

Buzanca v Rollerjam USA, Inc.

2010 NY Slip Op 32197(U)

August 17, 2010

Supreme Court, Richmond County

Docket Number: 101493/08

Judge: Joseph J. Maltese

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF RICHMOND DCM PART 3

Index No.:101493/08
Motion No.:001

RYAN BUZANCA, an Infant by his father and natural guardian, ANTHONY BUZZANCA, and ANTHONY BUZZANCA, Individually,

Plaintiffs

DECISION & ORDER

HON. JOSEPH J. MALTESE

against

ROLLERJAM USA, INC.,

Defendant

The following items were considered in the review of the following motion for summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

Inadvertently, defendant moved under the former special proceeding index number 80374/07. As this was a ministerial error this court is considering this motion as if it were made under the proper index number. The defendant moves for an order granting it summary judgment dismissing the plaintiffs' complaint pursuant to CPLR § 3212. The defendant's motion is denied in its entirety.

Facts

This is an action for personal injuries as a result of an accident at the defendant's roller rink. The plaintiff attended a teen night at the defendant's rink on October 5, 2007. The deposition testimony reveals that at the time of the accident the roller rink was dark, but for

flashes from strobe lights and laser effects. In addition, to the low lighting the roller rink utilized a fog machine to create a dark and foggy environment.

While the plaintiff had experience inline-skating, or roller blading, he was admittedly a novice at roller skating using quad skates. An inline-skate has four wheels placed one behind the other and attached at the bottom of the shoe. A quad skate is a traditional roller skate that has four wheels attached as two pairs beneath the shoe. The plaintiff admits that he fell several times on the roller rink before sustaining the subject injuries of this action.

According to the plaintiff, he and his friend were skating side by side when he fell to the floor. Plaintiff testified that he fell in a sitting position, and was injured when other skaters that did not observe him on the floor fell on top of him. The plaintiff testified that he felt complete numbness after the fall and that his friend pointed out that his right leg was “backwards.”

There are conflicting statements as to whether the plaintiff was helped off the rink by the defendant’s employees or that he crawled off the rink on his own. When the plaintiff made it off the rink he was offered an ice-pack. The plaintiff testified that as the numbness wore off he began to feel pain. The plaintiff called his father from the rink to have him get an ambulance.

The plaintiff sustained a tri-plan fracture of the distal fibular shaft and a medial malleolar fracture and a fracture of the lateral malleolus of the right ankle requiring open reduction surgery with internal fixation. The plaintiffs’ complaint and bill of particulars allege that the defendant failed to properly supervise and control the flow of skaters on to the rink. And further alleges that the defendant’s failure to provide sufficient lighting coupled with the use of instruments that inhibited visibility constitute negligence on the part of the defendant.

The defendant moves for summary judgment dismissing the plaintiffs’ complaint arguing that the plaintiffs have not demonstrated any negligence on its part because falls at roller rinks are expected and the plaintiff assumed the risk of such injuries by his participation.

Discussion

Summary judgment is a drastic remedy that will only be awarded when there is no triable issue of fact and the court can render a decision as a matter of law.¹ It is well established that summary judgment should be granted only if there are no material and triable issues of fact. It is not up to the court to determine issues of credibility or the probability of success on the merits, but rather whether there exists a genuine issue of fact. Issue-finding rather than issue determination is the key to summary judgment and the affidavit should be scrutinized in the light most favorable to the party opposing the motion.²

A party moving for summary judgment must make a prima facie showing of entitlement to judgment as a matter of law, offering sufficient evidence to demonstrate the absence of any triable issue of fact.³ If on any branch of a summary judgment motion, the movant fails to meet the initial burden, the burden never shifts to the opponent, and the movant's motion should be denied without regard to the sufficiency of the opposition papers.⁴

The defendant argues that voluntary participants in a sport or recreational activity may be held to have consented by their participation, to those injury-causing events which are known, apparent or reasonably foreseeable consequences of the participation.⁵ In this case, the defendant

¹ *Barclay v. Denckla*, 182 AD2d 658, [2d Dept 1992].

² *Hantz v. Fishman*, 155 AD2d 415, [2d Dept 1989].

³ *Dempster v. Overview Equities, Inc.*, 4 AD3d 495, [2d Dept 2004].

⁴ *Hughes v. Cai*, 31 AD3d 385, [2d Dept 2006].

⁵ *Morgan v. State*, 90 NY2d 471, [1997]; *Blashka v. South Shore Skating, Inc.*, 193 AD2d 772, [2d Dept 1993]; *Sabey v. Hudson Val. Girl Scout Council, Inc.*, 16 AD2d 525 [3d Dept 1962]; *Clements v. Skate 9H Realty Inc.*, 277 AD2d 614, [3d Dept 2000]; *Cardoza v. Village of Freeport*, 205 AD2d 571, [2d Dept 1994].

argues that the plaintiff's fall and subsequent injury is inherent in skating. The defendant cites a long line of cases that stand for the proposition that sudden and abrupt collisions leading to falls are common place in roller skating.⁶

Here, the plaintiffs' claims extend beyond the failure to supervise and overcrowding claims made by plaintiffs in the cases cited by the defendant in support of its motion. In this case, the plaintiff alleges that the dark environment coupled with the artificially produced fog and the pulses of light from both strobe lights and lasers, constitute an unsafe condition not inherent to roller skating. Also, the environment created by the defendant rendered both the fellow skaters and defendant's personnel unable to observe the fallen plaintiff, thus leading to his injuries.

The defendant's motion fails to address the plaintiffs' allegations that it created an environment in which dangerous activity existed for a sufficient period of time beyond those inherent to skating. In *Taynor v. Skate Grove at Lake Grove, Inc.*, the Appellate Division, Second Department reversed a trial court order granting the plaintiff a new trial after setting aside a jury verdict in favor of the defendant. In so doing, the court reasoned that the plaintiff ". . . failed to demonstrate that any dangerous activity existed for a sufficient length of time as to charge the defendant with notice of such activity."⁷ The court found that based on the evidence presented at trial that a jury could have interpreted that the plaintiff's injuries resulted from a sudden and abrupt action taken by fellow skaters that could not have been avoided by "even the most intense supervision." As such, the defendant failed to meet its burden going forward on summary judgment.

⁶ *Tassielli v. United Skates of America, Inc.*, 33 AD3d 908, [2d Dept 2006]; *Kleiner v. Commack Roller Rink*, 201 AD2d 462, [2d Dept 1994]; *Gaspard v. Board of Educ. of City of New York*, 47 AD3d 758, [2d Dept 2008]; *Taynor v. Skate Grove at Lake Grove, Inc.*, 150 AD2d 362, [2d Dept 1989];

⁷ *Taynor v. Skate Grove at Lake Grove, Inc.*, 150 AD2d 362, [2d Dept 1989].

Conclusion

While it is established that roller skating has inherent risks that are assumed by participants, the defendant failed to demonstrate its entitlement to summary judgment. It is an issue of material fact whether the dark environment, replete with intense bursts of light from lasers and strobe lights, coupled with the artificially produced fog constituted a dangerous condition. It is the finding of this court that a teenage novice skater could not fully comprehend the risks involved with roller skating in such an environment as a matter of law. It is general knowledge that the intense flashes from strobe lights alone have dramatic effects on the senses.

Accordingly, it is hereby:

ORDERED, that the motion by defendant RollerJam, USA, Inc. for summary judgment is denied in its entirety: and it is further

ORDERED, that the parties shall return to DCM Part 3 on Monday, September 27, 2010 at 9:30 a.m. for a Pre-Trial Conference

ENTER,

DATED: August 17, 2010

Joseph J. Maltese
Justice of the Supreme Court