Injury from Swinging Kettlebell Results in Suit Which Withstands Summary Judgment Motion

written by David Herbert | December 1, 2017

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In a case from New York,[1] the plaintiff was injured when he was struck in the back of his head by a kettlebell being swung by another kettlebell user. The injury occurred during an instructional course taught by one of the defendants at the defendant hotel where the course was provided. According to the lawsuit which was thereafter filed, the injury happened when a kettlebell was swung by an anonymous fellow attendee who was negligently permitted, allowed and instructed to continue swinging kettlebells, despite [other] people moving about the room. The lawsuit claimed the injury resulted "from defendants' recklessness, negligent supervision, and negligent hiring."

In response to the plaintiff's lawsuit which was filed against the course provider and presumably one of its personnel as well as the hotel defendants, the defendants moved for summary judgment. While a waiver of liability was used by the defendants to allege that the action was barred by the terms of the waiver, the hotel defendants also argued that any injury as alleged by the plaintiff did not arise out of any defective or dangerous condition of the premises.

In support of the plaintiff's arguments in opposition to the defendants' motion for summary judgment, the plaintiff argued that the waiver of liability was not enforceable since it did not state in unequivocal terms the intention of the parties to relieve the defendants from liability for their negligence since the law of New York required the use of such terms. The plaintiff also offered the affidavit and opinion of an expert, a certified kettlebell trainer, who stated: "during any type of break, when no instructors are maintaining the required vigilant supervision, no movement or swinging of kettlebells should occur."

The plaintiff's expert also cited industry recommendations from the National Strength and Conditioning Association (NSCA) which were included in the expert affidavit as follows:

> "[t]he National Strength and Conditioning Association recommends a six foot by four foot safety cushion, as a minimum, between kettlebell lifters at free weight stations. Such safety areas must . . . be maintained whenever kettlebells are allowed to be lifted. Kettlebell lifters should be permitted to work only in designated lifting areas and . . . an area of at least five feet (side to side) and seven feet (front to back) should be maintained around all lifters when lifting is being performed. . . . Moreover, for safe egress and ingress, there should be at least a 36 inch walkway maintained into the lifting area and a clear path provided to exits. No lifting should ever occur in this area, especially when student lifters are moving in or out of the facility."

In reviewing the event involved in the case, the court noted that it is "well settled… that the law frowns upon contracts intended to exculpate a party from the consequences of his own negligence and…such agreements are subject to close judicial scrutiny. . ."

The court further noted:

> "it has been repeatedly emphasized that unless the intention of the parties is expressed in unmistakable language, an exculpatory clause will not be deemed to insulate a party from liability for his own negligent acts. . . . [I]t must appear plainly and precisely that the limitation of liability extends to negligence or other fault of the party attempting to shed his ordinary responsibility."

Therefore, the court in this case ruled:

> "As such, since the subject waiver does not unmistakably express the parties' intention to release each other from all liability, including liability for its own negligence, defendants' motion for summary judgment on the waiver issue is denied."

Perhaps most importantly, the court noted that the plaintiff's expert opinion underscored "the existence of an issue of fact as to defendants' negligence, precluding summary judgment on this issue."

The court determined that the case against the non-hotel defendants would proceed. However the hotel defendants were dismissed since the evidence demonstrated only that the hotel rented the space to the course providers and the plaintiff made no allegations that the premises were not reasonably safe or that the premises caused any injury. While the plaintiff also argued that the hotel defendants were liable in failing to protect its guests against reckless and grossly negligent conduct by its lessee, the court found there was no evidence of either reckless or grossly negligent conduct.

Fitness professionals should note that waivers or releases of liability are not always effective in every state to bar these kinds of personal injury lawsuits. Such fitness professionals should also note that fitness industry standards are readily available for use by experts and then courts in determining what kind of conduct is negligent or substandard in the provision of service by such professionals to their clients.

Adequate and proper space must be provided not only in between various exercise devices, which subject we have reviewed in prior columns, but also in between various exercise activities. Failures to follow industry standards, guidelines or recommendations can result in lawsuits like this one which can withstand summary judgment motions. Ultimately, such cases must then be determined by judges or juries applying the facts as they find them to the law. Fitness professionals should take note of the need to provide adequate space for fitness activities in accordance with industry standards and guidelines!

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[1] Gallant v Hilton Hotels, Corp., et al., 988 N.Y.S. 2d 522, (Supreme Court of New York, New York County, March 5, 2014).