether or not a fee is paid to engage in the equine animal activity or, if a minor, the natural guardian, or

> trainer of that person standing in loco parentis, and shall include anyone accompanying the participant, or any person coming onto the property of the provider of equine animal activities or equestrian area whether or not an invitee or person pays consideration.

Id. N.J.S.A. 5:15-10 requires operators to post a warning sign stating that "an equestrian area operator is not liable for an injury to or the death of a participant[1] in equine animal activities." (emphasis added). No part of the statute speaks to injuries to the animals themselves or any related suit.

The Legislative history and the Agriculture Committee Statement appended to the Act support this view of the law. It states:

> The purpose of this bill is to establish by statue the responsibilities and liabilities of those individuals who engage in equine animal activities. Equine animal activities include any activity that involves the use of horses and ponies such as riding lessons, trail riding, horse training, or engaging in horse shows. This bill would enable operators of equestrian areas, acting under reasonable basis, to prevent participants or spectators who are under the influence of drugs or alcohol from engaging in an equine activity without subjecting the operator to criminal or civil liability.
>
> This bill provides that one who engages in equine activities assumes the risks involved in those activities. Under the provisions of this bill, notwithstanding the provisions of New Jersey's law with regard to comparative negligence, a participant would be completely barred from suing an operator for injuries to which the participant contributed by failing to conduct himself within the limits of his abilities.

1996 N.J. S.N. 282 – L. 1997, c. 287.

Although it is true that the Legislature envisioned "horse training" as an equine activity, the Court cannot glean from the Committee Statement that it intended to eliminate claims brought for injury to the horse itself. Rather, the last sentence of the above quoted language envisions protecting operators, such as the Defendant here, from the conduct of those who are

[1] Plaintiff's horse is not a participant under the statute.

engaging in the equine activity, which Plaintiff clearly was not. For these reasons, the Equine Activities Act does not shield Defendant from liability.

With respect to the Exculpatory Agreement, 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" and the [C]ourt 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). But contracts that meet these standards are not immutable.

Here, Defendant is seeking to enforce an Exculpatory Agreement that he asserts shields him from liability in this case. That Agreement states that:

> In consideration for the right and privilege to use the facilities of and/or enter upon the property either leased or owed by Piaffe Performance, Inc. . . . regardless of whether or not any fee or charge may be required therefore, the undersigned, jointly and severally, singly and collectively, hereby, HOLD HARMLESS AND INDEMNIFY, AND hereby RELEASE, the Property owner, PIAFFE, and the officers, directors, shareholders, agents, employee, managers, instructors, guest and insurers of the Property and/or of PIAFFE, FROM ANY AND ALL LIABILITY for damages, loss, cost or injury, including but not limited to attorney's fees, cost and expenses, including but not limited to bodily injury, property damage, emotional distress and/or any other form or kind of injury or damages, to myself and/or to any person and/or property for any cause, condition, circumstance, act, omission or negligence of any kind in connection with or as a result of any visit or visits by me and/or by my Horse to the Property on and/or after the date hereof and I hereby confirm that I will pay any and all attorney's fees, cost, and expense incurred by anyone indemnified above in defending against any claims covered by this indemnity.

> I understand that riding horses, being near horses and visiting a stable like the Property is very dangerous. I understand that horses may kick or bite me, may run into me or roll on me, and may otherwise injure or kill me and/or damage or destroy my property. I understand that saddles, bridles and other horse equipment don't always work properly and that I may be injured or killed as a result, even if I am just a spectator. I understand that riding or being near horses is subject to many risks, including but not limited to, negligent or improper installation, maintenance, selection, adjustment and use of equipment, collisions with trees, rocks, manmade objects, other horses or people, falling off, falling into holes, being thrown off, having the saddle fall off, etc.

At the outset, it is debatable whether the above language shields Defendant from the conduct Plaintiff alleges in her Complaint. If anything, this language seems to mirror, in a more forceful and direct fashion, the Legislative intent set out above because the paragraph quoted above speaks to dangers a patron or invitee might face – not the horse.

Regardless, our law "does not favor exculpatory agreements because they encourage a lack of care." Gershon, adm'x ad prosequendum for the Estate of Pietroluongo v. Regency Driving Center, Inc., 368 N.J. Super. 237, 247 (App. Div. 2004). This is so:

> because such an agreement seeks from one party the relinquishment of a legal right, thereby relieving the other party of its common law duty of care, an exculpatory release agreement must, on its face, reflect the unequivocal expression of the party giving up his or her legal rights that this decision was made voluntarily, intelligently and with the full knowledge of its legal consequences.

Ibid. Furthermore:

> an exculpatory release will be enforced 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.

Id. at 248.

Plaintiff argues that the Exculpatory Agreement is both void as against public policy and that the circumstances surrounding her execution of the agreement were unduly coercive.

> When considering whether enforcement [an] exculpatory agreement would adversely affect the public interest, the inquiry naturally blends into an examination of whether the exculpated party is under a legal duty to perform. When the subject of an exculpatory agreement is not governed by statute, we also have considered common law duties in weighing relevant public policy considerations.

Stelluti, supra, 203 N.J. at 306. Whether a duty exists is a question of fairness and public policy. See Kuzmicz v. Ivy Hill Park Apts., 147 N.J. 510, 515 (1997).

Setting aside the Court's initial thoughts about whether the exculpatory clause even really applies to Defendant's alleged conduct *vis-a-vis* Plaintiff's horse; the Court finds that enforcing such a provision here would be against public policy. First, applying the Gershon test, although the Court does not find that Plaintiff's claims are barred by the Equestrian Activities Act, the Legislative findings embodied in N.J.S.A. 5:15-1 state that equine animal activities are matters of public importance. Second, by seeking out Defendant and traveling from New York to seek his expertise in horse training, Plaintiff's Exhibit G, clearly then, Defendant was under a duty to perform and train Plaintiff's horse. Thus, two of the Gershon factors have been overcome and the Court cannot hold that the Exculpatory Agreement is enforceable in this dispute.

Defendant's reliance on Allen in support of the enforceability of the exculpatory agreement is misplaced. In Allen, the plaintiff signed a membership agreement with a fitness gym. Id. at *1. That Agreement contained an assumption of risk and release that the court found had no material difference from the one at issue in Stelluti, supra. Id. at *5. The Allen Court explained the Stelluti holding and said "that agreements between a gym and its patron limiting liability for 'injuries sustained as a matter of negligence that result from a patron's voluntary use

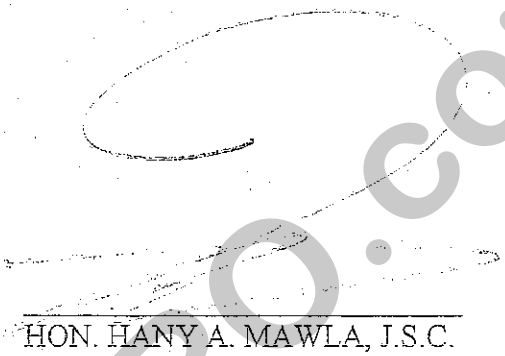
of equipment and participation in instructed activity are enforceable." Id. at *2 (citing Stelluti, supra, at 313). Both of these cases involved an individual being injured while participating in an activity for which they volunteered. Under such circumstances, the volunteering individual, exercising their own judgment as to their capabilities, can choose to continue or terminate the activity prior to their injury. The limitations on liability in these contexts, therefore, is reasonable because no defendant should be found liable for injuries that a plaintiff voluntarily sustains by continuing the activity past their limits. The present case is distinguishable from both Stelluti and Allen because a horse, unlike a human, cannot voice their need to discontinue an activity lest they suffer an injury.[2]

Lastly, with respect to Plaintiff's claims of coercion within the context of the agreement, our law holds that "[i]f a settlement agreement is achieved through coercion, deception, fraud, undue pressure, or unseemly conduct, or if one party was not competent to voluntarily consent thereto, the settlement agreement must be set aside." Peskin v. Peskin, 271 N.J. Super. 261, 276 (App. Div. 1994). Although the Court does not need to make a finding on coercion in order to adjudicate this motion, the coercion claimed by Plaintiff is a far cry from the definition of it under our case law. Rather, it appears that Plaintiff's conduct was borne more of a detrimental reliance on what Defendant's staff allegedly told her in asking her to sign the contract. Plaintiff was not made to sign the Agreement. Rather, perhaps happy and excited to place her horse in the trusted hands of Defendant and his expertise, she signed it without reading the fine print.

For these reasons, Defendant's motion for summary judgment on Plaintiff's negligence claim is denied.

---

[2] As a pre-eminent psychologist once said, "[t]he ego's relation to the id might be compared with that of a rider to his horse. The horse supplies the locomotive energy, while the rider has the privilege of deciding on the goal and guiding the powerful animal's movement." Sigmund Freud, *New Introductory Lectures on Psycho-analysis*, Lecture 31 (1933).



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