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NYSCEF DOC. NO. 27

RECEIVED NYSCEF: 02/26/2021

At an I.A.S. Trial Term, Part 84of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at Civic Center, Borough of Brooklyn, City and State of New York, on the 8th day of February 2021

PRESENT:

Hon. CAROLYN E. WADE

Justice

IRENE PIKER,

Cal. No.

Plaintiff(s)

Index No. 511092/2019

Seg 2

- against -

BROOKLYN BOULDERS LLC, and BROOKLYN BOULDERS,

DECISION/ORDER

Defendant(s)

The following papers numbered 1	l to	read	on	this	motion	Papers Numbered
Notice of Motion - Order to Show Cause and Affidavits (Affirmations) Annexed						1
Answering Affidavit (Affirmation)			4			1 2
Reply Affidavit (Affirmation)		742				
Affidavit (Affirmatio	n)					
Pleadings - Exhibits						
Stipulations - Minutes						
Filed Papers						

Jpon the foregoing cited papers, and after oral argument, the defendants' motion to compel arbitration and stay this action is <u>JRANTED</u>. This Court credits Plaintiff's contention that that the waiver of liability provision of the agreement should be rendered oid and unenforceable. Specifically, General Obligations Law section 5-326 provides that a release from liability signed by a plain s void when a defendant's facility is recreational in nature, and the plaintiff pays a fee for its use (see *Lee v. Brooklyn Boulders*, 156 AD3d 689 [2d Dept. 2017]). Defendants cite *Scott v. Tough Mudder*, 63 Misc3d 843, 857 [Sup Ct, Kings Cty. 2019], which states t [w]here an agreement consists partially of an unlawful objective, the court 'may sever the illegal aspects...and enforce the legal one o long as the illegal aspects are incidental to the legal aspects and are not the main objective of the agreement'" [citations omitted]. he instant case, this Court hereby severs the waiver of liability provision from the subject agreement, as it is void and unenforceable lowever, the arbitration provisions will remain, as they are clearly outlined in the agreement, and contain a bold heading. Plaintiff not submitted any legal authority to support rendering the entire agreement unenforceable.

his constitutes the Decision/Order of the Court.

For Clerks use only

MG_V

MD_ Motion Seq. #

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EJV-rev 11-04

ENTER

Hon. Carolyn E. Wade

Hon. Carolyn E. Wade Supreme Court Justice

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