Vanderbrook v Emerald Springs Ranch
2011 NY Slip Op 32355(U)
August 29, 2011
Sup Ct, Wayne County
Docket Number: 62589/2007
Judge: John B. Nesbitt
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STATE OF NEW YORK
SUPREME COURT COUNTY OF WAYNE

GAIL VANDERBROOK,

Plaintiff,

-vs-

EMERALD SPRINGS RANCH, EMERALD SPRINGS RANCH LLC, JOYCE DE VALINGER and THOMAS DE VALINGER

Index No. 62589/2007

Defendants.

APPEARANCES: GREGORY P GAROFALO, ESQ.
Attorney for the Plaintiff

SUGARMAN LAW FIRM, LLP
(Kevin R. Van Duser, Esq., of counsel)
Attorneys for Defendants

MEMORANDUM - DECISION

John B. Nesbitt, J.

This litigation arises from plaintiff's brief and unfortunate encounter some years ago with a horse named Friendly. In the context of this summary judgment motion brought by defendants, the facts will be stated, as they must, in a light most favorably to the plaintiff. During the last week of July, 2004, plaintiff was vacationing in Saranac Lake near the High Peaks Region of New York's Adirondack Mountain Preserve. She was accompanied by her husband, their four children, her sister and brother-in-law. Mulling about in the general store at Fish Creek Campgrounds where they were staying, plaintiff came upon a brochure for the Emerald Springs Ranch offering horseback lessons and riding opportunities. Although having ridden a horse less than a half dozen times in her life, plaintiff saw that the ranch did not require prior experience prior to a guided trail ride preceded by some basic instruction. It "sounded like even beginners can do this." Her daughters, Sarah and Abby, were excited by the prospect, and her sister, Debby, an experienced rider, agreed to come along. Plaintiff was especially solicitous of her younger daughter, Abby, who had recently undergone the trials and effects of chemotherapy and was due some fun at this point in her life.

Plaintiff, her two daughters, and sister went to the ranch on July 31, 2004, for the outing offered to visitors. For a fee per person, the ranch provided twenty minutes of instruction immediately followed by an hour guided trail ride on horseback. Plaintiff's interest was not to spark some equestrian future for her children, but merely that they enjoy their vacation and have a good time. The fees paid, and some paperwork filled out, the party was assigned a guide who explained to them the details. Being a vigilant mother, after the guide explained his expectations, plaintiff explained to the guide her expectations - that he would keep a close eye on Abby and the trip must be easy without galloping, loose running, or anything of that ilk. The guide assured her that this would not be a problem.

The instruction part of the program went off without incident. As far as the plaintiff was concerned, "[t]he lesson was barely anything" - merely how to mount the horse, followed by the admonition to hold on to the saddle horn when the horse is moving and push away any trees the horse may brush up against once on the trail. As explained by the guide, there was no need for the rider to control or steer the horse, for the horses are trained and know what to do on this trail excursion. Again being cautious, plaintiff noted the light rainfall and thunder in the distance. She told the guide that it wasn't "a good idea to be doing this," but was assured that "the horses are used to it; just cover your saddles." Plaintiff also became very concerned about the horse named Friendly that one of her daughters was riding. This horse was acting very nervous, spinning and prancing around, scaring her daughter. After the plaintiff voiced her concern, the daughter was assigned another horse, and plaintiff was assigned Friendly.

Plaintiff and Friendly got off to a poor start, and it went downhill from there. While the rest of the party rode off, disappearing into the woodland trail, plaintiff lagged behind, needing assistance to mount Friendly. Once mounted, Friendly "was not happy," and had to be pulled by the reins by one of the staff to the trailhead. Friendly would not respond to any of the techniques of horse control discussed with plaintiff during the instructional period. Plaintiff was admonished not to kick or pull hard on the reins, or Friendly would get angry. The staff person assuaged plaintiff that things would be fine once they got on the trail and all she had to do was hang on to the saddle horn and push off the trees if the horse got close. Friendly was still acting "nervous and jerky" at the time the staff person released Friendly at the trailhead to start down the trail. Unfortunately, no sooner had they

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gotten into the woods, a deer crossed the trail in front of them, causing Friendly to rear up and spin around, causing plaintiff to scream. The guide leading the party, yelled back to plaintiff, telling her not to scream, because it was scaring the horse. Once Friendly calmed down, plaintiff was able to catch up to her party, but the situation quickly devolved into "an absolute nightmare." The trail was replete with one puddle after another, and the horses would balk at going through them, at times stumbling. Friendly stumbled about ten times. On one point, Friendly simply refused to go through the puddle, entering the brush and rejoining the trial after passing the puddle. Plaintiff told the guide that Friendly did not want her riding, and the guide responded "I know, I know" and instructed her nevertheless to keep going, pushing off the trees. Plaintiff persevered, with Friendly becoming more and more unruly, stepping into the woods and seemingly intentionally brushing against the trees. Plaintiff continued to voice her opinion to the guide that Friendly "wants me off and he's scaring me." About twenty minutes into the ride, Friendly hit a fairly big tree, catching plaintiff off guard. Her right leg got hung up in the tree, the leg being yanked backwards off the saddle, wrenching and twisting her whole torso. Plaintiff screamed at the feeling of being "shot through my hip and split into two." Plaintiff managed to stay on the horse, and for another half hour to the end of the ride.

As a result of being partially yanked from the saddle and violently contorted as a result, plaintiff alleges that she suffered injuries for which she seeks monetary recompense in this litigation. Her theory of recovery as plead in her complaint sounds in common-law negligence. Defendants' answer to the complaint raises several affirmative defenses, two of which are among the subjects of this motion. Defendants move for summary judgment dismissing the complaint as a matter of law. As stated in their notice of motion, such dispositive relief is appropriate upon four grounds: (1) "the horse had no vicious propensities," (2) "defendants had no notice of any vicious propensities," (3) the "doctrine of assumption of the risk" bars the action, and, in any event, (4) a release and waiver signed by plaintiff prior to riding the horse constitutes a complete defense to this action. Plaintiff opposes the motion, arguing, at the very least, that contested issues of material fact exist whether defendants' defenses have any merit under the circumstances of this action. Plaintiff cross-moves for dismissal of such of defendant's affirmative defenses as allege that plaintiff's culpable conduct either defeats or diminishes her claim against the defendants.

The rules or principles of law applicable to the motions before the Court are well-settled and not disputed. Generally, of course, without assumption of a either a contractual duty or impression of an implied duty as a matter of law, owners of animals are not strictly liable for all injuries their animals may cause. No argument is made that this is a case of strict liability. As such, plaintiff must satisfy the requirements of a common-law negligence action as instantiated in these types of cases. In this regard, settled decisional law requires that the plaintiff prove that the horse that plaintiff was riding had vicious propensities and that defendant had knowledge of such propensities or that they existed for such a period of time that a reasonably prudent person would have discovered them (*see Appel v Heinsohn, Inc. d/b/a Lakeside Riding Academy*, 91 AD2d 1029, aff'd 59 NY2d 741.

In the Court's view, the plaintiff has submitted sufficient evidence in the form of her own uncontradicted testimony gleaned at examination before trial and by affidavit from which the trier of fact may infer that on the day in question plaintiff's horse was of aggressive temperament manifesting behavior both recalcitrant and disobedient. If plaintiff's version of the facts is credited, the disconcerting behavior of the horse before embarking on the trail ride raised an issue whether the horse was unmanageable and unpredictable that day for whatever reason. So too, once on the trail, the continued behavior of the horse in seemingly targeting trees to brush up against to dislodge plaintiff could reasonably be viewed as notice to defendant's agent leading the trip that something was amiss. It is question of fact whether the trip leader should have "pulled the plug" and turned back to the trailhead once he knew how much difficulty plaintiff was having and the problems were not abating.

Further, in the Court's view, the doctrine of assumption of the risk and the waiver of liability form ostensibly signed by plaintiff do not perforce bar this action warranting summary judgment dismissing her action before trial. The assumption of risk doctrine reflects common law recognition that certain risks inhere in certain activities, that participants may be chargeable with knowledge of those risks, and not heard to complain when the foreseeable, albeit unfortunate, consequences of those risks occur. Here the trier of fact may infer that plaintiff did not assume the risk that those in charge of plaintiff and her party would not intervene to stop what the trier could infer was a potentially dangerous situation. So too, viewing the facts most favorably to plaintiff, as the Court must on this motion, there is at least a question of fact regarding whether the waiver or liability form

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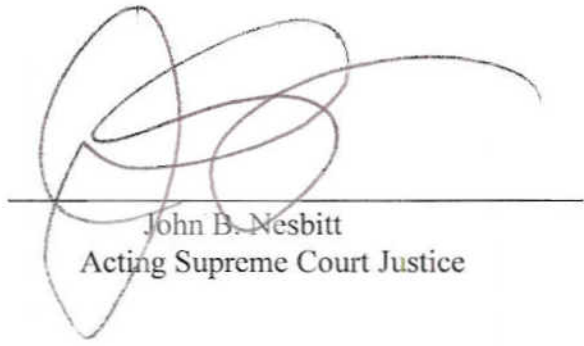
was signed by the plaintiff, and if so, its operative effect. It is at least arguable on this record that General Obligations Law §5-326 voids the waiver under the circumstances of this case because any instruction given plaintiff was merely incidental to the primary purpose of entertaining plaintiff and her party with a horseback ride.

Finally, plaintiff's cross-motion to dismiss certain of defendant's affirmative defenses is denied. Any culpability of plaintiff as the cause or as a contributing cause to her injuries is squarely one to be decided by the trier of fact.

Accordingly, the motions by plaintiff and defendants are denied. This decision shall constitute the order of the Court.

Dated: August 29, 2011
Lyons, New York



John B. Nesbitt
Acting Supreme Court Justice

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