

CHRISTINE FRY, et al.

\* IN THE

Plaintiffs

\* CIRCUIT COURT

v.

\* FOR

JOLLY ROGER RIDES, INC.

\* WORCESTER COUNTY

Defendant

\* Case No: 23-C-08-000313 OT

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**DEFENDANT JOLLY ROGER RIDES, INC.'S MOTION FOR SUMMARY JUDGMENT**

Jolly Roger Rides, Inc., Defendant, by KARPINSKI, COLARESI & KARP and DANIEL KARP, its attorneys, moves pursuant to Maryland Rule 2-501, for Summary Judgment as a matter of law, for the reasons stated in the accompanying Memorandum of Law.

KARPINSKI, COLARESI & KARP

BY:

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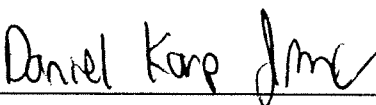
(410) 727-5000

Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 18<sup>th</sup> day of December 2008, a copy of the foregoing Motion for Summary Judgment was mailed, by first class mail, postage prepaid, to:

Jason E. Fetterman, Esquire  
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\_\_\_\_\_  
Of Counsel for Defendant

CHRISTINE FRY, et al.	*	IN THE
Plaintiffs	*	CIRCUIT COURT
v.	*	FOR
JOLLY ROGER RIDES, INC.	*	WORCESTER COUNTY
Defendant	*	Case No: 23-C-08-000313 OT

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**MEMORANDUM IN SUPPORT OF DEFENDANT, JOLLY ROGER RIDES, INC.'S MOTION FOR SUMMARY JUDGMENT**

Jolly Roger Rides, Inc., Defendant, by KARPINSKI, COLARESI & KARP and DANIEL KARP, its attorneys, submits the instant Memorandum of Law in Support of its Motion for Summary Judgment.

**STATEMENT OF THE CASE**

On or about February 25, 2008, the Plaintiffs filed suit against Jolly Roger Rides, Inc. The Complaint alleges that Christine Fry was injured when she was struck in the head while at the Defendant's amusement park. She further alleges that the Defendant negligently managed and supervised its amusement park. Complaint, ¶ 1. The Complaint further alleges that the long range basketball shot game was not equipped with any safety devices or other means of protecting passersby from potential injury and that no warnings were posted. Complaint, ¶ 7. The Complaint further alleges that Defendant negligently operated and maintained this gaming apparatus by failing to insure that adequate safety measures were in place to protect passersby and in failing to post warnings.

Complaint, ¶17. Finally, the Complaint alleges that the Defendant “was or should have been aware” of the hazards posed by the maintenance and operation of this game and failed to take any steps to correct this dangerous situation. Complaint, ¶18. In Count I, Christine Fry presents a claim for negligence. In Count II, Christine Fry and Daniel Fry present a claim for loss of consortium. The parties have exchanged written discovery and the Plaintiffs and representatives of the Defendant have been deposed. The deadline for designating expert witnesses was November 17, 2008 and deadline for completing discovery was December 17, 2008.

### **STATEMENT OF FACTS**

The long range basketball game involved in this litigation has been in operation since 2003. Affidavit of Michael H. Jones, ¶3, attached as Exhibit A. Based upon records of gross receipts for the game, over 300,000 people have played the game since it went into operation in 2003. Exhibit A, ¶4. Since 2003, countless thousands of people have walked by the game in the same area where Plaintiffs claim the event took place. Exhibit A, ¶5. No other person has been injured, or claimed to have been injured, as a result of an errant basketball. Exhibit A, ¶6; Defendant’s Answer to Interrogatory No. 13, attached as Exhibit B. Defendant has, or had, no reason to believe that the long range basketball game presented, or presents, an unreasonable risk of harm to anyone. Exhibit A, ¶9.

Interrogatory Number 26, directed to the Plaintiff, Christine Fry, asked her to “State the facts upon which you base your claim that the Defendant was

negligent in a particular way.” Plaintiff answered as follows:

“ The Defendant was negligent in that there was no protection or netting, etc. to protect the public from the game apparatus. There were no signs warning of any possible danger. I did not put myself at risk by watching the game, I was walking from behind like other people.” (A copy of Interrogatory Number 26 and the Plaintiffs’ Answer are attached in Exhibit C to this Memorandum.)

In Interrogatory Number 6 from the Defendant, Plaintiff, Christine Fry was asked to identify all persons, not previously identified, whom she believes to have personal knowledge of any facts concerning the cause or circumstances of the occurrence and any injuries or damages resulting from the occurrence and to provide the category for which each person has knowledge. In her response she identified her medical providers, along with John Swift, and various workmates who have seen her struggle at work following the accident. The answer also incorporated her answer to Interrogatory Number 4, which did not identify anyone specifically. Plaintiffs have failed to identify any witness who had knowledge of prior incidents or claims at the long range basketball game which would have put Defendant on notice of a dangerous condition there. Copies of Interrogatories 6 and 4, and their respective answers, are attached to this Memorandum in Exhibit C. One of the Plaintiffs, Daniel Fry, admitted in his deposition that this event was unusual. When asked whether he considered this to be a freak accident, his response was “One in a million.” See portion of deposition transcript attached as Exhibit D.

Discovery has closed in this case. The only experts designated by

Plaintiffs are medical experts regarding Mrs. Fry's injuries. Plaintiffs have not designated any expert(s) to establish a standard of care for operating games such as the long range basketball game, or a violation of such a standard which caused the incident at issue in this litigation.

### ARGUMENT

Summary Judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Prison Health Services, Inc. v. Baltimore County, 172 Md.App. 1, 912 A.2d 56 (Md. App. 2006). The Defendant asserts that Summary Judgment is appropriate in this case.

#### **1. Plaintiffs have failed to demonstrate any negligence on the part of Defendant.**

This is a case involving premises liability. Maryland courts have quoted with approval the general rule embodied in Section 343 of the Restatement, Torts. That rule states, in part,

“[t]hat a possessor of land is subject to liability for bodily harm caused to business visitors by a natural or artificial condition thereon, if, but only if, he (a) knows, or by the exercise of reasonable care should discover, the condition which, if known to him, he should realize as involving an unreasonable risk to them, and (b) has no reason to believe that they will discover the condition or realize the risk involved therein.”

Evans v. Hot Shoppes, Inc., 223 Md. 235, 164 A.2d 273, at 276. (Md. 1960).

The mere fact that an injury was sustained on a premises raises no

presumption of negligence on the part of the proprietor of the premises. Rehn v. Westfield America, 153 Md.App. 586, 387 A.2d 981 at 984 (Md. App. 2003) (*cert. denied* April 12, 2004). Furthermore, the burden is on a plaintiff/customer to show that the proprietor of the premises had actual or constructive notice that a dangerous condition existed. *Id.*, 387 A.2d. at 984, citing Moulden v. Greenbelt Consumer Servs., Inc. 239 Md. 229, 210 A.2d 724 (1965).

Even if Plaintiffs can point to legally sufficient evidence of an unusually dangerous condition of the premises, or an unusually dangerous situation (and clearly Plaintiffs cannot), the Plaintiffs have provided no evidence to demonstrate that Defendant had (or should have had) notice that an event, such as the one complained of, could take place. In Answers to Interrogatories the Plaintiffs produced no evidence and did not identify any potential witnesses who could show that there were prior injuries or incidents at the long range basketball shot game which would have put the Defendant on notice that the game posed a threat to patrons at the amusement park. Discovery is now closed and Plaintiffs have not designated any expert witness to establish a standard of care for such a game or a breach of the standard of care.

In contrast, the Defendant has attached the Affidavit of Michael H. Jones (Exhibit A) and Answer to Interrogatory No. 13 (Exhibit B), which establish that the game has been in operation for 5 years, that over 300,000 people have played the game in that time period, and that there have been no previous incidents,

injuries, or claims, involving a basketball striking a patron. Therefore, based upon the record before the Court, it is undisputed that Defendant had no knowledge, constructive or otherwise, that the long range basketball shot game created a dangerous condition on its premises. For this reason, as well, the Defendant is entitled to summary judgment as a matter of law.

**2. Plaintiffs claims are barred by their own assumption of the risk.**

The Complaint alleges that Defendant “was or should have been aware” of the hazards posed by the maintenance and operation of this game and failed to take any steps to correct this dangerous situation. Complaint, ¶18. As was argued in the previous section, Plaintiffs have not produced any evidence to show (1) a dangerous condition existed or (2) that Defendant had notice of a dangerous condition. Defendant has affirmatively demonstrated that it had no notice, no reason to believe, that the long range basketball game presented, or presents, an unreasonable risk of harm to anyone. Exhibit A, ¶9. The only logical way for Defendant to be aware of such a “hazard” would be for the “hazard” to be open and obvious. If the Court finds a “hazard” existed, (and clearly it did not) and was open and obvious to the Defendant, then it must have also been open and obvious to all, including the Plaintiffs. Accordingly, Plaintiffs claims should be barred by their own assumption of the risk of that “hazard”.

**CONCLUSION**

For the reasons set forth above, and for such other reasons as may be

advanced at a hearing on this motion, the Defendant respectfully moves this Court to enter an Order granting summary judgment in its favor.

Respectfully submitted:

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**REQUEST FOR HEARING**

Defendant, Jolly Roger Rides, Inc, through counsel, respectfully requests a hearing on this Motion for Summary Judgment.

Respectfully submitted:

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Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18<sup>th</sup> day of June, 2008, a copy of the foregoing Memorandum in Support of Defendant, Jolly Roger Rides, Inc's Motion for Summary Judgment and Request for Hearing was mailed, by first class mail, postage prepaid, to:

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Daniel Korp June  
Of Counsel for Defendant