

139 A.D.3d 614
Supreme Court, Appellate Division,
First Department, New York.

Robert BUTT, Plaintiff–Appellant,

v.

EQUINOX 63RD STREET, INC.,
doing business as Equinox Fitness
Club, et al., Defendants–Respondents,
Amin El Ghouay, Defendant.

May 31, 2016.

Synopsis

Background: Patron of fitness club who was injured while weightlifting with personal trainer at club brought personal injury action against club operator and related parties. The Supreme Court, New York County, [Richard F. Braun, J.](#), granted defendants' motion for summary judgment. Patron appealed.

Holding: The Supreme Court, Appellate Division, held that defendants were not liable for patron's injuries.

Affirmed.

West Headnotes (1)

[1] **Public Amusement and Entertainment**

🔑 [Games, Sports, Athletic Activities and Contests in General](#)

Public Amusement and Entertainment

🔑 [Particular cases](#)

Operator of fitness club and related parties were not liable for personal injuries of club patron, who was injured while weightlifting with a personal trainer at the club; patron, who was an experienced weightlifter and knew the techniques involved and the inherent risks in weightlifting from publications and his personal training sessions, appreciated the amount of weight to be lifted and voluntarily assumed the common and inherent risks

associated with the sport, and there was no indication, beyond the patron's speculative assumptions, that the trainer provided inadequate attention as a spotter during the patron's attempted bench press.

[1 Cases that cite this headnote](#)

Attorneys and Law Firms

****160** Pollack, Pollack, Isaac & DeCicco, LLP, New York ([Brian J. Isaac](#) of counsel), for appellant.

LaRocca Hornik Rosen Greenberg & Blaha LLP, New York (Jared E. Blumetti of counsel), for respondents.

[MAZZARELLI, J.P.](#), [RENWICK, SAXE, GISCHE, KAHN, JJ.](#)

Opinion

***615** Order, Supreme Court, New York County (Richard F. Braun, J.), entered May 28, 2014, which granted the motion of the fitness club defendants (Equinox) for summary judgment dismissing the complaint, unanimously affirmed, without costs.

Equinox established entitlement to judgment as a matter of law, in this action where plaintiff was injured while weightlifting at Equinox with an Equinox personal trainer. Equinox submitted evidence showing that plaintiff was an experienced weightlifter, that he understood the techniques involved and the inherent risks in the sport from publications, and from his personal training sessions, that he knew and appreciated the 230 to 240 pounds of weight the personal trainer had set up on his barbell for a single, bench press to close out the training session, and that he elected to attempt the bench press when the trainer encouraged him following plaintiff's brief questioning of the amount of weight. Such evidence established that plaintiff appreciated the risks, including the weight to be lifted, and that he voluntarily assumed the common and inherent risks associated with the sport (*see Lee v. Maloney*, 270 A.D.2d 689, 704 N.Y.S.2d 729 [3d Dept.2000]; *see also Feeney v. Manhattan Sports Club*, 227 A.D.2d 293, 642 N.Y.S.2d 674 [1st Dept.1996]).

In opposition, plaintiff failed to raise a triable issue of fact. There was no evidence that the personal trainer

provided ****161** inadequate attention as a spotter during plaintiff's attempted bench press. Plaintiff's testimony that the personal trainer engaged in conversations with plaintiff and two other trainers at the time plaintiff questioned his ability to lift the weight is insufficient, absent speculative assumptions, to raise a factual issue as to whether the conversations continued during the actual attempted lift. In fact, the record shows that the personal trainer stood behind plaintiff in the spotter's position, and within seconds of plaintiff's failed lift attempt, the trainer assisted plaintiff in placing the weight safely back on the bench post. Plaintiff also offered no expert testimony to indicate that the weight lifted at the time of his injury was

inordinate and beyond his capacity. Plaintiff admittedly bench pressed 220 pounds on a repetition basis earlier in the same training session and had lifted more weight in the past.

We have considered plaintiff's remaining arguments and find them unavailing.

All Citations

139 A.D.3d 614, 32 N.Y.S.3d 160, 2016 N.Y. Slip Op. 04121