IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

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| DANIEL J. CAPUTO, SR. and PASQUALE CAPUTO, on behalf of themselves and all others similarly situated, | ) | |
| Plaintiffs, | ) | |
| | ) | C.A. No. 10C-10-192 JAP |
| v. | ) | |
| KIRKWOOD FITNESS CLUBS, INC., | ) | |
| Defendant. | ) | |

Submitted: February 23, 2011
Decided: April 15, 2011

**MEMORANDUM OPINION**

John S. Spadaro, Esquire, John Sheehan Spadaro, LLC, Hockessin, Delaware. Attorney for the Plaintiffs.

Michael C. Hochman, Esquire, Monzack Mersky McLaughlin and Browder, P.A., Wilmington, Delaware. Attorney for the Defendant.

This is the sort of claim that can give a bad name to the legal profession. In 1975 plaintiff Daniel Caputo purchased a lifetime membership at Kirkwood Fitness. The following year he designated his nephew, plaintiff Pasquale Caputo, as the recipient of a free lifetime membership extended by Kirkwood as a promotional incentive. Kirkwood Fitness honored these memberships, and the Caputos have now used the facilities at Kirkwood Fitness for 35 and 34 years respectively without paying an additional cent in membership fees. Now they have brought a class action alleging that their lifetime memberships—for which they have paid nothing since 1975--were made illegal by a statute enacted in 1989. They seek treble damages as well as on behalf of other members of the purported class. They also seek an award of attorneys fees.

Plaintiffs base their claim exclusively on the Health Spa Regulation Act,[1] which was enacted 12 years after the later of the two Caputo contracts was executed. They contend that their lifetime memberships violate 4207 of the act which now prohibits health club contracts longer than 36 months. Having used the facilities for 35 years, they now say they wish to exercise a purported option to void their contracts ostensibly vested in them by section 4207. Defendant Kirkwood Fitness has moved to dismiss.[2] There are a host of reasons why this suit must be

[1] 6 *Del.C.* ch. 42.

[2] Plaintiffs complain that the court has considered materials outside of the complaint in resolving the motion to dismiss. The only matters the court mentioned in this opinion which are not in the complaint are (1) the date on which plaintiffs obtained their lifetime memberships and (2) the Plaintiffs were distressed

dismissed. Because the court has more meritorious matters it must attend to, it will address only two of those reasons.

First, the Health Spa Regulation Act expressly prohibits the relief Plaintiffs seek. Section 4221 provides:

> Contracts executed prior to January 1, 1986, and who original terms are still enforceable as of January 1, 1989, are excluded from all cancellation, refund and fee provisions of this chapter.[3]

This alone requires dismissal of Plaintiffs' suit.

Second, assuming for the sake of argument Plaintiffs were otherwise entitled to relief, their suit was barred by the statute of limitations nineteen years ago.[4] Plaintiffs claim that they were unaware of the Health Spa Regulation Act and therefore their "injury" was inherently unknowable. This fails for any of at least three reasons:

- Plaintiffs' theory ignores the maxim that ignorance of the law is no excuse. In *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich* the United States Supreme Court wrote "We have long recognized the common maxim, familiar to all minds, that ignorance of the law will not excuse any person, either civilly or criminally."[5]
- Plaintiffs' theory requires this court to believe that, had Plaintiffs known of the Health Spa Regulation Act

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over Kirkwood's decision to relocate. Neither of these facts is essential to the court's holding that the case should be dismissed. Moreover, the reference to the Plaintiffs' distress over the club's relocation is based upon a statement made by their counsel at oral argument. Although Plaintiffs' counsel argues he needs discovery to determine when his clients obtained their membership, he conceded the accuracy of those dates at oral argument for purposes of the present motion.

[3] 6 *Del.C.* §4221.

[4] 10 *Del.C.* 8106.

[5] __ US __, 130 S.Ct. 1605 (2010) (internal quotation marks omitted).

when it was enacted, they would have rescinded their long-ago paid up lifetime memberships and opted for one in which they had to pay.

- Plaintiffs misconstrue the "inherently unknowable" exception to the statute of limitations. It is irrelevant under that exception that plaintiffs were unaware of their cause of action. Rather that exception turns on whether the *injury*, not the cause of action, was inherently unknowable.[6] Although it is highly questionable that plaintiffs suffered any injury at all, they have not even made a pretense of showing that their injury (whatever it might be) was inherently unknowable.

The court is disturbed by the cause of action alleged in this case. It is evident from the allegations in the complaint that little or no thought was given this matter before it was filed. Equally disconcerting is the indication that this class action was brought for an improper purpose. At oral argument Plaintiffs' counsel indicated that his clients' real dispute with Kirkwood Fitness had nothing to do with their lifetime memberships. Rather, Plaintiffs were distressed over Kirkwood's decision to relocate to a new facility which is considerably less convenient for them. Plaintiffs' counsel stated in court that he told his clients he could

[6] *Becker v. Hamada, Inc*, 455 A.2d 353, 356 (Del. 1982).*Estate of Buonamici v. Morici*, 2010 WL 2185966 (Del.Super.).

do nothing to block Kirkwood's relocation, but that he could draft and file the instant class action for them. This raises the specter that this purported class action was simply brought in retaliation or as an attempt to extract a settlement from Kirkwood Fitness even though neither Plaintiff suffered any conceivable injury as a result of their continued use of their lifetime memberships.

This court has viewed Rule 11 as a highly draconian remedy to be invoked in only the most extreme cases. Sadly, this is one of them. The court will therefore enter an order directing Plaintiffs and their counsel to show cause in writing why they should not be required to reimburse Kirkwood Fitness for all costs, including attorneys fees, it incurred in defending this action.

For the foregoing reasons, Defendant's motion to dismiss is **GRANTED**. Jurisdiction is **RETAINED** for the purpose of determining whether the court should award sanctions against Plaintiffs or their counsel, or both.

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John A. Parkins, Jr.

oc: Prothonotary