

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

DESHAUN KETLER and)
BRITTANY KETLER, his wife,)
Plaintiffs,)
)
v.)
PFPA, LLC, a Delaware)
corporation, d/b/a Planet Fitness,)
and PLANET FITNESS)
EQUIPMENT, LLC, a Delaware)
corporation,)
Defendants.)

C.A. No. N14C-12-235 ALR

Submitted: April 17, 2015
Decided: June 3, 2015

Upon Defendant PFPA, LLC's Motion for Judgment on the Pleadings
GRANTED

DeShaun Ketler and his wife, Brittany Ketler, have filed suit against PFPA, LLC (a Delaware corporation doing business as Planet Fitness) and Planet Fitness Equipment, LLC. Defendant PFPA has filed a motion for judgment on the pleadings. Plaintiffs oppose the motion. Defendant Planet Fitness Equipment takes no position.

In consideration of Motion for Judgment of the Pleadings of Defendant PFPA, LLC, Plaintiffs' response in opposition thereto, PFPA's supplemental response and reply, and Plaintiffs' supplemental response in opposition, the Court finds as follows:

1. Plaintiffs filed this lawsuit on December 24, 2014. They allege that, on April 25, 2013, DeShaun Ketler sustained personal injuries at Planet Fitness in Wilmington, Delaware when a cable broke on a seated rowing machine he was using.

2. PFPA filed its Answer asserting primary assumption of the risk as an affirmative defense based on the Planet Fitness membership agreement ("Membership Agreement") signed by DeShaun Ketler on January 8, 2010. PFPA attached the Membership Agreement as an exhibit to its Answer.

3. Specifically, the Membership Agreement contains a release of liability and acknowledgment of assumption of the risk ("Release") as follows (with emphasis added):

I understand and expressly agree that my use of this Planet Fitness facility or any other Planet Fitness facility, involves the risk of injury to me or my guest **whether caused by me or not**. I understand that these risks can range from minor injuries to major injuries including death. In consideration of my participation in the activities and use of the facilities offered by Planet Fitness, I understand and voluntarily accept this risk and agree that Planet Fitness, its officers, directors, members, agents and independent contractors will not be liable for any injury, including, without limitation, personal, bodily, or mental injury, economic loss or any damage to you, your spouse, domestic partner, guests, unborn child or relatives, **resulting from the negligence of Planet Fitness or anyone on Planet Fitness' behalf whether related to exercise or not**. Accordingly, I do hereby forever release and discharge Planet Fitness from any and all claims, demands, injuries, damages, actions or causes of action. I further understand and acknowledge that Planet Fitness does not manufacture fitness or other equipment in its facilities, but purchases and/or leases

equipment and therefore Planet Fitness may not be held liable for defective products.

4. DeShaun Ketler concedes that he purchased a Planet Fitness gym membership and agreed to all of the terms in the Membership Agreement. He does not dispute that he signed it.

5. A party may move for judgment on the pleadings after the pleadings are closed, but within such time as not to delay trial.¹ “The nonmoving party is entitled to the benefit of any inferences that may fairly be drawn from its pleading.”² For purposes of considering a motion for judgment on the pleadings, all facts must be accepted as true and all reasonable inferences must be construed in favor of the non-moving party.³ Exhibits to pleadings are considered part of the pleadings and therefore this motion does not convert to one for summary judgment. In a motion for judgment on the pleadings, the Court must accept, as true, all well-pleaded allegations and extend reasonable inferences to the non-moving party.

6. PFPA moves for judgment on the pleadings based on the Release. PFPA does not concede negligence but argues that, to the extent Plaintiffs allege the cable broke due to PFPA's negligence, the Release bars Plaintiffs' recovery.

¹ Super. Ct. Civ. R. 12(c).

² *Walker v. City of New Castle*, 2014 WL 2885537, at *2 (Del. Super. June 23, 2014) (quoting *Estate of Williams v. Corr. Med. Servs., Inc.*, 2010 WL 2991589, at *1 (Del. Super. July 23 2010)).

³ *Silver Lake Office Plaza, LLC v. Lanard & Axilbund, Inc.*, 2014 WL 595378, at *6 (Del. Super. Jan. 17, 2014).

7. A general release allowing a party to avoid its own negligence is permissible under Delaware law. A release is valid if it is unambiguous, not unconscionable, and not against public policy.

8. The Delaware Superior Court recently addressed a contractual release of liability.⁴ In *Ellis*, Judge Davis reiterated that, under Delaware law, releases for one's own negligence are upheld when the "language makes it crystal clear and unequivocal that the parties contemplated and specifically agreed that the contracting party would be relieved of its own negligence."⁵

9. In the case before the Court, Plaintiffs incorrectly state that there is no specific reference to the negligent wrongdoing of defendant. To the contrary, the Release expressly relieves PFPA of liability for its own negligence. By signing the Membership Agreement, DeShaun Ketler agreed that, in consideration of his use of the facilities, he could not hold PFPA liable for any injury even if PFPA's own negligence caused those injuries. It is an unambiguous and express release.

10. The Release bars a negligence claim because it is clear and specifically states PFPA is not liable for its own negligence.

11. The Court rejects Plaintiffs' position that they are entitled to factual discovery before the Court can resolve this legal issue. The language of the

⁴ *Ellis v. Tri State Realty Assocs., LP*, 2015 Del. Super. LEXIS 106 (Del. Super. Ct. Feb. 27, 2015).

⁵ *Id.* at *13-14.

Membership Agreement is controlling and no further discovery is needed. PFPA cannot be sued for its own alleged negligence pursuant to the enforceable agreement between the parties. Delaware's decisional law on contract interpretation permits the Court to give full force and effect to the Release.

13. Finally, the Court rejects Plaintiffs' argument that DeShaun Ketler was a business invitee. PFPA is a private, membership-based business. DeShaun Ketler was a member of Planet Fitness per his Membership Agreement. Contrary to Plaintiffs' assertion, PFPA does not owe to De Shaun Ketler the same duty that PFPA would owe to a common law business invitee or to the public at large.

NOW, THEREFORE, this 3rd day of June, 2015, the Motion for Judgment on the Pleadings of Defendant PFPA, LLC is hereby GRANTED and JUDGMENT shall enter in favor of Defendant PFPA, LLC and against Plaintiffs DeShaun Ketler and Brittany Ketler.

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli