



Keleman v. Quinton Fitness Equipment

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Sullivan, J.P., Nardelli, Buckley, Catterson, Kavanagh, JJ.

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Plaintiff claims that she fell off a treadmill when it suddenly increased in speed after her hand inadvertently struck the control panel's acceleration button, and submits an engineer's opinion that the treadmill was defectively designed in that its acceleration button was located only five inches from the right edge of the control panel where a user might be expected to hold onto the treadmill for balance. However, plaintiff, at her deposition, unequivocally stated that her hands did not touch the speed buttons on the treadmill's control panel just before the belt unexpectedly speeded up. Given such testimony, neither the alleged design defect, nor any failure to warn against holding onto the edges of the control panel, could have been a proximate cause of the accident. Plaintiff's attempt to defeat summary judgment with an affidavit in opposition re-characterizing the plain meaning of her testimony was properly rejected (see *Blackmon v Dinstuhl*, 27 AD3d 241 [2006]). We have considered and rejected plaintiff's other arguments.

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

