

Decided on October 23, 2013

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT**

REINALDO E. RIVERA, J.P.
SANDRA L. SGROI
JEFFREY A. COHEN
SYLVIA O. HINDS-RADIX, JJ.

2012-01644
(Index No. 20641/09)

[*1]Gloria L. Ramirez, appellant,

v

Lucille Roberts Health Clubs, Inc., respondent.

Isaacson, Schiowitz & Korson, LLP, New York, N.Y. (Jeremy Schiowitz of counsel), for appellant.
Kenny & Zonghetti, LLC, New York, N.Y. (Kenneth B. Danielsen of counsel), for respondent.

DECISION & ORDER

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Kings County (Rothenberg, J.), dated December 19, 2011, which granted the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained personal injuries while participating in a step aerobics class at the defendant's fitness center. Prior to the subject incident, the

plaintiff had participated in at least 34 step aerobic classes at the defendant's facility and approximately 100 to 150 step aerobics classes in other facilities. The plaintiff commenced the instant action, and the defendant moved for summary judgment dismissing the complaint. The Supreme Court granted the motion.

The doctrine of primary assumption of risk provides that a voluntary participant in a sporting or recreational activity "consents to those commonly appreciated risks which are inherent in and arise out of the nature of the sport generally and flow from such participation" (*Morgan v State of New York*, 90 NY2d 471, 484; [see *Stach v Warwick Val. Cent. Sch. Dist.*, 106 AD3d 720](#), 721; [see *Lomonico v Massapequa Pub. Schools*, 84 AD3d 1033](#), 1034; [see *DiGiose v Bellmore-Merrick Cent. High School Dist.*, 50 AD3d 623](#), 624). In support of its motion, the defendant demonstrated its prima facie entitlement to judgment as a matter of law by establishing that, under the doctrine of primary assumption of risk, the plaintiff, an experienced participant in step aerobics classes, assumed the risk of injury by voluntarily participating in the subject class (*see Morgan v State of New York*, 90 NY2d at 484; *Berry v Bally Total Fitness Corp.*, 272 AD2d 354, 355). In opposition, the plaintiff failed to raise a triable issue of fact (*see Alvarez v Prospect Hosp.*, 68 NY2d 320, 324). Accordingly, the Supreme Court properly granted the defendant's motion for summary judgment dismissing the complaint. [*2]

RIVERA, J.P., SGROI, COHEN and HINDS-RADIX, JJ., concur.

ENTER:

Aprilanne Agostino

Clerk of the Court