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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU**

-----X
ROBERT LONDIN,

Plaintiff,

-against-

PALISADES LODGING CORPORATION,

Defendant.
-----X

**MICHELE M. WOODARD,
J.S.C.**

TRIAL/IAS Part 14

Index No.: 018393/07

Motion Seq. No.: 01

DECISION AND ORDER

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The Plaintiff alleges that on December 1, 2006 he was injured while exercising at a Comfort Inn & Suites in Nanuet, New York, operated by Palisades Lodging Corporation. At the time of the subject incident, Plaintiff was a guest at the Comfort Inn & Suites. Plaintiff alleges he was pedaling a recumbent exercise bicycle when the tension suddenly increased causing injury to his right knee.

Defendant moves by Notice of Motion for an order granting it summary judgment pursuant to CPLR §3212. Plaintiff opposes the motion.

In its motion, the Defendant argues that the complaint should be dismissed as Defendant did not have notice of the alleged defective condition of the bicycle. Defendant further argues that it cannot be held liable unless the Plaintiff can prove that the equipment was defective and that such a defect caused the alleged malfunction.

In support of its motion the Defendant submits affidavits from Lorrie Crouch, general manager of the Comfort Inn and Suites in Nanuet, New York and Peter Poczynok, a licenced engineer. On January 21, 2008 Mr. Poczynok inspected the subject exercise bicycle including the pedals, console and the wiring. Mr. Poczynok opined, "all were found to be in good working order without signs of defects or signs of damage." Mr. Poczynok further opined that the bicycle manifested no evidence of any defect or problem.

In opposition, the Plaintiff argues there is a triable issue of fact as to whether the subject exercise bicycle was defective. Plaintiff submits an affidavit from Fernando Valerio, a fitness equipment repair technician. Mr. Valerio inspected the subject bicycle on December 8, 2008. Mr. Valerio opined that the wiring connecting the lower control board to the computer was faulty. Mr. Valerio further opined that the defective wiring, "caused the computer to malfunction and the resistance to suddenly increase and jam the pedals, injuring Mr. Londin."

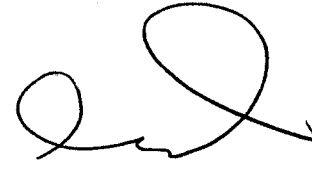
Plaintiff also argues there is a triable issue of fact as to whether Defendant had actual or constructive notice of the alleged defective condition of the bicycle. Plaintiff argues that, "defendant was on notice that the bicycle had a recurring problem" since the computer control panel of the subject exercise bicycle had malfunctioned and required repair on at least two occasions prior to Plaintiff's incident.

Plaintiff has satisfied his burden of demonstrating that there are triable issues of fact. Specifically, Plaintiff and Defendant have submitted affidavits with conflicting opinions as to the whether the subject exercise bike was defective. Conflicting expert affidavits raise issues of fact and credibility that cannot be resolved on a motion for summary judgment. *Bradley v. Soundview Healthcenter*, 4 AD 3d 194 (1st Dept 2004). Accordingly, Defendant's motion for summary judgment is **denied**.

It is hereby ordered, that the parties are directed to appear for a pre-trial conference on June 30, 2009 at 9:30 a.m. in DCM.

This constitutes the Decision and Order of the Court.

DATED: May 19, 2009
Mineola, N.Y. 11501

ENTERED 
HON. MICHELE M. WOODARD
MAY 28 2009
NASSAU COUNTY J.S.C.
COUNTY CLERK'S OFFICE