73 A.D.3d 654
Supreme Court, Appellate Division,
First Department, New York.

Stuart SUGARMAN, Plaintiff–Appellant,
v.
EQUINOX HOLDING, INC., etc.,
et al., Defendants–Respondents,
Christopher Carter, et al., Defendants.

May 27, 2010.

Synopsis

Background: Customer at health club brought action against owner and operator of club, alleging negligence and breach of duty arising from assault by fellow customer. The Supreme Court, New York County, Carol R. Edmead, J., 2008 WL 5264642, granted owner and operator's motion to dismiss. Customer appealed.

[Holding:] The Supreme Court, Appellate Division, held that customer failed to state claims against owner and operator for negligence arising from incident.

Affirmed.

West Headnotes (3)

[1] Public Amusement and Entertainment
Games, Sports, Athletic Activities and Contests in General

Customer failed to allege any facts that put health club owner and operator on notice that any criminal activity had occurred on premises or that it would occur, precluding customer's negligence claim against owner and operator arising from fellow customer's unforeseeable and unexpected assault on customer.

1 Cases that cite this headnote

[2] Labor and Employment
Negligent Hiring

Labor and Employment
Negligent retention

Health club customer failed to allege that employee who witnessed assault by fellow customer acted outside scope of his employment, and did not name employee as party, precluding customer's negligent hiring and retention claim based on theory of respondeat superior.

1 Cases that cite this headnote

[3] Damages
Aggravation of previous injury, disease, or disability

Public Amusement and Entertainment
Games, Sports, Athletic Activities and Contests in General

Customer failed to allege that health club owner and operator's act of preventing emergency responders from reaching him aggravated or exacerbated customer's injuries after assault by fellow customer, precluding customer's negligence claim based on purported breach of duty of care.

Cases that cite this headnote

Attorneys and Law Firms

****615** Gentile & Associates, New York (Laura Gentile of counsel), for appellant.

LaRocca Hornik Rosen Greenberg & Blaha LLP, New York (David N. Kittredge of counsel), for respondents.

****616** ANDRIAS, J.P., CATTERSON, RENWICK, RICHTER, ROMÁN, JJ.

Opinion

***655** Order, Supreme Court, New York County (Carol R. Edmead, J.), entered December 16, 2008, which granted the Equinox defendants' motion to dismiss for failure to state a cause of action, unanimously affirmed, without costs.

The complaint alleged that defendant Carter became increasingly hostile and enraged over the refusal by plaintiff, a fellow customer, to discontinue his shouting and cheering during a spin class at defendant health club. Indeed, Carter complained to the class instructor about plaintiff's behavior. The instructor did not intercede in the dispute, and plaintiff alleged that he was in fear of imminent harm. Nonetheless, plaintiff continued in his shouting and cheering. Ultimately, Carter abruptly pushed plaintiff and his spin cycle backward into a wall, resulting in plaintiff's neck and head injuries, allegedly warranting his hospitalization and surgery.

[1] Plaintiff failed to state a claim for negligence predicated upon Equinox's alleged breach of its duty to control the conduct of a customer on its premises under these circumstances. Plaintiff failed to allege any facts that put defendant Equinox on notice that any criminal activity had occurred on the premises or that it would occur. The unforeseeable and unexpected assault by patron at a fitness club, without more, does not establish a basis for liability (*Djurkovic v. Three Goodfellows, Inc.,* 1 A.D.3d 210, 767 N.Y.S.2d 108 [2003]).

[2] That aspect of the claim for negligent hiring and retention was properly dismissed where the complaint alleged Equinox's liability under the theory of respondeat superior, but with no allegation that the witness employee had acted outside the scope of his employment; nor was the employee even named as a party defendant (*see Karoon v. New York City Tr. Auth.,* 241 A.D.2d 323, 324, 659 N.Y.S.2d 27 [1997]).

[3] Plaintiff has not adequately established that Equinox owed plaintiff a common-law duty to summon emergency responders to its premises on his behalf. To the extent plaintiff claimed Equinox breached a duty of care by preventing emergency responders from reaching him at the health club, nowhere was it alleged that such nonaction aggravated or exacerbated his injuries.

All Citations

73 A.D.3d 654, 901 N.Y.S.2d 615, 2010 N.Y. Slip Op. 04508

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