

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D18245
O/kmg

_____AD3d_____

Argued - January 28, 2008

ROBERT A. SPOLZINO, J.P.
FRED T. SANTUCCI
DANIEL D. ANGIOLILLO
RUTH C. BALKIN, JJ.

2007-00050

DECISION & ORDER

Peter Gillen, appellant, v Nassau Semi-Fast
Softball League, respondent, et al., defendant.

(Index No. 6847/05)

Bisogno & Meyerson, Brooklyn, N.Y. (Elizabeth Mark Meyerson of counsel), for
appellant.

Molod Spitz & DeSantis, P.C., New York, N.Y. (Marcy Sonneborn and Alice Spitz
of counsel), for respondent.

In an action to recover damages for personal injuries, the plaintiff appeals from an
order of the Supreme Court, Nassau County (Robbins, J.), dated October 24, 2006, which granted
the motion of the defendant Nassau Semi-Fast Softball League for summary judgment dismissing the
complaint insofar as asserted against it.

ORDERED that the order is affirmed, with costs.

The plaintiff was injured while playing catcher in a softball league game when he
collided with a base runner from the opposing team near home plate. The defendant Nassau Semi-
Fast Softball League (hereinafter the League) established its entitlement to judgment as a matter of
law by demonstrating that the risk of such collision with another player is inherent in the sport of
softball (*see Morgan v State of New York*, 90 NY2d 471; *Rich v West Shore Little League Baseball,
Inc.*, 209 AD2d 396). Therefore, the plaintiff assumed that risk by participating in the softball game,
and the League cannot be held liable for her injuries. In opposition, the plaintiff failed to present

March 4, 2008

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evidence sufficient to raise a triable issue of fact.

SPOLZINO, J.P., SANTUCCI, ANGIOLILLO and BALKIN, JJ., concur.

ENTER:

A handwritten signature in black ink, reading "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court