

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

D26529
H/kmg

_____AD3d_____

Submitted - February 16, 2010

REINALDO E. RIVERA, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
SHERI S. ROMAN, JJ.

2009-02510

DECISION & ORDER

Phillip Cappadora, appellant, v Orange-Ulster
BOCES, et al., respondents, et al., defendants.

(Index No. 5184/07)

Foulke Law Offices, Goshen, N.Y. (Evan M. Foulke of counsel), for appellant.

LaRose & LaRose, Poughkeepsie, N.Y. (Keith V. LaRose of counsel), for respondent
Orange-Ulster BOCES.

Cascone & Kluepfel, LLP, Garden City, N.Y. (Gary Austin Manso of counsel), for
respondent Joint Recreation Commission of the Town and Village of Goshen.

In an action to recover damages for personal injuries, the plaintiff appeals from an order of the Supreme Court, Orange County (Owen, J.), dated April 3, 2009, which granted the separate motions of the defendant Orange-Ulster BOCES, and the defendant Joint Recreation Commission of the Town and Village of Goshen, for summary judgment dismissing the complaint insofar as asserted against each of them.

ORDERED that the order is affirmed, with costs.

In support of their separate motions for summary judgment, the defendants Orange-Ulster BOCES and Joint Recreation Commission of the Town and Village of Goshen made prima facie showings of entitlement to judgment as a matter of law by demonstrating that, pursuant to the doctrine of primary assumption of risk, they owed no duty to the plaintiff (*see Maddox v City of New York*, 66 NY2d 270, 274-275; *Lombardo v Cedar Brook Golf & Tennis Club, Inc.*, 39 AD3d 818,

April 20, 2010

Page 1.

CAPPADORA v ORANGE-ULSTER BOCES

819; *Joseph v New York Racing Assn.*, 28 AD3d 105, 108-109; *Barbato v Hollow Hills Country Club*, 14 AD3d 522). In opposition, the plaintiff failed to raise a triable issue of fact.

RIVERA, J.P., ANGIOLILLO, DICKERSON and ROMAN, JJ., concur.

ENTER:

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

James Edward Pelzer
Clerk of the Court