[Cite as *Geczi v. Lifetime Fitness*, 2012-Ohio-2948.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Jodi Geczi,	:	
Plaintiff-Appellant,	:	
		No. 11AP-950
v.	:	(C.P.C. No. 06CVC-11-15297)
Lifetime Fitness,	:	(REGULAR CALENDAR)
Defendant-Appellee.	:	

D E C I S I O N

Rendered on June 28, 2012

Barkan Meizlish Handelman Goodin Derose Wentz, LLP, Sanford A. Meizlish, and *Robert K. Handelman*, for appellant.

John P. Mazza, for appellee.

APPEAL from the Franklin County Court of Common Pleas.

DORRIAN, J.

{¶ 1} Plaintiff-appellant, Jodi Geczi ("Geczi"), appeals from a judgment of the Franklin County Court of Common Pleas granting summary judgment to defendant-appellee, Lifetime Fitness ("Lifetime"), in a negligence case. The trial court found that Geczi had agreed to three clear and unambiguous exculpatory provisions that operated to contractually release Lifetime from liability on Geczi's negligence claims. For the following reasons we affirm.

{¶ 2} Lifetime operates a fitness center at Easton Town Center in the city of Columbus. Geczi became a member of the fitness center on November 30, 2000. In her complaint, Geczi alleged that, on May 9, 2005, she began running on one of the treadmills at the center. As she increased the speed of the treadmill, the incline function engaged on

its own, and the machine began jerking violently. She further alleged that, in an attempt to steady herself, she grabbed the side railing of the treadmill with both hands, at which time she suffered a severe pull on her left arm and she heard a popping sound. Geczi alleged that she reported the incident to a Lifetime employee, who told her that he had known the treadmill was broken. She further alleged that, later that evening, a manager informed her that he had known the night prior to the incident that the treadmill was malfunctioning. Geczi was not, however, informed or warned of the defective nature of the treadmill prior to her injury.

{¶ 3} Geczi claimed that Lifetime was negligent in failing to maintain the treadmill and in failing to warn her that the machine was not operating properly. She claimed that she suffered injury, pain, medical expenses, loss of income, and other damages as a result of the incident. She subsequently amended her complaint to add a claim that her injuries resulted from reckless or willful and wanton misconduct on the part of Lifetime.[1]

{¶ 4} Lifetime asserted as a defense that Geczi had signed a "Membership Application and Agreement," as well as a separate document titled "New Member Policy Checklist," and that the two documents contained three exculpatory provisions that barred her claims. Geczi admitted that she had read, agreed to, and signed both documents.

{¶ 5} The trial court initially denied Lifetime's motion for summary judgment. On reconsideration,[2] however, the court found that the three provisions, when read together, clearly and unequivocally established that Geczi and Lifetime had agreed that Lifetime would not be liable to Geczi for any negligence on its part resulting in injury to her while using the equipment at the Lifetime facility. The court concluded that the contractual release provisions were enforceable and that they barred Geczi's negligence claims.

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[1] Geczi's amended complaint also included a spoliation claim based on her allegation that Lifetime no longer possessed the treadmill at issue. The trial court entered summary judgment in favor of Lifetime on the spoliation claim, and Geczi has not appealed that part of the summary judgment.

[2] In granting reconsideration of its denial of summary judgment, the court noted that its earlier decision "did not address all grounds asserted by" Lifetime.

{¶ 6} The court observed, however, that it was unclear whether Lifetime had taken any action before the incident to decommission the treadmill either by placing an out-of-order sign on it, unplugging it, or in some other way making it unavailable or inoperable to patrons. It concluded that genuine issues of fact existed as to whether Lifetime had acted willfully or wantonly prior to the incident. The trial court denied Lifetime's motion for summary judgment on Geczi's willful and wanton claim because releases do not relieve a defendant of liability for claims of that type. *Gardner v. Ohio Valley Region Sports Car Club of America,* 10th Dist. No. 01AP-1280, 2002-Ohio-3556, fn. 1, citing *Bowen v. Kil-Kare, Inc.,* 63 Ohio St.3d 84 (1992). Geczi's willful and wanton claim was tried to a jury, which returned a verdict for Lifetime.

{¶ 7} Geczi timely filed a notice of appeal from the decision of the trial court granting summary judgment to Lifetime on Geczi's negligence claim. She has formulated her assignment of error into two paragraphs, as follows:

> The trial court erred in concluding that the language of the release executed by the Appellant clearly and unequivocally evidenced the intent of Ms. Geczi to release the Appellee from its failure to protect against the use of a treadmill that it knew to be defective and could result in injury to the Appellant.
>
> The trial court erred in concluding that the language of the release executed by the Appellant barred a negligence claim where the Appellee was on notice that a treadmill had malfunctioned, the use of which could cause injury to an unsuspecting user and failed to either warn the Appellant or prevent the use of the treadmill.

{¶ 8} "Appellate review of summary-judgment motions is de novo." *Capella III, L.L.C. v. Wilcox,* 190 Ohio App.3d 133, 2010-Ohio-4746, ¶ 16 (10th Dist.), citing *Andersen v. Highland House Co.,* 93 Ohio St.3d 547, 548 (2001). "De novo appellate review means that the court of appeals independently reviews the record and affords no deference to the trial court's decision." *Holt v. State,* 10th Dist. No. 10AP-214, 2010-Ohio-6529, ¶ 9 (internal citations omitted). Summary judgment is appropriate where "the moving party demonstrates that (1) there is no genuine issue of material fact, (2) the moving party is entitled to judgment as a matter of law, and (3) reasonable minds can come to but one conclusion, and that conclusion is adverse to the party against whom the motion for

summary judgment is made." *Capella III* at ¶ 16, citing *Gilbert v. Summit Cty.*, 104 Ohio St.3d 660, 2004-Ohio-7108, ¶ 6. Therefore, we undertake an independent review to determine whether Lifetime was entitled to judgment as a matter of law.

{¶ 9} In the case at bar, the parties agree concerning the material facts. The determinative issue is whether reasonable minds can only conclude that the documents Geczi signed constituted a valid release of her claims against Lifetime.

{¶ 10} This court has previously considered releases executed in favor of recreational facilities, including fitness centers. We have recognized that the law does not favor releases from liability for future tortious conduct, which will be narrowly construed. *Denlinger v. Columbus*, 10th Dist. No. 00AP-315 (Dec. 7, 2000), citing *Glaspell v. Ohio Edison Co.*, 29 Ohio St.3d 44, 46-47 (1987). "A court must construe a contract against its drafter, but when the terms are unambiguous and clear on their face, the court need not look beyond the plain language of the contract to determine the rights and obligations of the parties." *Beasley v. Monoko, Inc.*, 195 Ohio App.3d 93, 103, 2011-Ohio-3995, ¶ 30 (10th Dist.). This latter principal of contract interpretation, that exculpatory clauses are to be strictly construed against the drafter unless the language is clear and unambiguous, has been recognized in a case involving a fitness center. *Pruitt v. Strong Style Fitness*, 8th Dist. No. 96332, 2011-Ohio-5272, ¶ 8. Similarly, waiver and release provisions must be strictly construed and do not relieve the proprietor from liability due to wanton or willful misconduct. *Thompson v. Otterbein College*, 10th Dist. No. 95APE08-1009 (Feb. 6, 1996).

{¶ 11} But clear and unambiguous contract clauses relieving a party from liability for its own negligence are generally upheld in Ohio. *Jacob v. Grant Life Fitness Ctr.*, 10th Dist. No. 95APE12-1633 (June 4, 1996). *See also Thompson*. Moreover, a " 'release of a cause of action for damages is ordinarily an absolute bar to a later action on any claim encompassed within the release.' " *Jacob*, quoting *Haller v. Borror Corp.* 50 Ohio St.3d 10, 13 (1990).

{¶ 12} "To be enforceable, however, a release must be expressed in terms that are clear and unequivocal." *Jacob*, citing *Thompson*. "This is because intent is presumed to reside in the language the parties chose to employ in the agreement, and the intention of the parties governs the interpretation of releases." *Jacob*, citing *Kelly v. Med. Life Ins.*

Co., 31 Ohio St.3d 130 (1987), paragraph one of the syllabus. "When a contract is unambiguous, a court cannot in effect create a new contract by finding an intent not expressed in the clear language employed by the parties." *Jacob*, citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 246 (1978). *See also Tanker v. N. Crest Equestrian Ctr.*, 86 Ohio App.3d 522, 525 (9th Dist.1993). But "where the language of a contract is reasonably susceptible of more than one interpretation, the meaning of ambiguous language is a question of fact" to be determined by a jury. *Brown v. Columbus All-Breed Training Club*, 152 Ohio App.3d 567, 2003-Ohio-2057, ¶18 (10th Dist.) *See also Tanker* at 525, citing *Inland Refuse Transfer Co. v. Browning-Ferris Industries of Ohio, Inc.*, 15 Ohio St.3d 321 (1984).

{¶ 13} The membership agreement Geczi signed contained the following two provisions:

> **ASSUMPTION OF RISK, RELEASE & INDEMNITY**
>
> The use of the facilities at the Club naturally involves the risk of injury, whether the undersigned or someone else causes it. As such, the undersigned agrees that he or she understands and voluntarily accepts this risk and agrees that *LIFE TIME FITNESS[3] will not be liable for any injury*, including and without limitation, personal, bodily or mental injury, economic loss or any damage to the undersigned, the undersigned's spouse, guest or relatives *resulting from the negligence or other acts of LIFE TIME FITNESS or anyone else using the facilities.* * * *

(Emphasis added.)

> **WAIVER OF LIABILITY**
>
> The undersigned understands that although the Clubs['] facilities, equipment, services and programs are designed to provide a safe level of beneficial exercise and enjoyment, there is an inherent risk that use of such facilities, equipment, services and programs may result in injury. Therefore, *the undersigned* agrees to specifically assume all risk of injury while using any of the Clubs['] facilities, equipment, services or programs and *hereby waives any and all claims or actions*

[3] Throughout the course of this litigation, and even within its own contractual agreements, the name of defendant-appellee has been inconsistently spelled as either "Lifetime Fitness" or "Life Time Fitness."

> *which may arise against LIFE TIME FITNESS or its owners and employees as a result of such injury*. The risks include, *but are not limited to*
> 1) *Injuries arising from my use of any exercise equipment*, machines and/or tanning booths
> 2) Injuries arising from participation in supervised or unsupervised activities and programs within the Club or outside the Club, to the extent sponsored or endorsed by the Club
> 3) Injuries or medical disorders resulting from exercise at the Club, including, but not limited to, heart attacks, strokes, heartstress, sprains, broken bones and torn muscles or ligaments
> 4) Accidental injuries within the facilities, including, but not limited to the locker rooms, salons, child-care centers, steam rooms, whirlpool, sauna, showers and dressing rooms.

(Emphasis added.)

{¶ 14} In addition, the new member policy checklist Geczi signed contained the following provision:

> I accept full responsibility for my use, as well as the use by any other person under my membership, of any and all equipment and fixtures as well as for any participation in the activities provided by the Club. *I agree that I will hold the Club,* its shareholders, directors, officers, employer's representative, agents and landlord *harmless from any and all loss, claim, injury, damage, or liability incurred by me* or any other person using the Club under my membership. I further agree that I fully understand all of the Club's policies and agree to abide by them at all times while using the Club.

(Emphasis added.)

{¶ 15} We refer to these three contractual provisions collectively as "the release."

{¶ 16} Geczi admitted that she read, agreed to, and signed the documents containing these contractual provisions. She argues, however, that they are ambiguous and that she therefore had a right to have a jury determine the issue of her intent regarding the scope of the release. We disagree.

{¶ 17} " 'Contractual language is "ambiguous" only where its meaning cannot be determined from the four corners of the agreement or where the language is susceptible of two or more reasonable interpretations.' " *Hedmond v. Admiral Ins. Co.*, 10th Dist. No.

02AP-910, 2003-Ohio-4138, ¶ 38, quoting *Covington v. Lucia*, 151 Ohio App.3d 409, 2003-Ohio-346, ¶ 18 (10th Dist.). Lifetime's release language does not meet this definition of ambiguity. The only reasonable interpretation of Lifetime's release is that it reflected the parties' intent to release Lifetime from negligence claims of the nature asserted by Geczi.

{¶ 18} In 2010, the Seventh District Court of Appeals comprehensively surveyed Ohio cases examining exculpatory releases to determine whether the clauses were clear and unambiguous. *Hague v. Summit Acres Skilled Nursing & Rehab.*, 7th Dist. No. 09 NO 364, 2010-Ohio-6404. It observed that courts generally enforce releases of future tort liability where the intent of the parties, "[1] with regard to exactly what kind of liability and [2] what persons and/or entities are being released, is stated in clear and unambiguous terms." *Id. at* ¶ 20. The court characterized our decision in *Jacob* as the "watershed case involving injuries sustained at a fitness club," *Hague* at ¶ 23. In *Jacob*, we noted that the release clause clearly specified (1) the kind of liability released as it included the words "release" and "negligence"; and (2) also identified the persons or entities being released by stating that "the Center, its owners, officers, employees, agents, assigns and successors" are released. *Id.*

{¶ 19} The Seventh District's survey of Ohio precedent included other Ohio cases in which release provisions were found to be unambiguous and enforceable, citing *Lamb v. Univ. Hosp. Health Care Ent., Inc.*, 8th Dist. No. 73144 (Aug. 13, 1998) (clause including word "release" and "negligence," as well as specifically identifying persons released from liability held to be sufficiently clear and unambiguous so as to release fitness club from liability for injuries); *Swartzentruber v. Wee-K Corp.*, 117 Ohio App.3d 420, 424-27 (4th Dist.1997) (language releasing owner of a livery stable from "any and all claims" that arose out of "any and all personal injuries" was not ambiguous and barred negligence claims of an injured horseback rider); and *Conkey v. Eldridge*, 10th Dist. No. 98AP-1628 (Dec. 2, 1999) (release was unambiguous and enforceable where it relieved the owner of a race car stored on the owner's property of "all liability for personal injuries, property damage, loss from theft, vandalism, fire, water, explosion, rodent damage, or any other causes"). Having reviewed the precedent, the *Hague* court adopted as its test of ambiguity the test established by the Fourth District in *Swartzentruber, i.e.*, "whether it is

clear from the general terms of the entire contract, considered in light of what an ordinary prudent and knowledgeable party of the same class would understand, that the proprietor is to be relieved from liability for its own negligence." *Hague* at ¶ 22, citing *Swartzentruber*. We adopt that test as well, it being consistent with our own precedent in *Jacob* and *Thompson*.

{¶ 20} It is true that Ohio courts have found other releases to be ambiguous. The First District found ambiguous a health-club membership contract stating that the member used facilities at his "own risk" and that the club would not be liable for "any injury or damage" resulting from use of the facilities. *Holmes v. Health & Tennis Corp. of Am.*, 103 Ohio App.3d 364 (1st Dist.1995). The court found that the release did not express a clear and unambiguous intent of the member to release the club from its negligence. Similarly, the Ninth District has found ambiguous a clause providing that a horseback rider assumed "full responsibility and liability" for any and all personal injury associated with the riding of any horse at an equestrian center. *Tanker*. That language was deemed so general as to be meaningless. *Id.* And in *Thompson*, this court considered the following language:

> I hereby, * * * release and discharge the owners, operators, and sponsors of THIS STABLE and their respective servants, agents, officers and all other participants of and from all claims, demands, actions and causes of action for such injuries sustained to my person, or that of my child or legal charge and/or property.

{¶ 21} We found that this language released "essentially everyone * * * from *any* type of misconduct, whether it be negligent, wanton or willful conduct" and therefore was so general as to be meaningless. (Emphasis sic.) *Id.*

{¶ 22} In the case before us, the release in the Lifetime membership agreement clearly specified the "kind of liability released." It included a release provision titled "**ASSUMPTION OF RISK, *RELEASE*, & INDEMNITY**" (emphasis added) which, much like *Jacob*, included the term "release," as well as the term "negligence." The provision states that Lifetime "will not be liable for *any injury*, including and without limitation, personal, bodily or mental injury, economic loss or any damage to the undersigned, the undersigned's spouse, guest or relatives *resulting from the negligence or*

other acts of LIFE TIME FITNESS." (Emphasis added.) Similarly, the provision captioned **"WAIVER OF LIABILITY,"** again identified in bold, capitalized letters, provided that the signer was agreeing to "assume all risk of injury while using any of the Clubs[']facilities, equipment, services or programs * * * [t]he risks include, but are not limited to 1) *Injuries arising from my use of any exercise equipment*, machines and/or tanning booths." (Emphasis added.) Finally, the new member policy checklist stated: "I accept full responsibility for my use * * * of any and all equipment."

{¶ 23} The release also clearly specified the persons and/or entities being released. The assumption of risk, release, and indemnity provision stated generally "LIFE TIME FITNESS will not be liable." The waiver of liability and the new member policy checklist further specified, respectively, that the member would waive any and all claims which may arise as a result of such injury against "LIFE TIME FITNESS or its owners and employees" and agrees to hold harmless "the Club, its shareholders, directors, officers, employer's representative, agents and landlord."

{¶ 24} "In determining the intent of the parties, the court must read the contract as a whole and give effect to every part of the contract, if possible * * * [and] [t]he intent of each part of a contract is to be gathered from consideration of the contract as a whole." (Internal citations omitted.) *Beasley* at ¶ 30. Reasonable minds can only conclude that the documents Geczi signed, which included the two provisions in the membership agreement, as well as the provision contained in the new member policy checklist, when read and considered as a whole, were clear, definite, and unambiguous. Accordingly, the trial court appropriately entered summary judgment rather than submit to a jury the question of the parties' intent concerning the release. Geczi executed a valid, enforceable release.

{¶ 25} Geczi emphasizes the first sentence of the waiver provision, which states that: "[T]he undersigned understands that although the Clubs[']facilities, equipment, services and programs are designed to provide a safe level of beneficial exercise and enjoyment, *there is an inherent risk* that use of such facilities, equipment, services and programs may result in injury." (Emphasis added.) That sentence is followed by the second sentence of the provision, which unambiguously states that the signer "hereby waives any and all claims or actions which may arise * * * as a result of such injury."

Appellant also points out that the assumption of risk provision begins by observing that the "use of the facilities at the Club *naturally* involves the risk of injury, whether the undersigned or someone else causes it." (Emphasis added.) That sentence is followed however by a second sentence indicating that the member agrees "that LIFE TIME FITNESS will not be liable for any injury * * * resulting from the negligence or other acts of LIFE TIME FITNESS." Geczi submits that the express and broad exculpatory language in the second sentences of these provisions should be read as limited by the first sentences. Under her interpretation, the release extends only to liability as to injury resulting from a risk that is inherent or natural in the operation of a properly operating treadmill. She further argues that the type of injury she suffered is not inherent in the use of a correctly operating treadmill. Moreover, she argues that Lifetime's negligence, if any, in failing to warn her of the treadmill's condition, was not an inherent or natural risk of use of a treadmill. She concludes that the release, therefore, does not extend to her claims. We disagree.

{¶ 26} In determining the intent of the parties, "the court must read the contract as a whole and give effect to every part of the contract, if possible * * * [and] the [i]ntent of each part is to be gathered from consideration of the contract as a whole." (Internal citations omitted.) *Beasley* at ¶ 30. We therefore refuse to read the first sentences of the assumption of risk and waiver provisions in isolation. In reading all three provisions as a whole, we conclude that the clear intent of the parties was to release Lifetime of all negligence and not just to injuries that are "inherent" in the use of a fitness facility or to injuries resulting from risks that one "naturally" encounters when using a fitness facility.

{¶ 27} Moreover, the waiver provision contained an "including, but not limited to" clause giving examples of four types of injuries covered by the waiver. The first enumerated example was "[i]njuries arising from my use of any exercise equipment, machines and/or tanning booths." That is, the contractual language itself contemplated that injuries resulting from the use of an exercise machine were included within the scope of the waiver. It follows that an injury resulting from the use of exercise equipment is an inherent risk when using a Lifetime fitness facility. Furthermore, we do not agree with Geczi's contention that the language in the first sentence indicating that the equipment is

"designed to provide a safe level of beneficial exercise and enjoyment" suggests that the waiver did not extend to malfunctioning fitness equipment.

{¶ 28} We refuse to emphasize the succinct and prefatory language of the "inherent risk of injury" and the "natural risk" recitations at the expense of the clear and unambiguous language used elsewhere in the exculpatory clauses. To do so would accord the inherent risk and natural risk language a "new and exalted prominence as the central governing principle of the whole Release." *McKissick v. Yuen*, 618 F.3d 1177, 1185 (C.A.10, 2010) (rejecting argument that a phrase in an "including, but not limited to" clause served to limit "any and all claims" language in a release). And these introductory clauses do not contradict the clear and unambiguous language of the exculpatory clauses, act as a limitation on them, or otherwise render them ambiguous.

{¶ 29} Moreover, the release did not distinguish between types of negligence, exempting some types of negligence from liability while preserving liability for other types of negligence. Rather, the clause extended to liability for *any* injury resulting from Lifetime's negligence. The scope of that broad language extends to negligence in maintaining equipment, negligence in leaving defective equipment available to users, and negligence in failing to warn patrons of defective equipment. The trial court did submit to the jury the question whether Lifetime's failure to act or failure to warn rose to the level of willful or wanton conduct, liability for which would not have been affected by the release signed by Geczi. But the jury did not find Lifetime to have acted willfully or wantonly.

{¶ 30} For the foregoing reasons, Geczi's assignment of error is overruled, and we therefore affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

BRYANT and TYACK, JJ., concur.
