STATE OF NEW YORK
SUPREME COURT COUNTY OF WARREN

DEBORAH A. BOLAND,

Plaintiff,

v.

RIDING HIGH DUDE RANCH, INC.
d/b/a RIDIN HY RANCH RESORT,

Defendant.

DECISION AND ORDER

Index No. 58485
RJI No. 56-1-2013-0147

Alexander & Catalano, LLC, East Syracuse (*Peter J. Addonizio* of counsel), for plaintiff.

Roemer Wallens Gold and Mineaux, LLP, Albany (*Matthew J. Kelly* of counsel), for defendant.

ROBERT J. MULLER, J.S.C.

This action arises out of an incident occurring at the Riding High Dude Ranch, Inc. d/b/a Ridin Hy Ranch Resort [hereinafter Ranch] on June 2, 2012. The Ranch is in the business of providing trail rides of different challenges and plaintiff alleges she fell from a horse during one of these organized rides when the saddle became loose and caused her fall. On the morning of these events the plaintiff, a middle aged horseback rider with approximately ten hours of related experience over her lifetime, was assisted in mounting a horse with the intention of participating in a slow paced "beginner[s]" ride with a group of other participants. She describes testing the saddle and raising no complaints. While she, and several other riders, proceeded in a slow single file the animal in front of the plaintiff's stopped briefly several times causing her horse to stop as well. Within fifteen minutes of the ride's commencement, during one of these brief stops, plaintiff noticed the saddle had become loose. As her horse again began to move forward she attempted to straighten the saddle without success and fell. It is not clear from the record in this

motion *in limine* if the saddle came off of the horse but the plaintiff certainly did.

Plaintiff's narrow claim is that defendant was negligent in "failing to properly and/or adequately saddle the horse, secure the saddle and fasten and/or tighten the saddle and/or saddle equipment on the horse. The defense testimony is that plaintiff "was leaning to the right a little bit, [was] told ... to scoot her butt to the left and ... sit in the middle of the horse." The defendant asserts that not sitting in the middle of a saddle can cause it to slide off to the side.

The gravamen of this pre-trial motion is to strike the defendant's fifth affirmative defense pertaining to a written horse rental agreement and general release which is unarguably eviscerated by GOL § 5-326, a statute which deems such writings as void as against public policy and entirely unenforceable. The opposition's novel theory is that this unenforceable agreement's language can still be used, perhaps with redactions, to demonstrate the plaintiff's express awareness that saddles may loosen and riders may fall by reason thereof - that the jury should be aware of this documentary evidence that plaintiff has "inspected any and all equipment provided...and [was] satisfied with its condition." The more common injuries associated with horseback riding are mishaps due to the sudden and unintended actions of the animals, including those actions which result in the participant being thrown or falling. That does not seem to be the facts here.

While it is well recognized that participants in the sporting activity of horseback riding assume commonly appreciated risks inherent in the activity, such as being kicked (see *Dalton v. Adirondack Saddle Tours, Inc*., 40 A.D.3d 1169, 1171, 836 N.Y.S.2d 303 [2007]; *Tilson v. Russo*, 30 A.D.3d 856, 857, 818 N.Y.S.2d 311 [2006]), "[p]articipants will not be deemed to have assumed unreasonably increased risks" (*Corica v. Rocking Horse Ranch, Inc*., 84 A.D.3d

1566, 1567, 923 N.Y.S.2d 739 [2011]; see *Morgan v. State of New York*, 90 N.Y.2d 471, 486, 662 N.Y.S.2d 421, 685 N.E.2d 202 [1997]; *Tilson v. Russo*, 30 A.D.3d at 857, 818 N.Y.S.2d 311). " '[A]n assessment of whether a participant assumed a risk depends on the openness and obviousness of the risks, the participant's skill and experience, as well as his or her conduct under the circumstances and the nature of the defendant's conduct' " (*Corica v. Rocking Horse Ranch, Inc.*, 84 A.D.3d at 1567, 923 N.Y.S.2d 739, quoting *Rubenstein v. Woodstock Riding Club*, 208 A.D.2d 1160, 1160, 617 N.Y.S.2d 603 [1994]).

Assumption of a risk is predicated not upon plaintiff's intervening act, but upon their agreement, express or implied, not to hold defendant responsible for the injury-causing act, negligent though it may have been, which resulted from plaintiff's entering into the activity with knowledge of its danger, or under circumstances from which it could be found that they should have had such knowledge (id.; Restatement [Second] of Torts §§ 496A–496F).

The Court is not persuaded that the release language sufficiently addresses the question of whether the plaintiff was aware that the saddle could loosen regardless of the cause for it. To this extent the motion *in limine* is granted. It is not, however, to be inferred by this ruling that defense counsel is prohibited from attempting to adduce proof at trial of either assumption of risk or the plaintiff's own contributory negligence - merely that there shall be no evidence related to the horse rental agreement and liability release.

The original of this Decision and Order has been filed by the Court. The Notice of Motion In Limine dated March 4, 2016 has been filed by the Court together with the submissions

referenced below. Counsel for plaintiff is hereby directed to promptly obtain a filed copy of the Decision and Order for service with notice of entry upon defendant in accordance with CPLR 5513.

Dated: April 6, 2016
Lake George, New York

ROBERT J. MULLER, J.S.C.

ENTER:

Papers Reviewed:

1. Notice of Motion in Limine dated March 4, 2016;
2. Affirmation of Peter J. Addonizio, Esq. dated March 4, 2016 together with Exhibits "A" through "K";
3. Affidavit in Opposition of Matthew J. Kelly, Esq. sworn to March 25, 2016 and
4. Reply Affirmation of Peter J. Addonizio, Esq. dated March 28, 2016.