MARYLAND HEALTH CLUB RELEASE DOES NOT VIOLATE PUBLIC POLICY

SEIGNEUR v. NATIONAL FITNESS INSTITUTE, INC.
No. 6136 (Md.Sp.App. 2000)
COURT OF SPECIAL APPEALS OF MARYLAND
May 31, 2000

[Note: Attached opinion of the court has been edited and citations omitted.]

In this case, we are asked to examine the enforceability of an exculpatory clause found in a fitness club's contract.

On September 4, 1998, Gerilynne Seigneur and her husband James filed a complaint in the Circuit Court for Montgomery County against **National Fitness Institute, Inc.** ("NFI"). The **Seigneurs asserted that Ms. Seigneur was injured as a result of NFI's negligence while she was undergoing an initial evaluation at a fitness club owned and operated by NFI.**

NFI filed a **motion to dismiss the complaint based on an exculpatory clause found in its contract** with Ms. Seigneur. The motion for summary judgment was granted, and the Seigneurs filed this appeal in which they presented a single issue, viz: **Does the exculpatory clause in the agreement entered into by the parties validly release NFI from all liability for injuries to Ms. Seigneur caused by NFI's negligence?** We answer that question in the affirmative.

I. FACTUAL BACKGROUND

NFI is a Maryland corporation operating an exercise and fitness facility on Shady Grove Road in Rockville, Montgomery County, Maryland. On January 30, 1996, Ms. Seigneur, after deciding to begin a weight loss and fitness program, joined NFI on a one-month trial basis. **She selected NFI over its competitors for several reasons:** First, NFI was recommended to her by her chiropractor; second, **NFI promoted itself as a fitness club that employed "degreed, certified fitness, clinical exercise and health specialists" and "promised to provide programs that are appropriate for your health status and fitness level"; and third, NFI promised to "provide advice based upon scientific evidence."**

When she signed her membership contract, Ms. **Seigneur had a history of serious lower back problems, including a herniated disc. Moreover, her general physical condition was poor. These facts were disclosed to NFI prior to the accident.**

As part of the application process, Ms. Seigneur was required to complete and sign a document entitled "National Fitness, Inc. Health Programs Participation Agreement" ("the Participation Agreement"). Besides informing the customer of NFI's payment and fee collection policies, this agreement contained the following clause:

Important Information: I, the undersigned applicant, agree and understand that I must report any and all injuries immediately to NFI, Inc. staff. It is further agreed that all exercises shall be

undertaken by me at my sole risk and that NFI, Inc. shall not be liable to me for any claims, demands, injuries, damages, actions, or courses of action whatsoever, to my person or property arising out of or connecting with the use of the services and facilities of NFI, Inc., by me, or to the premises of NFI, Inc. Further, I do expressly hereby forever release and discharge NFI, Inc. from all claims, demands, injuries, damages, actions, or courses of action, and from all acts of active or passive negligence on the part of NFI, Inc., its servants, agents or employees.

Ms. Seigneur signed the Participation Agreement on January 30, 1996. Kim Josties, an NFI employee, then **performed an initial evaluation of Ms. Seigneur, in which Ms. Seigneur was first directed to perform various flexibility tests. Ms. Josties next directed her to the weight machines for strength testing. Ms. Seigneur worked on the leg extension machine and then the bench press. She made no complaints after using either of these devices. Ms. Seigneur next used an upper torso weight machine. Ms. Josties placed a ninety-pound weight on this machine and instructed Ms. Seigneur to lift this weight once with her arms. While attempting to lift this load, Ms. Seigneur felt a tearing or ripping sensation in her right shoulder. She instantly reported this to Ms. Josties, but the instructor did not seek immediate medical attention. Instead, Ms. Josties had Ms. Seigneur proceed to the next machine, and shortly thereafter, the initial evaluation was completed.**

Ms. Seigneur claims that since this incident, she has had pain and difficulty using her shoulder. In addition, she has undergone **shoulder surgery for a condition that her doctor attributed to the use of NFI's upper torso machine.**

The Seigneurs' complaint against NFI alleged that NFI was vicariously liable because Ms. Josties, as an employee or agent of NFI, was **"negligent in instructing, directing, and/or guiding the [appellant] to lift ninety (90) pounds of weight on the upper torso machine in the manner previously described, especially in light of the physical condition of the [appellant] and the physical and exercise history and experience of the [appellant], which was, or reasonably should have been known to [Ms. Josties], and in directing the [appellant] to continue with and complete the program evaluation despite her complaint of injury."**

The Seigneurs additionally claimed that NFI breached its duty to Ms. Seigneur by negligently hiring Ms. Josties, who "lacked sufficient training, experience, certification and/or other qualifications and knowledge to properly, reasonably and safely instruct, direct and guide [Ms. Seigneur] in lifting weights and in the use of the weight equipment." The Seigneurs also asserted that NFI negligently failed to provide Ms. Josties "with sufficient training and knowledge to properly, reasonably and safely instruct, direct and guide . . . [Ms. Seigneur] in lifting weights and in the use of the weight equipment."

On October 28, 1998, NFI filed a motion to dismiss arguing that the exculpatory clause contained in the Participation Agreement was valid and enforceable and that NFI was entitled to judgment as a matter of law. The Seigneurs responded by arguing that the Participation Agreement was a contract of adhesion and that the exculpatory clause was void as against public policy. They also argued that the agreement was unclear and ambiguous, thus precluding summary judgment.

II. Analysis

A. Validity of the Exculpatory Clause

To decide this case, we must first determine **whether the exculpatory clause quoted at the beginning of this opinion unambiguously excused NFI's negligence.** In construing the Participation Agreement, we are required to give legal effect to all of its unambiguous provisions.

Our primary concern when interpreting a contract is to effectuate the parties' intentions. Moreover, when interpreting a contract, the court places itself in the same situation as the parties who made the contract, so as to view the circumstances as they viewed them and to judge the meaning of the words and the correct application of the language to the things described.

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In Maryland, for an exculpatory clause to be valid, it need not contain or use the word "negligence" or any other "magic words". **An exculpatory clause is sufficient to insulate the party from his or her own negligence 'as long as its language clearly and specifically indicates the intent to release the defendant from liability for personal injury caused by the defendant's negligence.**

In the instant case, there is **no suggestion that the agreement between NFI and Ms. Seigneur was the product of fraud, mistake, undue influence,** overreaching, or the like. The exculpatory clause unambiguously provides that Ms. Seigneur "expressly hereby forever release[s] and discharge[s] NFI, Inc. from all claims, demands, injuries, damages, actions, or courses of action, and from all acts of active or passive negligence on the part of NFI, Inc., its servants, agents or employees." Under these circumstances, **we hold that this contract provision expresses a clear intention by the parties to release NFI from liability for all acts of negligence.**

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B. Public Policy Exception

More than one-hundred years ago, it was noted that "the right of parties to contract as they please is restricted only by a few well defined and well settled rules, and it must be a very plain case to justify a court in holding a contract to be against public policy." This legal principle continues to hold true today. **In Maryland, unambiguous exculpatory clauses are generally held to be valid in the absence of legislation to the contrary...**

It is quite possible for the parties expressly to agree in advance that the defendant is under no obligation of care for the benefit of the plaintiff, and shall not be liable for the consequences of conduct which would otherwise be negligent. There is in the ordinary case no public policy which prevents the parties from contracting as they see fit.

Three exceptions have been identified where the public interest will render an exculpatory clause unenforceable. They are: (1) when the party protected by the clause intentionally causes harm or engages in acts of reckless, wanton, or gross negligence; (2) when the bargaining power of one party to the contract is so grossly unequal so as to put that party at the mercy of the other's negligence; and (3) when the transaction involves the public interest.

Ms. Seigneur has not alleged that NFI's agents intentionally caused her harm, or engaged in reckless, wanton, or gross acts of negligence. She does assert, however, that the second and third exceptions are applicable.

Appellants argue that NFI "possess[es] a decisive advantage in bargaining strength against members of the public who seek to use its services." She also claims that she was presented with a contract of adhesion and that this is additional evidence of NFI's grossly disproportionate "bargaining power."

It is true that the contract presented to Ms. Seigneur was **a contract of adhesion. [A contract of adhesion has been defined as one 'that is drafted unilaterally by the dominant party and then presented on a "take-it-or-leave-it" basis to the weaker party who has no real opportunity to bargain about its terms.]** But that fact alone does not demonstrate that NFI had grossly disparate bargaining power... **[T]here were numerous other competitors providing the same non-essential services as NFI.** The exculpatory clause was prominently displayed in the Participation Agreement and Ms. Seigneur makes no claim that she was unaware of this provision prior to her injury.

To possess a decisive bargaining advantage over a customer, the service offered must usually be deemed essential in nature... [I]n the determination of whether the enforcement of an exculpatory clause would be against public policy, the courts consider whether the party seeking exoneration offered services of great importance to the public, which were a practical necessity for some members of the public. As indicated above, courts have found generally that the furnishing of gymnasium or health spa services is not an activity of great public importance nor of a practical necessity...

Here there is no special legal relationship and no overriding public interest which demand that this contract provision, voluntarily entered into by competent parties, should be rendered ineffectual. Defendant, a private corporation, was under no obligation or legal duty to accept plaintiff as a "member" or patron. Having consented to do so, it has the right to insist upon such terms as it deemed appropriate. **Plaintiff, on the other hand, was not required to assent to unacceptable terms, or to give up a valuable legal right, as a condition precedent to obtaining employment or being able to make use of the services rendered by a public carrier or utility.** She voluntarily applied for membership in a private organization, and agreed to the terms upon which the membership was bestowed. She may not repudiate them now...

Health clubs are a good idea and no doubt contribute to the health of the individual participants and the community at large. But ultimately, they are not essential to the state or its citizens. And any analogy to schools, hospitals, housing (public or private) and public

utilities therefore fails. Health clubs do not provide essential services... The services offered by the appellee simply cannot be accurately characterized as "essential"...

The Washington metropolitan area, of which Montgomery County is a part, is home to many exercise and fitness clubs. **Ms. Seigneur...was free to choose among scores of facilities providing essentially the same services...There is no compelling need that an individual user be a member of a particular "health club"' such was the one operated by appellee..** She also had the option of purchasing her own fitness equipment and exercising at home or of exercising without any equipment by doing aerobic or isometric exercises. **Ms. Seigneur's bargaining position was not grossly disproportionate to that of NFI...**

The ultimate determination of what constitutes the public interest must be made considering the totality of the circumstances of any given case against the backdrop of current societal expectations... **[T]ransactions that affect the public interest... [are those involving] the performance of a public service obligation, e.g., public utilities, common carriers, innkeepers, and public warehousemen.** It also includes those transactions, not readily susceptible to definition or broad categorization, that are s**o important to the public good that an exculpatory clause would be "patently offensive," such that the common sense of the entire community would pronounce it invalid.**

NFI does not provide an essential public service such that an exculpatory clause would be "patently offensive" to the citizens of Maryland. The services offered by a health club are not of great importance or of practical necessity to the public as a whole. Nor is a health club anywhere near as socially important as institutions or businesses such as innkeepers, public utilities, common carriers, or schools...

[T]he great weight of authority [in other jurisdictions have determined that] **exculpatory agreements in the recreational sports context do not implicate the public interest... Aside from health club or "spa" cases, courts from other jurisdictions almost universally have held that contracts relating to recreational activities do not fall within any of the categories that implicate public interest concerns.** Additionally, a Maryland court "will not invalidate a private contract on grounds of public policy unless the clause at issue is patently offensive...

CONCLUSION

We **affirm the trial court's ruling that NFI's exculpatory clause is enforceable so as to release NFI from liability for injuries Ms. Seigneur sustained while on its premises.**