

<b>Garay v Saint Joseph's R.C. Church</b>
2018 NY Slip Op 34434(U)
May 22, 2018
Supreme Court, Nassau County
Docket Number: Index No. 603836/15
Judge: Anthony L. Parga
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

SHORT FORM ORDER
SUPREME COURT-NEW YORK STATE-NASSAU COUNTY

PRESENT:

HON. ANTHONY L. PARGA
JUSTICE

-----X PART 4
HENRY GARAY,

Plaintiff,

INDEX NO. 603836/15
MOTION DATE: 3/29/18
SEQUENCE NOS.: 001

-against-

SAINT JOSEPH'S ROMAN CATHOLIC
CHURCH,

Defendant.

-----X
Notice of Motion, Affm., & Exhs..... 1
Affirmation in Opposition, Affm., & Exhs..... 2
Reply Affirmation..... 3

Upon the foregoing papers, the motion by defendant Saint Joseph's Roman Catholic Church (hereinafter as "St. Joseph's") which seeks an order pursuant to CPLR §3212 for summary judgment dismissing plaintiff's complaint is determined as follows.

The within action seeks damages for personal injuries sustained by plaintiff during a basketball game at defendant's gymnasium on March 12, 2015, located at 1346 Broadway, Hewlett, New York 11557. It is alleged, inter alia, in plaintiff's Verified Bill of Particulars that plaintiff's injuries were caused by a defective dangerous condition at the premises and, more specifically, that the platform/stage was under and in close proximity to the backboard, basket and out-of-bounds line.

Plaintiff testified that he had been playing on the Mercy First Basketball team since 2013. Plaintiff testified that on the day of the incident he was at St. Joseph's for a league playoff game. He recalled seeing the stage and the wall in front of the stage prior to the game. Plaintiff testified that at the start of game he stole the ball and went on a fast break to the basket, laid it up with his right hand and as he was coming down the stage was right in front of him and his right

side from his hip down went crashing into the stage.

Defendant moves for summary judgment contending that the plaintiff's claims are barred by the doctrine of primary assumption of risk and that the condition was open and obvious.

In support of its application defendant submits, *inter alia*, the deposition transcript of plaintiff; the deposition transcript and affidavit of Robert P. Ryan, Facilities Manager at St. Joseph's Parish; the deposition transcript of non-party witness Jeffery McBride; the deposition transcript of non-party witness Anne Gildea and various color photographs.

Robert Ryan, Facilities Manager for eleven (11) years at St. Joseph's Parish testified that the gym was mostly used for Catholic Youth Organization (CYO) and that CYO has used it for the past eleven (11) years for basketball games. He testified he had little or no involvement with CYO and the basketball league. Mr. Ryan could not provide the dimensions of the stage or its distance from the baseline of the basketball court. He testified that there are four (4) pads permanently affixed to the front of the stage. Mr. Ryan attests in his affidavit that there were no complaints made to the Church concerning the condition or layout of the gym, and that he is not aware of any accident having occurred involving a player being injured due to the presence of the stage or its proximity to the baseline.

Jeffery McBride, the coach of the CYO team in which plaintiff played, did not notice nor report any dangerous condition to the referee on the date of the incident prior to the game. He was not aware of anyone else having an accident at this gym prior to plaintiff. He did not know measurements between baseline and stage but did recall the stage being padded. He testified that the game continued after plaintiff's accident.

Defendant contends that plaintiff assumed the risk of participating in the game, that the risk of colliding with the stage was inherent in and arising out of the nature of the sport and that there was no duty owed to plaintiff as the stage was an open and obvious condition.

In opposition, the plaintiff submits the affidavit of its safety expert, Leo DeBobes. Mr. DeBobes reviewed various documents pertaining to this litigation, conducted a physical inspection of the premises and issues a letter report containing his findings and opinions.

Mr. DeBobes opines that the distance between the basketball court and line boundary and

the padded section of the stage wall was 27 15/16 inches which is significantly less than the three (3) foot minimum established by the National Federation of High School Association Basketball Rules Book or the six (6) foot minimum established by that American Alliance for Healthy Physical Education, Recreation and Dance (AHPERD). Mr. DeBobes states that an inadequate safety or buffer zone presents a foreseeable risk of injury. Mr. DeBobes further opines that the defendant was negligent in allowing and/or permitting the basketball court to exist without properly installed and maintained wall padding.

“Summary judgment...is designed to expedite civil cases by eliminating claims which can properly be resolved as a matter of law (see *Andre v Pomery*, 35 NY2d 361, 320 N.E.2d 853, 362 N.Y.S.2d 131). It is a drastic remedy which should only be employed when there is no doubt as to the absence of triable issues...” (*Pizzo-Juliano v. Southside Hospital*, 129 A.D.3d 695, 696; 10 N.Y.S.3d 572 [2<sup>nd</sup> Dept. 2015]).

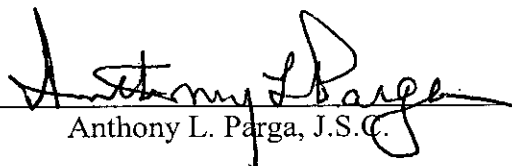
If there is any doubt as to the existence of a triable issue of fact, or if a material issue of fact is arguable, summary judgment should be denied. (*Dykeman v. Heht*, 52 A.D.3d 767, 861 N.Y.S.2d 732 [2<sup>nd</sup> Dept. 2008] *Celardo v. Bell*, 222 A.D.2d 547, 635 N.Y.S.2d 85 [2<sup>d</sup> Dept. 1995]; *Museums at Stony Brook v. Village of Patchogue Fire Dept.*, 146 A.D.2d 572, 536 N.Y.S.2d 177 [2<sup>d</sup> Dept. 1989]).

Contrary to movant’s contentions, there are questions of fact surrounding the design/layout of the basketball court and its safety which preclude the granting of summary judgment.

**Accordingly, defendants motion for summary judgment is denied.**

This constitutes the decision and Order of this Court. Any request for relief not expressly granted herein is denied.

Dated: May 22, 2018

  
Anthony L. Parga, J.S.C.

**ENTERED**

MAY 24 2018

NASSAU COUNTY  
COUNTY CLERK'S OFFICE

Cc: Mulholland Minion Davey  
McNiff & Beyrer  
374 Hillside Avenue  
Williston Park, NY 11596

Ronemus & Vilensky  
112 Madison Avenue, 2<sup>nd</sup> Floor  
New York, NY 10016