

Lubliner v Hampton Hills Assoc.
2026 NY Slip Op 31072(U)
March 20, 2026
Supreme Court, New York County
Docket Number: Index No. 152242/2022
Judge: Brendan T. Lantry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BRENDAN T. LANTRY PART 46M

Justice

-----X
INDEX NO. 152242/2022

JERRY A. LUBLINER,

Plaintiff,

MOTION DATE 09/30/2024,
06/26/2025

- v -

MOTION SEQ. NO. 003 004

HAMPTON HILLS ASSOCIATES, HAMPTON HILLS GOLF
AND COUNTRY CLUB

Defendants.

**DECISION + ORDER ON
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 003) 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 86, 87, 88, 89

were read on this motion for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 90, 91, 92, 93, 94, 95, 96, 97, 98, 100, 101, 102, 103, 120, 122

were read on this motion for JUDGMENT - SUMMARY.

This action arises from injuries allegedly sustained by Plaintiff Jerry A. Lubliner (hereinafter, "Plaintiff") on May 30, 2020 at Hampton Hills Golf and Country Club located at County Road 31, Westhampton Beach, New York (hereinafter, "Hampton Hills"). Plaintiff claims that, while on the fairway of the seventh hole of the golf course, he was struck by a golf ball hit by another golfer, Alan Rapfogel (hereinafter, "Rapfogel").

On September 30, 2024, Defendant Hampton Hills Associates and Defendant Hampton Hills Golf and Country Club (hereinafter, "Defendants") moved, by Notice of Motion, for summary judgment pursuant to CPLR 3212. In support of their motion, Defendants submitted "declarations" of professional golf course architect Barry Jordan and Professional Golfers' Association (hereinafter, "PGA") professional Jack McGown (*see* NYSCEF Doc. Nos. 63 and 64). The Plaintiff opposed the motion. The court denied Defendants' motion by Decision and Order dated April 28, 2025 ("April 28, 2025 Decision and Order") (*see* NYSCEF Doc. No. 86). Citing *Matter of Grandsard v Hutchinson*, 227 AD3d 491 [1st Dept 2024], the court found that Defendants' submitted "declarations" were not in admissible form pursuant to CPLR 2106 and, therefore, Defendants had not met their burden to succeed on a motion for summary judgment.

This matter, including the instant motion, was transferred to the signing jurist on January 28, 2026.

Defendants now move, by Notice of Motion, for (1) leave to reargue their motion for summary judgment and (2) a modification of the court's April 28, 2025 Decision and Order insofar as to grant Defendants' motion for summary judgment and dismiss Plaintiff's complaint. Plaintiff opposes Defendants' motions. For the reasons set forth herein, Defendants' motion to reargue pursuant to CPLR 2221(d) is granted. Defendants' motion for summary judgment pursuant to CPLR 3212 is granted.

Defendants' Motion to Reargue

Defendants, moving for leave to reargue their motion for summary judgment, acknowledge that the previously submitted "expert declarations" did not include the requisite language pursuant to CPLR 2106. Defendants argue, however, that the absence of said language was a "harmless error that should have either been overlooked or given a chance to cure pursuant to CPLR 2001 and CPLR 2101."

Defendants argue that, in its April 28, 2025 Decision and Order, the court misapprehended the law. Defendants argue that *Matter of Grandsard v Hutchinson*, 227 AD3d 491 [1st Dept 2024] a case on which the court relied, is a matter involving Election Law requirements and defects, containing "facts and circumstances highly distinguishable" from the instant matter and that therefore, the court's reliance on same amounts to a misapprehension of the law.

Defendants further argue that CPLR 2101 and 2001 provide for defects in papers to either be disregarded or corrected and that New York courts "prefer matters to be decided on the merits as opposed to human error as it relates to form" (*see* Affirmation in Support of Motion to Reargue, dated June 26, 2025 at ¶ 16 [NYSCEF Doc. No. 91]).

Defendants note that their deficiencies have since been cured and that Plaintiff did not raise any objection to the form or admissibility of Defendants' expert submissions in their opposing papers prior to the April 28, 2025 Decision and Order. Defendants contend that their motion for summary judgment would be granted if decided on the merits and that it would thus be against public policy for the court to not consider same.

Plaintiff's Opposition to Defendants' Motion to Reargue

Plaintiff opposes Defendants' motion for leave to reargue. Plaintiff argues that Defendants failed to submit admissible expert affirmations in their motion for summary judgment and that the court appropriately relied upon *Grandsard* in denying their motion. Plaintiff argues that Defendants' corrected expert submissions are "new evidence" and thus improper in the context of a motion to reargue.

Plaintiff argues that Defendants fail to demonstrate that the court overlooked any facts or misapplied the law and that a motion to reargue is not "designed as a means to enable parties to correct the previously submitted evidence or to present the same arguments made in the prior motion." Plaintiff further argues that Defendants' reliance on CPLR 2001 is improper and that their public policy argument should likewise be rejected. Plaintiff opposes Defendants' contention that their summary judgment motion would have been granted if decided on the merits.

Defendants' Motion for Summary Judgment

Defendants, in moving for summary judgment, argue that on May 30, 2020, Plaintiff assumed the inherent risk of being struck by a golf ball. Defendants argue that Plaintiff, with over 40 years of golf experience and over 22 years of experience playing golf at Hampton Hills, was an experienced golfer with "extreme" familiarity with the Hampton Hills course and that he therefore appreciated the inherent risk of being struck by a golf ball on the date of the incident. Defendants argue that the condition of the seventh hole at Hampton Hills was open and obvious and that a "blind spot" does not unreasonably enhance the inherent risk of being hit by a golf ball.

Defendants argue that the members of Hampton Hills, including Plaintiff, were aware that there was a portion of the fairway on the seventh hole that cannot be seen from the tee box, and that on the date of the incident, Plaintiff again became aware of same as he had left the tee box moments before the incident. Defendants argue that they did not negligently maintain, operate, or manage the golf course and that they should not be held liable where the condition of the seventh hole presents no unreasonable enhancement of the risk that Plaintiff assumed.

Defendants further argue that Rapfogel had a duty to ensure that Plaintiff was not in the area in which he was hitting his golf ball and that, but for Rapfogel's reckless conduct, Plaintiff would not have been injured. Defendants argue that, if their motion for summary judgment is denied, the court should find that Defendants are entitled to full indemnification and contribution from Rapfogel of any damages claimed by Plaintiff.

Plaintiff's Opposition to Defendants' Motion for Summary Judgment

Plaintiff, in opposition to Defendants' motion for summary judgment, argues that Defendants unreasonably enhanced the risk of golfers being struck with golf balls. Plaintiff argues that Defendants were aware of the blind spot on the fairway of the seventh hole and that Plaintiff has raised a triable issue of fact as to whether Defendants unreasonably enhanced the risk of a golfer striking Plaintiff.

Plaintiff argues that, on the date of the incident, it was the first date in which he had not seen a ranger at the seventh hole and that Plaintiff therefore "did not assume any usual risk while under the expected comfort of the ranger" (*see* Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment, dated November 8, 2024 [NYSCEF Doc. No. 72]).

Plaintiff further argues that the usual deployment of a ranger at the seventh hole demonstrates that Defendants had notice that the failure to have proper warnings at this hole unreasonably enhanced the risk to golfers.

Plaintiff argues that Defendants had an obligation to maintain the course in a reasonably safe condition to protect the safety of the golfers and that they breached their duty to Plaintiff. Plaintiff argues that the assumption of risk doctrine does not apply here to completely bar recovery and that there are issues of fact as to whether Plaintiff assumed the risk of being struck by a golf ball under the unique circumstances of this case and whether Defendants unreasonably enhanced the risk.

Discussion

Motion to Reargue

“A motion for leave to reargue shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion...” (CPLR 2221(d)(2)). “[A] motion for reargument, addressed to the discretion of the court, is designed to afford a party an opportunity to establish that the court overlooked or misapprehended the relevant facts, or misapplied any controlling principal of law. Its purpose is not to serve as a vehicle to permit the unsuccessful party to argue once again the very questions previously decided” (*Pro Brokerage, Inc. v Home Ins. Co.*, 99 AD2d 971 [1st Dept 1984] [citations omitted]). Defendants argue that, in its April 28, 2025 Decision and Order (hereinafter, “the April 28th Decision”), the court misapprehended the law. The court agrees.

A court is “generally limited to the issues or defenses that are the subject of the motion” (*Rosenblatt v St. George Health and Racquetball Assoc., LLC*, 119 AD3d 52 [2nd Dept 2014] [citations omitted]). Indeed, “as a general matter, a court should not examine the admissibility of evidence submitted in support of a motion for summary judgment unless the nonmoving party has specifically raised that issue in its opposition to the motion” (*Bank of N.Y. Mellon v Gordon*, 171 AD3d 197, 202 [2nd Dept 2019] [citations omitted]; see *Rosenblatt* [finding that the trial court erred in making a sua sponte determination that a deposition transcript was inadmissible due to the lack of certification without affording the moving party an opportunity to correct the error prior to denying their motion for summary judgment]).

Pursuant to CPLR 2106(a),

The statement of any person wherever made, subscribed and affirmed by that person to be true under the penalties of perjury... may be used in an action in New York in lieu of and with the same force and effect as an affidavit... and any other sworn statement. Such affirmation shall be in substantially the following form:

I affirm this ___ day of _____, _____, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters I believe it to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

(Signature)

In its April 28th Decision, the court, relying on *Matter of Grandsard v Hutchinson*, 227 AD3d 491 [1st Dept 2024], found that Defendants failed to meet their burden for summary judgment because their submitted expert “declarations” were not in admissible form pursuant to CPLR 2106. In *Grandsard*, the Appellate Division, First Department, unanimously affirmed the trial court’s finding that a petition failed to adhere to the requirements of Election Law § 16-116 and CPLR 2106 and was therefore unverified. The court finds that the facts and circumstances in the instant matter are significantly different from those in *Grandsard*, where the issue presented to

the court was the insufficiency of a petition, thereby necessitating an analysis and determination of same.

Election Law pleadings, filings, and related procedures are distinct, and noncompliance with their mandates can be fatal, leaving the court without discretion to excuse the defect (*see Seawright v Board of Elections*, 35 NY3d 227 [2020]; *Fuentes v Catalano*, 165 AD3d 1010, 1013 [2d Dept 2018]).

In contrast, here, the court was presented with a motion for summary judgment in a civil matter not involving the Election Law. In support of their motion, Defendants submitted expert declarations that did not contain the language required pursuant to CPLR 2106. Plaintiff did not raise this defect in his opposition (*see* NYSCEF Doc. Numbers 72-78). The Plaintiff's opposition was limited to the merits of the motion (i.e., a question of fact analysis). Therefore, in accordance with *Rosenblatt* and *Bank of N.Y. Mellon*, it was improper for the court to sua sponte deem the expert declarations inadmissible when the issue had not been raised. The court should have either afforded Defendants an opportunity to correct their error or decided the motion on the merits.

Moreover, pursuant to CPLR 2101(f),

A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court, and leave to correct shall be freely given. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections.

As noted, *supra*, Plaintiff failed to object to the form of Defendants' expert submissions and therefore waived same (*see Devonshire Surgical Facility, LLC v Allstate Ins. Co.*, 38 Misc.3d 127(A) [1st Dept 2012]). Therefore, the court respectfully finds that, in the April 28th Decision, the court misapprehended the law. Accordingly, Defendants' motion to reargue its motion for summary judgment is granted. The court will now turn to the merits therein, including the now-corrected expert affirmations (*see* NYSCEF Doc. Nos. 93 and 94).

Summary Judgment

It is well-settled that a "proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v NYU Med Ctr*, 64 NY2d 851, 853 [1985] [citations omitted]). "Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers." (*Id.*). The motion must be supported by evidence in admissible form (*see Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Once this showing has been made, the burden shifts to the opposing party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). "[T]he motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility" (*Garcia v J.C. Duggan, Inc.*, 180 AD2d 579, 580 [1st Dept 1992] [citation omitted]).

“Under the primary assumption of risk doctrine, ‘[a] person who chooses to participate in a sport or recreative activity consents to certain risks that are inherent in and arise out of the nature of the sport generally and flow from such participation.’” (*Katleski v Cazenovia Golf Club, Inc.*, 44 NY3d 212, 218 [2025] [citations omitted]). “[I]t is not necessary to the application of assumption of risk that the injured plaintiff have foreseen the exact manner in which [their] injury occurred, so long as [they are] aware of the potential for injury of the mechanism from which the injury results” (*Id*; *Grady v Chenango Val. Cent. Sch. Dist.*, 40 NY3d 89 [2023]). Further,

[T]he application of the assumption of risk doctrine in assessing the duty of care owed by an owner or operator of a sporting facility requires that the participant have not only knowledge of the injury-causing defect but also appreciation of the resultant risk, but awareness of risk is not to be determined in a vacuum. It is, rather, to be assessed against the background of the skill and experience of the particular plaintiff (*Morgan v State of New York*, 90 NY2d 471, 485 [1997] [citations omitted]).

“[R]isks which are commonly encountered or ‘inherent’ in a sport, such as being struck by a ball or bat in baseball, are ‘risks [for] which various participants are legally deemed to have accepted personal responsibility’” (*Bukowski v Clarkson Univ.*, 19 NY3d 353, 356 [2012] [citations omitted]). With respect to golf, “being hit without warning by a ‘shanked’ shot while one searches for one’s own ball reflects a commonly appreciated risk of golf” (*Anand v Kapoor*, 15 NY3d 946, 948 [2010] [citations omitted]). “It is well settled however, that ‘participants are not deemed to have assumed risks resulting from the reckless or intentional conduct of others, or risks that are concealed or unreasonably enhanced’” (*Katleski*, 44 NY3d at 219 [citations omitted]). “The risks of a sport can also be unreasonably enhanced through the negligent design or operation of a sports venue” (*Katleski*, 44 NY3d at 220).

In *Katleski*, a plaintiff, who was an experienced golfer, was struck by a mishit golf ball that was shot from a tee box which was installed to increase the difficulty of the third hole of a golf course. Defendant, an owner and operator of the golf course, moved for summary judgment, arguing that *Katleski* had voluntarily assumed the risk of being hit by a golf ball. The parties submitted conflicting expert affirmations in support of their motion and opposition, respectively.

The defendant in *Katleski*, citing numerous comparable facilities, contended that golf courses commonly lack clear visibility and barriers between holes, while *Katleski*’s expert opined that “the placement of [the tee box] on the third hole increased the risk to players on the seventh fairway ‘drastically’ beyond what they faced prior to the box’s installation or might have faced had a barrier or other protective measure been implemented” (*Katleski*, 44 NY3d at 221). In finding that summary judgment in favor of defendants was appropriate, the Court of Appeals held that “[i]t is not enough for [plaintiff] to show that the layout of the course was less safe than it ideally could have been; he must show that the design enhanced the inherent risk of being struck by a ball beyond what is customary in the sport” (*Id*).

Here, Defendants argue that the instant matter is akin to *Katleski*. The court agrees. In support of its summary judgment motion, Defendants submitted expert affidavits, deposition

testimony from the parties, email exchanges, photographs, a map of the golf course, and other related materials. Plaintiff's deposition established that he began golfing in 1996 or 1997 and that he has been a member of Hampton Hills since 1999. Plaintiff testified that, since he became a member of Hampton Hills and up until the date of the incident, he played golf twice a week. Plaintiff further testified that, at the time of the incident, he was in the middle of the fairway of the seventh hole, that he took a cart "to make sure that the coast was clear before [we] hit the ball," and that it was the first time he had not seen a ranger at the seventh hole.

On May 30, 2020, Plaintiff sent an email to Stanley Pine (hereinafter, "Pine"), the general manager of Hampton Hills, wherein Plaintiff noted that "the threesome behind [him] violated club policy to check ahead before they hit," and that Pine should "make it clear that it is the responsibility of the golfer to make sure the hole is clear before they hit." Plaintiff testified that his reference to "club policy" was a reference to general etiquette for golf players to check ahead before they hit.

Pine testified that there are "a dozen or more" blind spots at Hampton Hills and that it is common knowledge for golfers to check that the area is clear before they tee off. Pine testified that, upon joining Hampton Hills, members are instructed to check for blind spots. Pine further testified that, as of May 30, 2020, Hampton Hills did not have a protocol in place for rangers to monitor blind spots, but that if a ranger is in the vicinity of a blind spot, they are required to warn the player.

Defendants further submitted affidavits of professional golf course architect Barry Jordan (hereinafter, "Jordan") and PGA professional Jack McGown (hereinafter, "McGown") in support of the instant motion (*see* NYSCEF Doc. Nos. 92 and 94). Jordan stated that it is "common knowledge or golf course etiquette" for players to remain aware of other golfers' positions on the golf course (*see* NYSCEF Doc. No. 92). Jordan further stated that "[t]here is no official standard, regulation, rule, guideline, or authoritative text establishing a minimum standard or requirement for golf course design" and that "there is no industry requirement or standard mandating installation of a warning device such as a sign, light, bell, and/or having a ranger to warn of every concealed area of a course" (*see Id.*). Jordan opined that there is no need for a warning system at the seventh hole of Hampton Hills, as players have a "clear visible cue from the teeing area where they can see when players re-emerge onto the fairway approaching the green" (*see Id.*).

Jordan noted that bells or warnings are reserved for golf holes where players do not come back into view after they enter a blind spot, and that such is not the case at the Hampton Hills seventh hole (*see Id.*). Jordan stated that he "did not observe any concealed, unique or unreasonably dangerous conditions at the course at Hampton Hills," and that "[t]he low area of the seventh hole is not a unique in golf course design, rather it is typical" (*see Id.*).

McGown also opined that "it is not standard practice at golf courses to have a warning device or a ranger positioned at every area of the course from which a golfer could be concealed from view," as it is common knowledge for golfers to check that the area is clear before hitting their ball. McGown further opined that the seventh hole at Hampton Hills "is not unique and does not unreasonably enhance the risk of a player getting hit by a ball" (*see* NYSCEF Doc. No. 94).

Based upon Defendants' motion for summary judgment and the accompanying submissions, Defendants demonstrated their prima facie entitlement to judgment as a matter of law. It is well settled that being struck by a golf ball is an inherent and commonly appreciated risk of the sport (*see Anand*, 15 NY3d at 948). Plaintiff – an experienced golfer who played twice a week for approximately 21 years at Hampton Hills (over 2,000 times) – was aware of this risk. Plaintiff's assertion that a ranger was typically present at the seventh hole to prevent any incidents supports Defendants' argument that Plaintiff was aware of his surroundings and the risks associated with playing golf, specifically at a hole that contains a blind spot. Plaintiff's further assertion that he proceeded to the fairway of the seventh hole "to make sure that the coast was clear" likewise indicates that he was aware of the blind spot, yet continued to play on the course, even in the absence of a ranger.

Defendants' experts established that it was common knowledge among golfers for players to remain aware of other players' positions on the course and that, unlike other New York courses, the seventh hole at Hampton Hills is not a hole in which a warning or bell system would be required.

As the Defendants demonstrated their prima facie entitlement to judgment as a matter of law, the burden then shifts to the Plaintiff to raise a triable issue of fact.

While not appended to the Affirmation in Opposition to the instant motion (NYSCEF Doc. No. 120), the Plaintiff submitted Affidavits of Rapfogel and golf teaching professional William Smittle (hereinafter, "Smittle") in opposition to the September 30, 2024 Notice of Motion (*see* NYSCEF Doc. Numbers 75 and 77). Smittle opined that "industry customs and practice, especially when it comes to golf course safety, requires golf courses to provide warnings to golfers hitting from a tee box into a blind spot area" (*see* NYSCEF Doc. No. 77). Smittle opined that the absence of a ranger at the seventh hole of Hampton Hills on the date of the incident "enhanced the risk of [Plaintiff] being struck by a ball in that area" (*see Id.*). Rapfogel stated that, prior to the date of the incident, "a ranger was always located between the seventh hole T-box and the valley," and that he believes the accident would not have occurred had a ranger been present on that day.

The court acknowledges that the parties' experts maintain different positions regarding golf industry standards and whether Defendants' lack of a warning system or ranger at the seventh hole unreasonably enhanced the risk of Plaintiff being struck. Nonetheless, "[e]ven accepting the opinions of [Plaintiff's] expert that the course failed to meet applicable safety standards, the primary assumption of risk doctrine also encompasses risks involving less than optimal conditions" (*Katleski*, 225 AD3d 1030, 1036 [3rd Dept 2024] [citations omitted]).

As noted, *supra*, it has been clearly established that Plaintiff, an experienced golfer, was aware of the blind spot at the seventh hole of Hampton Hills and nevertheless continued with his activity despite the lack of presence of a ranger or a warning system and thus, the doctrine of primary assumption applies (*see Fritz v Walden Playboys M.C. Inc.*, 217 AD3d 1293, 1296 [3rd Dept 2023]). Plaintiff further failed to present evidence that blind spots on golf courses are governed by an established industry code, protocol, or rule, and otherwise failed to submit evidence to support the notion that Defendants unreasonably enhanced the risk of injury to players. Therefore, Plaintiff is "deemed to have assumed the risk as a matter of law." (*Katleski*, 44 NY3d,

222). Accordingly, the court finds that Defendants made a prima facie showing of entitlement to judgment as a matter of law and Plaintiff failed to raise a triable issue of fact.

Accordingly, it is hereby

ORDERED that Defendants' motion for leave to reargue its motion for summary judgment is granted; and it is further

ORDERED that, upon reargument, the court vacates the April 28, 2025 Decision and Order, and grants Defendants' motion for summary judgment; and it is further

ORDERED that the complaint is dismissed with costs and disbursements to Defendants as taxed by the Clerk upon the submission of an appropriate bill of costs; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the Decision and Order of the court.

3/20/2026 **MAR 20 2026**
DATE


BRENDAN T. LANTRY, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE

HON. BRENDAN T. LANTRY
J.S.C.