

**Meddanis v City of New York**

2016 NY Slip Op 30891(U)

April 13, 2016

Supreme Court, Bronx County

Docket Number: 307978/2010

Judge: Mitchell J. Danziger

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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ANGELA MEDDANIS and  
NICHOLAS MEGDANIS,

Index No.: 307978/2010

Plaintiff(s),

-against-

**DECISION/ORDER**  
**Present:**  
**HON. MITCHELL J. DANZIGER**

THE CITY OF NEW YORK and THE NEW  
YORK CITY DEPARTMENT OF EDUCATION,

Defendant(s).

-----X  
Recitation as Required by CPLR §2219(a): The following papers  
were read on this Motion for Summary Judgment

Papers Numbered

Notice of Motion, Affirmation in Support with Exhibits .....	<u>1</u>
Affirmation in Opposition .....	<u>2</u>
Reply Affirmation in Support .....	<u>3</u>
Sur Reply Affirmation in Opposition .....	<u>4</u>

Upon the foregoing cited papers, the Decision/Order of this Court is as follows:

Defendants move for summary judgment dismissing the complaint pursuant to CPLR §3212.

Plaintiffs commenced this action seeking damages for injuries allegedly sustained by ANGELA MEGDANIS on November 3, 2009 as the result of a trip and fall on a recreational field located at Lehman High School in the Bronx. Mrs. Megdanis is employed as a physical education teacher for the New York City Department of Education (“DOE”). Mrs. Megdanis’ accident occurred during a staff development program. Mrs. Megdanis testified that all physical education teachers employed by the DOE are required to attend this staff development (defendant’s ex. F at pp. 21-22). At this particular staff development, different groups of teachers were directed to different areas of the Lehman High School based on the activities they would be engaging in. At some point prior to the date of the staff development program, there was an online registration in which the teachers could sign up for different “clinics” to be given during the program. Mrs. Megdanis signed up for the soccer clinic via the online registration form (id. a p. 23, lns. 17-21). On the date of the accident, Mrs. Megdanis was directed by the soccer clinic instructor to report to the field. Mrs. Megdanis

noticed that the field was made from “rugs” and that separate pieces of the rugs were not seamed together (id. at p. 38, lns. 18 - 25). Mrs. Megdanis spoke with her fellow teachers about the poor condition of the field (id. At p. 39, lns. 5-11). The instructor of the clinic used orange cones to demarcate the area in which the teachers were supposed to remain (id. at p.26, lns 7-12). The instructor informed the teachers that he wanted to start with a warm up and that he was going to teach the group skills and lessons that they could take back to their schools and students (id. at p.26, lns. 20-25). Mrs. Megdanis and the other teachers were then directed by the clinic instructor to slowly jog within the coned off area (id. at pg. 27, lns. 9-14 & lns. 22-25). During this warm up, Mrs. Megdanis’ foot got caught in a space between two separate pieces of rug and she fell on her right shoulder (id. at p. 27, lns. 5-7; p. 37, lns. 10-13; & p. 38, lns. 4-13).

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v. Prospect Hospital*, 68 N.Y.2d 320 [ 1986]; *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 [1985]). Summary judgment is a drastic remedy that deprives a litigant of his or her day in court. Therefore, the party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted and the papers will be scrutinized carefully in a light most favorable to non-moving party (*Assaf v. Ropog Cab Corp.*, 153 A.D.2d 520 [1<sup>st</sup> Dept. 1989]). Summary judgment will only be granted if there are no material, triable issues of fact (*Sillman v. Twentieth Century-Fox Film Corp.*, 3 N.Y.2d 395 [1957]). Once movant has met his initial burden on a motion for summary judgment, the burden shifts to the opponent who must then produce sufficient evidence to establish the existence of a triable issue of fact (*Zuckerman v. City of New York*, 49 N.Y.2d 557 [1980]). It is well settled that issue finding, not issue determination, is the key to summary judgment (*Rose v. Da Ecib USA*, 259 A.D. 2d 258 [1<sup>st</sup> Dept. 1999]). When the existence of an issue of fact is even fairly debatable, summary judgment should be denied (*Stone v. Goodson*, 8 N.Y.2d 8, 12 [1960]).

Defendants argue that summary judgment dismissing the complaint is warranted because Mrs. Megdanis assumed the risk inherent in participating in an interactive soccer clinic. Defendant’s argue that because Mrs. Megdanis registered to participate in the soccer clinic at the staff development program, she was a voluntary participant in a sporting event, and therefore, consented

to the commonly appreciated risks that are inherent in and arise out of the nature of the sport. In opposition, plaintiffs' counsel asserts that Mrs. Megdanis' participation in the staff development was mandated, and therefore, the assumption of risk doctrine does not apply.

It is well settled that assumption of risk applies to voluntary participation in athletic and recreational activities and those risks inherent to those activities (*Trupia ex. rel. Trupia v. Lake George Central School Dist.*, 14 N.Y.3d 392 [2010]). A defendant is relieved from liability where the risks assumed are inherent in engaging in a sport, the consenting participant is aware of the risk, has an appreciation for the nature of risks and voluntarily assumes the risks (*Morgan v. State of New York*, 90 N.Y. 2d 471 [1997]). However, in cases where plaintiff participates in an activity that is not voluntary, but compelled by a superior, the inherent compulsion doctrine applies, which neutralizes the doctrinal principals underlying assumption of risk (*Bentiez v. New York City Bd. of Educ.*, 73 N.Y. 2d 650 (1989)). The theory of inherent compulsion provides that the defense of assumption of the risk is not a shield from liability, even where the injured party acted despite obvious and evident risks, when the element of voluntariness is overcome by the compulsion of a superior (*Id.*, at 658 citing, *Maddox v. City of New York*, 66 N.Y.2d 270, 279 [1985]). Two factors are generally present to sustain a finding of liability on an inherent compulsion theory despite the injured party's knowledge of the risk, "a direction by a superior to do the act" and "an economic compulsion or other circumstance which equally impels" compliance with the direction. (*Benitez v New York City Bd. of Educ.*, 73 NY2d 650, 658 [1989]).

Here, the court finds that defendants have failed to make a prima facie showing that Mrs. Megdanis assumed any risk by voluntarily participating in the staff development day. Based on the record before the court, Mrs. Megdanis was required to attend the staff development program. The fact that Mrs. Megdanis registered for the soccer clinic prior to the staff development does not conclusively establish that she was not compelled to participate. While Mrs. Megdanis registered for the soccer clinic, the record establishes that Mrs. Megdanis was required to participate in the staff development program and was directed by the instructor of the soccer clinic to engage in activity in the particular area of the field where Mrs. Megdanis was injured.

The cases cited by defendants in support of the motion are distinguishable from the case at bar. In *Valerde v. Great Expectation, LLC*, (131 A.D.3d 425 [1<sup>st</sup> Dep't., 2015]), the inherent

compulsion doctrine did not apply because the plaintiff was injured while riding in a golf cart. However, the court found that the record was devoid of any evidence that plaintiff's employer directed her to ride as a passenger in the golf cart. In *Ticha v. OTB Jeans* (39 A.D.3d 310 [1<sup>st</sup> Dep't., 2007]), the court dismissed the complaint because the plaintiff could not prove that her employer directed her to stand in the location where she was ultimately injured while filming a dirt bike competition. In *Bereswill v. National Basketball Assn.*, (279 A.D.2d 292 [1<sup>st</sup> Dep't., 2001]), the court dismissed the complaint because plaintiff offered no proof that he had no other choice but to obey his superior's direction to engage in the activity which lead to his injury.

Here, there is evidence that Mrs. Megdanis was required to attend the staff development day, and was directed by an instructor to go to a portion of the field (designated by said instructor) to engage in the activity which led to her injury. Further, Mrs. Megdanis attended the staff development day because she was "supposed to participate" in the clinics and that participation in the clinic were "mandatory" (defendant's ex. F at p. 44, Ins. 6-13). The court finds that Mrs. Megdanis' registration for the soccer clinic, does not automatically establish that she assumed a risk.

Based on the foregoing, defendants' motion is denied in its entirety.

This constitutes the decision and order of the court.

Dated: 4/13/16  
Bronx, New York

  
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HON. MITCHELL J. DANZIGER, J.S.C.