

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU-----X
Yael Sebagh

Index No.: 606781/2016

Plaintiff,

NOTICE OF APPEAL

-against-

CAPITAL FITNESS, INC., CAPITAL FITNESS-
ROOSEVELT, LLC d/b/a XSPORTS FITNESS, and
SIMON PROPERTY GROUP, L.P.Defendants.
-----X

PLEASE TAKE NOTICE that Defendants, by their attorneys, LITCHFIELD CAVO, LLP, hereby appeal to the Appellate Division, Second Department, from a Decision and Order of this Court in favor of the Defendants, with said decision being entered with the Clerk of the Supreme Court of the County of Nassau on May 30, 2019. Defendants appeal from each and every part of said Order by which is aggrieved as well as from the whole thereof. A copy of said Order is annexed hereto.

Dated: New York, New York
June 26, 2019



Patricia A. Carbone
Litchfield Cavo LLP
420 Lexington Avenue, Suite 2104
New York, New York 10170
(212) 434-0100
File No: 9074-4407
Attorneys for Defendants

TO:

LEAHEY & JOHNSON, P.C.
120 Wall Street, Suite 2200
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(212)269-7308
Attorneys for Plaintiff

Supreme Court of the State of New York

Appellate Division: Second Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

| | | |
|---|---|---|
| Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended. | | For Court of Original Instance Date Notice of Appeal Filed |
| YAEL SEBAGH - against - CAPITAL FITNESS INC, CAPITAL FITNESS-ROOSEVELT LLC d/b/a XSPORT FITNESS and SIMON PROPERTY GROUP LP | | For Appellate Division |
| Case Type | <input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding | Filing Type |
| <input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 | | |
| <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review | | |
| Nature of Suit: Check up to three of the following categories which best reflect the nature of the case. | | |
| <input type="checkbox"/> Administrative Review | <input type="checkbox"/> Business Relationships | <input type="checkbox"/> Commercial |
| <input type="checkbox"/> Declaratory Judgment | <input type="checkbox"/> Domestic Relations | <input type="checkbox"/> Election Law |
| <input type="checkbox"/> Family Court | <input type="checkbox"/> Mortgage Foreclosure | <input type="checkbox"/> Miscellaneous |
| <input type="checkbox"/> Real Property (other than foreclosure) | <input type="checkbox"/> Statutory | <input type="checkbox"/> Taxation |
| | | <input checked="" type="checkbox"/> Contracts |
| | | <input type="checkbox"/> Estate Matters |
| | | <input type="checkbox"/> Prisoner Discipline & Parole |
| | | <input checked="" type="checkbox"/> Torts |

Informational Statement - Civil

| Appeal | |
|--|--|
| Paper Appealed From (Check one only): | If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper. |
| <input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input type="checkbox"/> Decision <input type="checkbox"/> Decree | <input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment |
| <input checked="" type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment | <input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify): |
| Court: Supreme Court | County: Nassau |
| Dated: 06/26/2019 | Entered: June 4, 2019 |
| Judge (name in full): ANTHONY L. PARGA | Index No.: 606781/2016 |
| Stage: <input checked="" type="checkbox"/> Interlocutory <input type="checkbox"/> Final <input type="checkbox"/> Post-Final | Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury |
| Prior Unperfected Appeal and Related Case Information | |
| Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, please set forth the Appellate Division Case Number assigned to each such appeal. | |
| Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case: N/A | |
| Original Proceeding | |
| Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus | Date Filed: |
| Statute authorizing commencement of proceeding in the Appellate Division: | |
| Proceeding Transferred Pursuant to CPLR 7804(g) | |
| Court: Choose Court | County: Choose County |
| Judge (name in full): | Order of Transfer Date: |
| CPLR 5704 Review of Ex Parte Order: | |
| Court: Choose Court | County: Choose County |
| Judge (name in full): | Dated: |
| Description of Appeal, Proceeding or Application and Statement of Issues | |
| <p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>Defendant appeals from each and every part of the Order of the Honorable Anthony L. Parga dated May 30, 2019 and entered June 4, 2019 granting plaintiff's cross-motion for summary judgment and awarding summary judgment to plaintiff on liability against defendant and dismissing certain affirmative defenses raised by defendants. In addition, the action against Simon Property Group should have been dismissed.</p> | |

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Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

Plaintiff's cross-motion for summary judgment should have been denied as issues of fact exist as to whether a dangerous condition existed at the time of plaintiff's alleged accident, whether defendants had notice of the dangerous condition existing at the time of plaintiff's alleged accident and whether plaintiff assumed the risk of her injuries. In addition, the action against Simon Property Group should have been dismissed.

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

| No. | Party Name | Original Status | Appellate Division Status |
|-----|--|-----------------|---------------------------|
| 1 | Yael Sebagh | Plaintiff | Respondent |
| 2 | Capital Fitness Inc. | Defendant | Appellant |
| 3 | Capital Fitness-Roosevelt LLC d/b/a XSport Fitness | Defendant | Appellant |
| 4 | Simon Property Group LP | Defendant | Appellant |
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| Attorney Information | | | |
|--|-----------|------------|----------------------------|
| Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided. | | | |
| Attorney/Firm Name: Jason Pagel/Leahey & Johnson, PC | | | |
| Address: 120 Wall Street, Suite 2200 | | | |
| City: New York | State: NY | Zip: 10005 | Telephone No: 212-269-7308 |
| E-mail Address: | | | |
| Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice | | | |
| Party or Parties Represented (set forth party number(s) from table above): 1 | | | |
| Attorney/Firm Name: Patricia A. Carbone/Litchfield Cavo LLP | | | |
| Address: 420 Lexington Avenue, Suite 2104 | | | |
| City: New York | State: NY | Zip: 10170 | Telephone No: 212-434-0100 |
| E-mail Address: | | | |
| Attorney Type: <input checked="" type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice | | | |
| Party or Parties Represented (set forth party number(s) from table above): 2, 3, 4 | | | |
| Attorney/Firm Name: | | | |
| Address: | | | |
| City: | State: | Zip: | Telephone No: |
| E-mail Address: | | | |
| Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice | | | |
| Party or Parties Represented (set forth party number(s) from table above): | | | |
| Attorney/Firm Name: | | | |
| Address: | | | |
| City: | State: | Zip: | Telephone No: |
| E-mail Address: | | | |
| Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice | | | |
| Party or Parties Represented (set forth party number(s) from table above): | | | |
| Attorney/Firm Name: | | | |
| Address: | | | |
| City: | State: | Zip: | Telephone No: |
| E-mail Address: | | | |
| Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice | | | |
| Party or Parties Represented (set forth party number(s) from table above): | | | |
| Attorney/Firm Name: | | | |
| Address: | | | |
| City: | State: | Zip: | Telephone No: |
| E-mail Address: | | | |
| Attorney Type: <input type="checkbox"/> Retained <input type="checkbox"/> Assigned <input type="checkbox"/> Government <input type="checkbox"/> Pro Se <input type="checkbox"/> Pro Hac Vice | | | |
| Party or Parties Represented (set forth party number(s) from table above): | | | |

Informational Statement - Civil

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