SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: LOUIS B. YORK J.S.C. Justice PART 2

Index Number : 109041/2005
CHAPPILL, RAYFORD WAYNE
VS.
BALLY TOTAL FITNESS
SEQUENCE NUMBER : 004
REARGUMENT/RECONSIDERATION

INDEX NO. _____
MOTION DATE _____
MOTION SEQ. NO. _____
MOTION CAL. NO. _____

n this motion to/for _____

	PAPERS NUMBERED
Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...	
Answering Affidavits — Exhibits	
Replying Affidavits	

Cross-Motion: ☐ Yes ☒ No

Upon the foregoing papers, It is ordered that this motion

MOTION IS DECIDED IN ACCORDANCE WITH ACCOMPANYING MEMORANDUM DECISION.

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 141B).

Dated: 1/20/11

LOUIS B. YORK J.S.C.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: ☒ FINAL DISPOSITION ☐ NON-FINAL DISPOSITION

Check if appropriate: ☐ DO NOT POST ☐ REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 2

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RAYFORD WAYNE CHAPPILL,

Plaintiff,

Index No. 109041/05

-against-

DECISION/ORDER

BALLY TOTAL FITNESS CORPORATION,

Defendants.

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Louis B. York, J.S.C.:

Defendant, Bally Total Fitness Corporation, runs various health club locations throughout the nation, including one located at 33 LeCount Place, New Rochelle, NY (New Rochelle Club). On August 7, 2002 during the early afternoon, Plaintiff, Rayford Wayne Chappill, suffered a cardiac arrest at the New Rochelle Club. Upon learning of the incident, the front desk receptionist called 911. Upon learning of the incident, a police officer investigating an unrelated matter at the New Rochelle Club, also requested immediate medical assistance on his police radio.

Plaintiff, who collapsed by the lat pull down machines, was found lying on his back. After being notified of the incident, two of Defendant's employees rushed over to Plaintiff's side. Emergency medical services (EMS) arrived approximately 3 minutes later. EMS began performing cardiopulmonary resuscitation (CPR) on the Plaintiff, immediately followed by an intravenous injection of epinephrine and atropine. After another unsuccessful CPR attempt, EMS defibrillated Plaintiff's heart.

However, after subsequent failures in attempting to revive his heart, EMS transported Plaintiff to a nearby hospital via ambulance. As a result of substantial deprivation of oxygen, Plaintiff suffered tremendous brain damage.

Three years after Plaintiff's injury, he filed a negligence action against Defendant. Plaintiff alleges that Defendant, through its employees, failed to timely notify EMS of the emergency, which caused him direct harm. He also alleges that Defendant was negligent in failing to train employees to handle cardiac emergencies and failing to equip the New Rochelle Club with a professional first aid kit containing an automated external defibrillator (AED). Defendant denies any negligent wrongdoing by asserting immunity under Federal and New York State Good Samaritan Statutes. Further, Defendant denies owing any duty to keep a professional first aid kit at the New Rochelle Club or a duty to administer CPR to Plaintiff.

Defendant moved for summary judgment on October 9, 2008. However, because of a pending bankruptcy proceeding, an automatic stay was imposed. Upon lifting the stay, court now entertains this motion for summary judgment.

When the facts appear clear and undisputed, summary judgment is utilized to eliminate civil cases from the trial court calendar that can be determined as a matter of law. Andre v. Pomeroy, 35 N.Y.2d 361 (1974). Defendant makes a prima facie showing for summary judgment and cannot be held negligent. Defendant acted reasonably and beyond what was lawfully required.

Generally, unless a special relationship exists, there is no a legal duty to render aid or assistance to another in peril. Plutner v. Silver Associates, 186 Misc. 1025, 1027, 61 N.Y.S.2d 594, 595 (Mun Ct, New York County 1946). Moreover, although "there

may be a strong moral and humanitarian obligation to furnish such aid and assistance under ordinary circumstances,...our courts have held that there is no legal responsibility so to do." Id; Clark v. State, 302 N.Y. 795, 99 N.E.2d 300 (1951). However, "when no original duty is owed to an individual to undertake affirmative action, once it is voluntarily undertaken, it must be performed with due care." Parvi v. City of Kingston, 41 N.Y.2d 553, 559, 394 N.Y.S.2d 161 (1977).

Defendant did not owe Plaintiff a legal duty to render assistance since no special relationship existed. However, the employees at the New Rochelle Club did act accordingly under the circumstances. The two employees that rushed over to Plaintiff attested in their affidavits that they both received CPR training from The American Red Cross. Plaintiff presents no proof to the contrary. Also, both employees sought medical attention for Plaintiff soon after hearing of his heart attack. Again, Plaintiff provides no proof to the contrary. Thus, the New Rochelle Club employees "fulfilled their duty of care by immediately calling 911." Digiulio v. Gran, Inc., 74 A.D.3d 450, 452, 903 N.Y.S.2d 359, 362 (1st Dep't, 2010).

Defendant also asserts that Plaintiff assumed the risk of harm by engaging in a strenuous workout regiment. Assumption of risk applies when the plaintiff is aware of the risk, appreciates the risk and voluntarily assumes the risks. Morgan v. State, 90 N.Y.2d 471 (1997). Generally a question for the jury, the doctrine of assumption of risk enables a court to render a judgment as a matter of law if no question of material fact remains. Maddox v. City of New York, 66 N.Y.2d 270 (1983). This doctrine is applicable to this case.

Plaintiff was 41 when he suffered the heart attack at the New Rochelle Club. He was also a Bally's gym member for 7 years and an avid health club member who exercised regularly. A similarly situated person who also exercised 3 to 4 times week, would reasonably "know that there is an apparent and foreseeable risk of cardiac arrest while participating in [such] strenuous" exercises. Rutnik v. Colonie Center Court Club Inc., 249 A.D.2d 873, 875, 672 N.Y.S.2d 451, 452 - 453 (3rd Dep't,1998) (citing Morgan v. State of New York, 90 N.Y.2d 471, 488, 685 N.E.2d 202, 210 [1997]).

Pursuant to their CPR training, the employees did not perform CPR to Plaintiff because he was still breathing. The court finds this explanation credible. The employees acted in accordance with the training they received. In addition, Defendant may cease to have employees undergo CPR training, if potential lawsuits follow every pulse an employee checks. Inaction would ensue, instead of the attempt to possibly save a life. New York's Good Samaritan statute was enacted to promote and protect more humanitarian behavior. (Public Health Law § 3000-a) ("any person who voluntarily and without expectation of monetary compensation renders first aid or emergency treatment at the scene of an accident or other emergency...shall not be liable for damages for injuries alleged to have been sustained by such person...unless it is established that such injuries were or such death was caused by gross negligence on the part of such person"). Since Plaintiff failed to show that the New Rochelle Club employee's were grossly negligent in utilizing their CPR training, Defendant is afforded protection under the New York Good Samaritan statute.

Furthermore, at the time Plaintiff suffered the heart attack, health clubs were not required to keep an AED on the premises. (General Business Law § 627-a). And even

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after the enactment of such law requiring such a device, health clubs "had no common-law duty to use the AED, and could not be held liable for not using it." Digiulio at 452, 362. Consequently, Defendant cannot be held liable for failing to use an AED on Plaintiff at the time of the incident.

For the reasons given above, it is therefore

ORDERED and ADJUDGED that Defendants' motion is granted and this action is dismissed with costs and disbursements awarded to Defendants.

Dated: 1/20/11

ENTER:

Louis B. York, J.S.C.

LOUIS B. YORK
J.S.C.

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