

STATE OF NEW YORK : COUNTY OF DUTCHESS
SUPREME COURT

-----X

JUDITH ROSENFELD,

Plaintiff,

-against-

DECISION AND ORDER

Index No. 7524/2007

HUDSON VALLEY STADIUM CORP.,
ROHDE, SOYKA & ANDREWS CONSULTING
ENGINEERS, P.C., LISCUM, McCORMACK &
VANVOORHIS, KEYSTONE PROFESSIONAL
BASEBALL CLUB d/b/a HUDSON VALLEY RENEGADES,
DUTCHESS COUNTY ENTERTAINMENT CORP.,
THE GREATER SOUTHERN DUTCHESS CHAMBER
OF COMMERCE, INC., and COUNTY OF DUTCHESS,

Defendants.

-----X

Defendant Rohde, Soyka & Andrews Consulting Engineers, P.C. move for an order, pursuant to Rule 3211(a)(7) of the Civil Practice Law and Rules, dismissing the complaint against it in its entirety and dismissing all cross-claims that may have been asserted against it.

Defendant Liscum, McCormack & VanVoorhis move for an order, pursuant to CPLR Rule 3212, granting summary judgment dismissing the plaintiff's complaint against it and all cross-claims against it.

Defendant County of Dutchess moves for an order dismissing the plaintiff's complaint against it together with any cross-claims against it.

Defendant Keystone Professional Baseball Club d/b/a Hudson Valley Renegades moves for an order, pursuant to CPLR 3211(a)(1) and 3211(a)(7), dismissing plaintiff's complaint against it and dismissing all cross-claims which may have been asserted against it.

The following submissions were read:

Notice of Motion - Affirmation of Thomas H. Kukowski, Esq. - Annexed Exhibits	1-3
Defendant Rohde, Soyka & Andrews Consulting Engineers, P.C.'s Memorandum of Law - Annexed Exhibits	4-5
Notice of Motion - Affirmation of James F. O'Brien, Esq. - Annexed Exhibits	6-8
Defendant Liscum, McCormack & VanVoorhis' Memorandum of Law	9
Notice of Motion - Affirmation of Kimberly Hunt Lee, Esq. - Annexed Exhibits	10-11
Notice of Motion - Frank Raia, Esq.'s Affirmation - Annexed Exhibits	12-14
Exhibits to Affidavit of Jeff Goldklang	15
Defendant Keystone Professional Baseball Club d/b/a Hudson Valley Renegades' Memorandum of Law	16
David L. Kremen, Esq.'s Affirmation in Opposition - Annexed Exhibits	17-18
David L. Kremen, Esq.'s Affirmation in Opposition - Annexed Exhibits	19-20
Reply Affirmation of Kimberly Hunt Lee, Esq.	21
Reply Affirmation of Frank Raia, Esq.	22
Reply Affirmation of Thomas H. Kukowski, Esq. - Annexed Exhibits	23-24

Upon the foregoing papers it is hereby ORDERED that the defendants' motions are granted and the plaintiff's complaint against the defendants and any cross-claims against the defendants are dismissed.

The instant personal injury action arises out of plaintiff being hit by a foul ball while attending a minor league baseball game at Dutchess Stadium in Fishkill, N.Y. on

August 5, 2006. The plaintiff alleges, *inter alia*, that the defendants were negligent in that they failed “to provide proper available and cost efficient protection and safety devices and plans” for the picnic area where she was injured. (Plaintiff’s Verified Complaint, annexed as Exhibit A to defendant Rohde, Soyka & Andrews Consulting Engineers, P.C.’s Notice of Motion.) However, contrary “to the plaintiff’s contentions, by furnishing sufficient protective netting behind home plate where the danger of being struck by a baseball is the greatest, the proprietor of a ballpark fulfills its duty of care and cannot be held liable in negligence (see *Akins v. Glens Falls City School Dist.*, 53 NY2d 325 [1981]; *Sparks v. Sterling Doubleday Enters.*, 300 AD2d 467 [2002].) The operators of a ballpark are not insurers of the safety of spectators who choose to occupy unprotected seats (see *Davidoff v. Metropolitan Baseball Club*, 61 NY2d 996, 998 [1984]). Here, it is uncontroverted that the stadium had protective netting in the area behind home plate and extending up the foul lines to the dugouts. Thus, the injured plaintiff assumed the risk of injury (see *Sparks v. Sterling Doubleday Enters.*, *supra*.)” (*Ray v. Hudson Valley Stadium Corp.*, 306 AD2d 264, 264-265 (2nd Dept., 2003).)

The Court notes that the plaintiff alleges that her friend who purchased the general admission tickets had wanted to purchase tickets for seats behind home plate but they were sold out. However, the President of defendant Keystone Professional Baseball Club d/b/a Hudson Valley Renegades has submitted an affidavit in which he states, “Before each game begins, a series of public announcements are made advising the spectators who


wish to be seated or reseated within a protected area that they will be accommodated . . .
A request for seating behind the netting could and would have been accommodated.”
(Affidavit of Jeff Goldklang, paragraphs 5-7.) The plaintiff does not deny that such
announcement was made, but merely states that she did not hear such announcement. In
any event, it is undisputed that the plaintiff sat in the general admission area for about an
hour into the game without incident. Rather, it was only after the plaintiff had gone to a
concession stand to purchase food and sat down with the food in the picnic area that the
accident occurred. (See, Affidavit of Judith Rosenfeld, paragraphs 4-5; Affidavit of
Thomas Vaculik, paragraph 5.)

Accordingly, for all of the foregoing reasons, the defendants’ motions to dismiss
the plaintiff’s complaint against them must be granted. (See also, *Sparks v. Sterling
Doubleday Enterprises, L.P.*, 300 AD2d 467 (2nd Dept., 2007); *Procopio v. Town of
Saugerties*, 20 AD3d 860 (3rd Dept., 2005), leave to appeal denied by 5 NY3d 716
(2005); *Wade-Keszey v. Town of Niskayuna*, 4 AD3d 732 (3rd Dept., 2004); *LaRocca v.
Pleasant Valley Little League*, 15 AD3d 628 (2nd Dept., 2005).)

This constitutes the decision and order of this Court.

So ordered.

Dated: July 15, 2008
Poughkeepsie, New York


HON. CHRISTINE A. SPROAT
Supreme Court Justice

TO: DAVID L. KREMEN, ESQ.
Oshman & Mirisola, LLP
Attorneys for Plaintiff
42 Broadway, 10th Floor
New York, NY 10004

THOMAS H. KUKOWSKI, ESQ.
Milber Makris Plousadis & Seiden, LLP
Attorneys for Defendants Rohde, Soyka & Andrews
3 Barker Avenue, 6th Floor
White Plains, NY 10601

JAMES F. O'BRIEN, ESQ.
Wilson, Elser, Moskowitz, Edelman & Dicker, LLP
Attorneys for Defendant Liscum, McCormack & VanVoorhis
3 Gannet Drive
White Plains, NY 10604

KIMBERLY HUNT LEE, ESQ.
McCabe & Mack, LLP
Attorneys for Defendant County of Dutchess
P.O. Box 509
Poughkeepsie, NY 12602

FRANK RAIA, ESQ.
Rivkin Radler, LLP
Attorneys for Defendant Keystone Professional Baseball Club
d/b/a Hudson Valley Renegades
926 RexCorp Plaza
Uniondale, NY 11556

DUTCHESS COUNTY ENTERTAINMENT CORP.
c/o VanDewater & VanDewater,
P.O. Box 112
Poughkeepsie, NY 12602

THE GREATER SOUTHERN DUTCHESS CHAMBER OF COMMERCE
300 Westage Business Center, Suite 100
Fishkill, NY 12524

HUDSON VALLEY STADIUM CORP.
P.O. Box 225
Wappingers Falls, NY 12590