

Pantaleo v New Image Gymnastics Academy, Inc.

2007 NY Slip Op 31051(U)

April 23, 2007

Supreme Court, Suffolk County

Docket Number: 0015888/2003

Judge: Robert W. Doyle

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SUPREME COURT - STATE OF NEW YORK
POST-NOTE MOTION PART - SUFFOLK COUNTY

P R E S E N T :

Hon. ROBERT W. DOYLE
Justice of the Supreme Court

MOTION DATE 11-29-06
ADJ. DATE 1-24-07
Mot. Seq. # 001 - MG
002 - MG; CASEDISP

-----X			
REEECA PANTALEO, an infant by her mother	:	DECOLATOR, COHEN & DIPRISCO	
and natural guardian, LINDA PANTALEO, and	:	Attorneys for Plaintiffs	
LINDA PANTALEO, individually,	:	1399 Franklin Avenue, Suite 201	
	:	Garden City, New York 11530	
	:		
	:	HAVKINS ROSENFELD, et al.	
Plaintiffs,	:	Attorneys for Defendant New Image	
	:	114 Old Country Road, Suite 300	
- against -	:	Mineola, New York 11501	
	:		
NEW IMAGE GYMNASTICS ACADEMY, INC.	:	JOHN T. RYAN & ASSOCIATES	
d/b/a NEW IMAGE GYMNASTICS and	:	Attorneys for Defendant Deary's	
DEARY'S GYMNASTICS,	:	633 East Main Street, Suite 3	
	:	Riverhead, New York 11901	
Defendants.	:		
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Upon the following papers numbered 1 to 52 read on these motions for summary judgment; Notice of Motion/Order to Show Cause and supporting papers 1 - 16; 17 - 39; Notice of Cross Motion and supporting papers _____; Answering Affidavits and supporting papers 40 - 50; Replying Affidavits and supporting papers 51 - 52; Other _____; (and after hearing counsel in support and opposed to the motion) it is,

ORDERED that this motion (#001) by defendant Deary's Gymnastics (hereinafter "Deary's") for summary judgment and this motion (#002) by defendant New Image Gymnastics Academy, Inc. d/b/a New Image Gymnastics (hereinafter "New Image") are consolidated for the purposes of this determination; and it is further

ORDERED that this motion by defendant Deary Gymnastics for an order pursuant to CPLR 3212, granting it summary judgment dismissing plaintiff's complaint is granted; and it is further

ORDERED that this motion by defendant New Image Gymnastics Academy, Inc. d/b/a New Image Gymnastics for an order pursuant to CPLR 3212, granting it summary judgment dismissing plaintiff's complaint is granted.

Plaintiff Linda Pantaleo commenced this action on behalf of herself and her infant-daughter, plaintiff Rebecca Pantaleo (“Rebecca”), to recover damages for the alleged injuries sustained by Rebecca on December 15, 2002 while she was performing in a gymnastics meet in at Brentwood South Middle School gymnasium. As Rebecca was performing her last tumbling pass during the floor exercise, she felt her foot sink down into the floor, into a hole underneath the floor mat, causing her to sustain injuries to her right ankle. Rebecca, at the time of the accident, was a 10-year-old student at the Elite Gymnastics School, and she was wearing an ankle brace on her right ankle. The gymnastics meet was sponsored by defendant New Image. The gymnastics equipment, including the floor exercise mat, for the meet was rented from defendant Deary’s.

Defendant Deary’s now moves for summary judgment on the basis that plaintiffs have failed to demonstrate that the condition of the floor exercise mat was defective and the proximate cause of the infant plaintiff’s injuries. Defendant Deary’s also contends that the infant plaintiff by participating in the gymnastics meet assumed the risk of incurring an injury that is inherent, known and reasonably foreseeable in the field of competitive gymnastics. Defendant submits, the pleadings, copies of the deposition testimony of plaintiffs and defendants and the gymnastics’ equipment rental contract between defendants.

Defendant New Image also moves for summary judgment on the basis that the plaintiffs have failed to prove the existence of a dangerous or defective condition that New Image either created or had notice of. Defendant also asserts that the infant plaintiff was an experienced gymnast that was well aware of the risks associated with participating in the field of competitive gymnastics. Defendant submits, the pleadings, copies of the deposition transcripts of plaintiffs and defendants and plaintiff’s doctor’s notes.

Plaintiffs oppose both defendants’ motions on the grounds that the condition of the floor exercise mat posed an unreasonably increased risk to the infant plaintiff, which she did not assume merely by participating in the gymnastics meet and was the proximate cause of her injuries. Plaintiffs also contend that the defendants breached their duty of care by failing to reasonably inspect the floor during the course of the meet. Plaintiffs, submits, copies of the deposition testimony of plaintiffs and defendants, affidavit of Carol L. Alberts, plaintiff’s expert and a experts of the USGF’s Gymnastics Safety Manual.

Robin Thomas testified on behalf of defendant New Image at its deposition before trial. Ms. Thomas testified that she owns New Image Academy, Inc. with her partner, Carlos “Fidget” Harper. Ms. Thomas stated that there are 12 instructors that teach gymnastics to children of all ages and abilities and is a part of the USA Gymnastics, the governing body for competitive gymnastics in the United States. She also explained that she is a meet director and a professional member of USA Gymnastics and is required every four years to take a course in safety certification for one full day. Ms. Thomas stated that in a gymnastics meet the gymnasts perform in four events— the vault, the uneven bars, the floor event and the balance beam. Ms. Thomas stated that the events are held at gymnastics facilities and school gymnasiums. She explained that the floor exercise set up for a meet at a school’s gymnasium consists of the wooden gym floor, panels with coil springs, one and three-eighth inches to two inches of foam and then a carpet is placed on the foam. She stated that the floor exercise mat is 42 by 42 inches long and 42 inches wide and is made up using 7 rolls of 6 by 42 inch mats that are secured together with a clear sticky mat tape. She explained that each piece of flooring is laid down in opposite

directions so as to prevent sliding and that all the events' areas are covered with mats. She testified that coaches may also choose to place a landing mat, that is five by ten inches long and either one, four or eight inches thick, to help cushion their students' landing. Ms. Thomas stated that her facility sponsored the gymnastics meet on December 15, 2002 at the Brentwood South Middle School, in which Elite Gymnastics School's students, including Rebecca, competed. She stated that New Image rented the gymnastics' equipment from defendant Deary's. Ms. Thomas explained that the equipment was set up on the Friday night before the two day event and that the set up team consisted of 12 to 16 adults, who were supervised by a representative from Deary's. Ms. Thomas testified that prior to laying down the equipment her and her partner, along with the facility's janitorial staff, inspect the floor for any defects, such as warping or holes, and take measurements. Ms. Thomas testified that on the day of the competition Rebecca competed in the third session of the meet, which included 40 competitors from different gymnastic schools. She stated that Rebecca competed in all four events, uneven bars, balance beam, floor exercises and vault, in that respective order. Ms. Thomas stated that she was not aware that Rebecca had injured herself because Rebecca did not complain to her. Ms. Thomas testified that the equipment is checked each morning before the competition begins and is not checked again unless someone complains about the equipment. Ms. Thomas further testified that she did not receive any complaints regarding the equipment and is unaware of anyone having witnessed Rebecca's fall.

At her examination before trial, Rebecca testified that she competed in the New Image meet held at Brentwood Middle School on December 15, 2002 as a part of the Elite Gymnastics team. Rebecca testified that she competed in all four of the events and her order of events was the uneven bars, the balance beam, the floor exercise and the vault. Rebecca stated that she before performing her floor exercise routine she stretched. Rebecca testified that she injured her right ankle while performing her last tumbling pass, a roundoff back handspring with a tuck. She stated she was only able to perform a roundoff back handspring because she felt her foot go into a hole underneath the floor and her ankle pop, but she did not fall down. Rebecca testified that afterwards she could not really walk and when she told her coaches about injuring herself they told her to "tough it up and go on." Rebecca testified that after rubbing her ankle, she proceeded towards the vault event. She stated that she performed two practice vaults prior to performing her two competition vaults and she was able to correctly land at end of each of her vaults. She stated she did not inform her mother of her injury until after the meet even though she was able to speak to her mother after her floor exercise performance. Rebecca testified that her mother told her "to go sit down" with her team at the awards ceremony after the competition and she stayed for the entire duration. Rebecca stated that she did not inform any of the judges or Ms. Thomas about the hole in the floor. Rebecca further testified that approximately one month before the gymnastics competition while practicing at the gym, she twisted her right ankle and was told by her coach to get an ankle brace, which she was wearing during the competition.

At her examination before trial Linda Pantaleo testified that her daughter Rebecca started gymnastics in February of 1999 at New Image and began competing in gymnastics meets in late 1999 or early 2000. Mrs. Pantaleo testified that Rebecca had sustained a quadriceps injury in her right thigh, which she never received treatment for, prior to her December 15, 2002 injury. Mrs. Pantaleo stated Rebecca twisted her right ankle approximately eight months before the injury in question while she was performing her floor exercise and was told to buy a brace for her ankle. Mrs. Pantaleo stated that her and her mother went to see Rebecca compete on December 15th. She stated that her daughter's first rotation was the uneven bars, then the balance beam, the floor exercise was third and her final event was

the vault. Mrs. Pantaleo testified that she watched her daughter's routines from the bleachers and she noticed that during the floor exercise when Rebecca was performing her back handspring she "wobbled" when she landed. She stated that Rebecca did not perform the back tuck and she looked "off balance" when she landed. Mrs. Pantaleo testified that Rebecca finished her routine, saluted the judges and limped off the floor. She stated that she could not go down to Rebecca because parents are not allowed in the competition area. Mrs. Pantaleo testified she saw her daughter, who was crying and grabbing her right ankle, speak to her coach but then her daughter proceeded to the vaulting area. She stated Rebecca performed two practice vaults and two competitive vaulting landing them all without incident. Mrs. Pantaleo testified that Rebecca informed her in the awards' room that she hurt her ankle and "it really hurts". She testified that she did not notice her daughter put any ice on her ankle during the meet or at the awards' ceremony. Mrs. Pantaleo testified that before they left Brentwood Middle School they congratulated Ms. Thomas on her new baby but never informed Ms. Thomas of Rebecca's injury. Mrs. Pantaleo further testified that her nor Rebecca ever looked at the floor or underneath the floor and nor did they ask any of the parents, who dismantled the floor to check to see if there was a hole in the floor.

John Deary, the vice president of Deary's testified on behalf of Deary's that he owns the company with his brother, Peter Deary, who is the president and in 2002 they had eight to ten employees. Mr. Deary testified that his company primarily sells gymnastics equipment and merchandise but does a small amount of business in volleyball sales. He stated that Deary's rented the Stratum Floor Palmer Springs exercise mat to New Image for use at its gymnastics competition during the weekend of December 13-15, 2002. He stated that Robin Thomas or New Image were the event directors and were required to provide equipment setup and breakdown assistance to the Deary's representative. Mr. Deary further testified that contract called for FIG, Federation of International Gymnastics, equipment, which is the standard for gymnastics equipment. Mr. Deary testified that Adam Provost was the Deary's representative sent to oversee the setup and breakdown of the equipment. He stated Mr. Provost was not required to stay on site during the entire gymnastics competition but if he did choose to stay on site during the course of the meet, he would check all of the equipment throughout the gym between sessions to ensure everything is safe. Mr. Deary testified that the representative would walk over the floor exercise mat and perform a visual inspection looking for bumps in the foam. He stated that the representative would only check for spaces in between the sections of the floor if a complaint was made and if a problem was found, the representative would dismantle the entire floor to determine the cause of the problem. Mr. Deary stated that he learned of the infant plaintiff's injury after the lawsuit was commenced and he phoned Ms. Thomas to find out what happened. Mr. Deary further testified that Ms. Thomas informed him that one of the athletes was injured during the competition, but they never discussed any problems with the flooring.

Adam Provost also testified on behalf of Deary's, stating that he had been employed with Deary's since 2001 as a sales representative and his duties include, scheduling gymnastics' equipment for meet rentals, installations, and sales of gymnastics equipment. Mr. Provost testified that although he is not required to remain at the gymnastics meets for their entire duration, he is required to go to the meets, help with the installation and breakdown of the equipment rentals. Mr. Provost stated that he arrived at the Brentwood Middle School on Friday evening, December 13, 2002, to begin the set-up process for the weekend's gymnastics meet. Mr. Provost testified that his company requires that there are at least 10 to 15 adults, who are chosen by the gymnastics meet's event director, to help with the installation of the equipment and they are not required to have a background in unloading and installing

gymnastics equipment. Mr. Provost stated that upon his arrival at the school's gym he was worried about fitting the equipment in the space because the gym was small, but once informed by the event director, Ms. Thomas, that the competition would only require the usage of one set of rental equipment, instead of the customary two sets, his fears were subsided. Mr. Provost explained that he and Ms. Thomas then walked through the gym charting the apparatuses specific layout. Mr. Provost stated that he inspected the gym's standard wooden basketball floor before laying down the floor exercise mat but he did not check for warping or unevenness. Mr. Provost testified that the layout of the floor for the floor exercise consists of a 3 layer system, which was laid down with the help of five or six gentlemen, using a diagram of the initial layout of the floor exercise floor. Mr. Provost explained that the first layer of the floor consists of 50 sections of four feet by eight feet one-half inch thick fiberglass coated plywood panels, measuring forty feet by forty feet. He stated 32 springs are secured to the bottom of the plywood boards with the springs touching the gym floor. He stated the boards, which have been laid out 10 boards across and 5 boards down, are attached using H-shaped aluminum channels that are eight inches by three inches wide and duct taped. He then stated that 15 two-inch cloth webbing straps are then placed along the width and length of the floor to further secure the floor and to ensure no gaps exist between the panels. Mr. Provost explained that as an added precaution the H-channels and wood panels are then taped together. He then stated that after the first layer is completed he inspects it to ensure there are no gaps. He then explained that the second layer of the floor is laid down, which consists of a two and one-half inch foam border that is placed around the forty by forty foot perimeter, expanding the floor's measurements to forty-five by forty-five feet. He stated that six feet by forty-two foot rolls of one and three-eighth inch foam that has been secured with three strips of forty-two feet in length plastic or duct tape is placed on top of the wood panels and eight or ten strips of tape are also placed across the width of the rolls of foam. Mr. Provost stated that after an inspection is performed, the third layer of the floor is laid. He stated the third layer consists of one-eighth inch thick carpet, which is rolled out in the opposite direction of the way the foam was laid out, to prevent the seams from lining up. He stated the carpet has velcro sewn onto its ends and a roll of four inch wide velcro is placed underneath the carpet's seam and the two are "velcroed" together. He stated that a forty by forty white out-of-bounds tape is placed around the entire floor, but is not part of the system that secures the floor. Mr. Provost testified that after the entire floor is set-up he makes a visual inspection to ensure that the floor is perfectly square, there are no bumps and the seams are as tight as possible. Mr. Provost testified that before he leaves he always speaks with the event director to make sure that the equipment is set-up as required. He stated that the set-up for the New Image December competition took three to four hours to complete and he did not leave any equipment inspection instructions with Ms. Thomas. Mr. Provost testified that he did not return to the meet until Sunday, December 15 and when he arrived the competition was still occurring. Mr. Provost stated that no one complained to him about the floor exercise equipment nor did he hear of anyone stumbling during their floor exercise routine. Mr. Provost further testified that he walked around the gym while the events were occurring and did not notice anything out of the ordinary with the equipment.

On a motion for summary judgment the court's function is to determine whether issues of fact exist: not to resolve issues of fact or to determine matters of credibility; therefore, in determining the motion for summary judgment, the facts alleged by the nonmoving party and all inferences that may be drawn are to be accepted as true (*see, Roth v Barreto*, 289 AD2d 557, 735 NYS2d 197 [2001]; *O'Neill v Fishkill*, 134 AD2d 487, 521 NYS2d 272 [1987]). The failure of the moving party to make such a prima facie showing requires denial of the motion regardless of the insufficiency of the opposing papers

(*Sheppard- Mobley v King*, 10 AD3d 70, 778 NYS2d 98 [2004]). Once the movant's burden is met, the burden shifts to the opposing party to establish the existence of a material issue of fact (*Alvarez v Prospect Hosp.*, *supra*; *Zuckerman v New York*, 49 NYS2d 557, 427 NYS2d 595 [1980]). Where a plaintiff fails to submit any evidence that the condition alleged to have caused the injury was actually defective or dangerous, summary judgment must be granted in defendant's favor (*Przbyszewski v Wonder Works Construction, Inc.*, 303 AD2d 482, 755 NYS2d 435 [2003]).

It is fundamental that in order for a plaintiff to recover against a defendant in a negligence action, the plaintiff must prove that the defendant owed the plaintiff a duty and the breach of that duty resulted in the injuries sustained by the plaintiff (*Turcotte v Fell*, 68 NY2d 432, 510 NYS2d 49 [1986]; *Atkins v Glen Falls City Sch. Dist.*, 53 NY2d 325, 441 NYS2d 644 [1981]; *Kimbar v Estis*, 1 NY2d 399, 153 NYS2d 197 [1956]). There must be evidence that establishes that the defendant either created the defective condition or had actual or constructive notice of the dangerous condition, such that the defect was apparent, visible and existed for a sufficient length of time to allow the defendant time to discover and remedy the situation (*Moss v JNK Capital Ltd.*, 85 NY2d 1005, 631 NYS2d 280 [1995]; *Gordon v American Museum of Natural History*, 67 NY2d 836, 501 NYS2d 646 [1986]; *Cafiero v Inserra Supermarkets*, 195 AD2d 681, 599 NYS2d 342 [1993]). Moreover, the fact that the defendant may have a general awareness that a defective condition may exist is not legally sufficient to constitute notice of the particular condition that caused the plaintiff's injuries (*Kennedy v Wegmans Food Markets, Inc.*, 90 NY2d 923, 664 NYS2d 259 [1997]; *Gordon v American Museum of Natural History, supra*).

Furthermore, a voluntary participant in a sporting or recreational event, consents to the risks that are commonly inherent, apparent and arise out of the nature of the sport itself and generally flow from such participation (*Marcano v City of New York*, 99 NY2d 548, 754 NYS2d 200 [2002]; *Morgan v State of New York*, 90 NY2d 471, 662 NYS2d 421 [1997]; *Maddox v City of New York*, 66 NY2d 270, 495 NYS2d [1985]; *see also*, Restatement [Second] of Torts § 496A, comment c; Restatement [Second] of Torts § 896 [2]). This includes the construction of the playing field and any open and obvious condition on it (*Sklyer v County of Erie*, 90 NY2d 912, 707 NYS2d 374 [2000]; *Welch v Bd. of Educ. of City of New York*, 272 AD2d 469, 707 NYS2d 506 [2000]). Nor is it necessary for the plaintiff to have foreseen the exact manner in which the injury occurred "so long as he or she is aware of the potential for injury of the mechanism from which the injury results" (*Joseph v New York Racing Assoc.*, __ AD3d __, __ NYS2d __, 2006 NY Slip Op1000, 2006 NY App. Div. LEXIS 1656 [2d Dept, Feb. 7] *quoting Maddox v City of New York, supra*). However, the level of the participant's risk awareness is to be assessed against the background of the participant's skill and experience and the participant is not deemed to have consented to any risk that results from reckless or intentional conduct or concealed or unreasonably increased risk (*Joseph v New York Racing Assoc., supra*; *Morgan v State of New York, supra*). Therefore, if the risks of the activity are fully comprehended or perfectly obvious to the plaintiff, then the plaintiff by engaging in such activity has fully consented to the known, foreseeable risk inherent in the activity (*Marcano v City of New York, supra*; *Morgan v State of New York, supra*; *Maddox v City of New York, supra*).

Initially, it should be noted that the affidavits of plaintiffs' expert was not considered as the plaintiffs never disclosed to either defendant Deary's or New Image that the utilization of expert

testimony would be employed (*Safrin v DST Russian & Turkish Bath, Inc.*, 16 AD3d 656, 791 NYS2d 443 [2005]; *Dawson v Cafiero*, 292 AD2d 488, 739 NYS2d 190 [2002]; *Ortega v New York City Tr. Auth.*, 262 AD2d 470, 692 NYS2d 131 [1999]). The identity of plaintiffs' expert, Dr. Carol Alberts, a professor of Physical Education and Sport Sciences at Hofstra University, was not disclosed during pretrial disclosure and the affidavit was elicited and served only in opposition to the defendant's motion for summary judgment, after the note of issue and certificate of readiness attesting to the completion of discovery had been filed (*see*, CPLR 3101 (d) (1); *Mankowski v Two Park Co.*, 225 AD2d 673, 629 NYS2d 847 [1996]; *Bauernfiend v Albany Med. Ctr. Hosp.*, 195 AD2d 819, 600 NYS2d 516 [1993]).

Applying the foregoing principles to the facts of this case, it is clear that defendant Deary's has met its burden in establishing its entitlement to judgment as a matter of law (*Winegrad v NYU Medical Ctr.*, 64 NY2d 851, 487 NYS2d 316 [1985]; *Zuckerman v New York, supra*). The evidence submitted demonstrated that Deary's did not create or have notice of any defective condition in existence on its floor exercise mat when the plaintiff was injured (*Piacquadio v Recine Realty Corp.*, 84 NY2d 967, 622 NYS2d 493 [1994]; *Gordon v American Museum of Natural History, supra*). No testimony has been presented to establish that after the construction of the floor exercise mat it was in a dangerous state. In fact, Mr. Provost testified to the careful construction of the floor exercise mat and his inspection of each layer of the mat to ensure that the mat was perfectly suitable for each gymnast's floor exercise routine. He also explained that his inspection entailed making sure there were no gaps in between the sections, no bumps in the foam or carpet and that the mat was a perfect square. Mr. Provost, although he was not required to remain at the site for the duration of the gymnastics meet, returned on December 15th, walked around the gym and visually inspected the gymnastics apparatuses, including the floor exercise mat and found the mat to be just as it had been on Friday evening when it was constructed. In addition, Ms. Thomas testified that other gymnasts had performed on the mat without incident. Moreover, Mr. Provost as well as Mr. Deary testified that they were not made aware of any problems with the floor exercise mat until the lawsuit was initiated. Thus, it cannot be said that defendant Deary's was placed on notice of a defective condition existing on the floor exercise mat that was rented by defendant New Image for use at its gymnastics event and any determination as to the cause of plaintiff's injury would be based upon mere speculation and conjecture (*Bruno v Town of Hempstead*, 248 AD2d 576, 670 NYS2d 864 [1998]; *Dima v Breslin Realty, Inc.*, 240 AD2d 359, 658 NYS2d 115 [1997]). Furthermore, it cannot be said that the floor exercise mat was in a state that created a dangerous condition above the usual dangers inherent in the sport of competitive gymnastics, and increased the risks to the infant plaintiff (*Owen v R.J.S. Safety Equip.*, 79 NY2d 967, 582 NYS2d 998 [1992]; *but see, Clark v State of New York*, 245 AD2d 413, 666 NYS2d 209 [1997]).

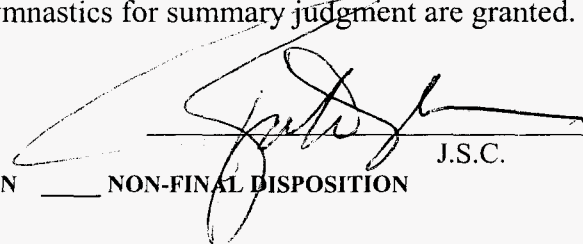
Defendant New Image has also established its entitlement to judgment as a matter of law that it did not create or have notice of a dangerous condition existing on the floor exercise mat during the time in which the infant plaintiff was injured (*Panagakos v Greek Archdiocese*, 213 AD2d 336, 624 NYS2d 37 [1995]; *Seegars v Brunswick Yonkers Bowl*, ___ NYS2d __; 2002 NY Slip Op 50056U, 2002 NY Mis. LEXIS 109 [Feb. 1]). Although Rebecca testified that she informed her coaches, who were from Elite Gymnastics School, that she had stepped into a "hole" and injured her right ankle while performing her floor exercise routine, neither she nor her mother informed anyone from New Image that there was a "hole" underneath the floor exercise mat, even though they both congratulated Ms. Thomas on her new baby. In fact, after Rebecca's accident, the testimony elicited demonstrates that Rebecca went on to

perform two practice vaults as well as two competitive vaults, “sticking” both of her landings, without incident. In addition, Ms. Thomas testified that prior to the placement of the gymnastics apparatuses, including the floor mat, she inspected the gymnasium’s floor to ensure that the floor was not warped and uneven. Ms. Thomas also stated that each morning before the day’s events she would inspect the gymnastics equipment to make sure that it was safe for the participants to use. Ms. Thomas further explained that she did not receive any complaints from any of the other gymnasts regarding the condition of the floor exercise mat. Thus, plaintiffs assertions as to the cause of the accident are conclusionary and speculative, and the plaintiffs have failed to demonstrate that defendant New Image was aware of a defect in the floor exercise mat that was in existence for a significant amount of time, which it failed to remedy (*Mroz v Ella Corporation*, 262 AD2d 465, 692 NYS2d 156 [1999]; *Kuchman v Olympia & York, USA, Inc.*, 238 AD2d 381, 656 NYS2d 323 [1997]).

Additionally, the infant plaintiff by choosing to participate in competitive gymnastics assumed the risks inherent in the sport (*Morlock v Town of North Hempstead*, 12 AD3d 652, 785 NYS2d 123 [2004]; *Goldberg v Town of Hempstead*, 289 AD2d 198, 733 NYS2d 691 [2001] compare, *Siegel v City of New York*, 90 NY2d 471, 662 NYS2d 421 [1997]; *Irish Deep Hollow Ltd.*, 251 AD2d 293, 671 NYS2d 1024 [1998]). Therefore, the risks the infant plaintiff consented to included those associated with performing on the constructed floor’s surface, which included the floor exercise mat becoming soft after having been used by over 80 gymnasts prior to her usage (*Welch v Bd. of Educ.*, *supra*) and nor can it be said that the infant plaintiff did not appreciate the risk associated with participating in the gymnastics meet (*Morlock v Town of North Hempstead*, *supra*; *Goldberg v Town of Hempstead*, *supra*). Here, the infant plaintiff was an experienced and skilled gymnast, who was able to fully comprehend the risks inherent in competitive gymnastics. Both the infant plaintiff and her mother stated that Rebecca had been involved in competitive gymnastics since she was approximately seven years old. The infant plaintiff also candidly admitted that she was aware of the dangers of performing a routine on the floor exercise mat before electing to participant in the New Image sponsored gymnastics event. She stated that she had previously twisted her right ankle and was told by one of her coaches to wear an ankle brace, which she was wearing the day of the event. No evidence, except that the infant plaintiff injured her ankle and stated she felt like she “stepped in a hole,” has been presented to show that the floor exercise mat contained any concealed or unreasonably increased risks to the infant plaintiff (*see, Goldberg v Town of Hempstead*, *supra*; *Cole v New York Racing Assoc.*, 24 AD2d 993, 266 NYS2d 267 [1965]). Under these circumstances, the plaintiff clearly assumed the risks associated with performing a roundoff back handspring back tuck somersault during a floor exercise routine at a gymnastics competition, which included landed awkwardly or injuring one’s ankle, and both defendants Deary’s and New Image discharged their duties by making the floor exercise mat as safe as it appeared to be (*Turcotte v Fell*, *supra*; *Joseph v New York Racing Assoc.*, *supra*; *Cevetillo v Town of Mount Pleasant*, 262 AD2d 517, 692 NYS2d 426 [1999]).

Accordingly, both of the motions by defendants Deary’s Gymnastics and New Image Gymnastics Academy, Inc. d/b/a New Image Gymnastics for summary judgment are granted.

Date: APR 23 2007



J.S.C.
 FINAL DISPOSITION NON-FINAL DISPOSITION