CUPERTINO

OFFICE OF PUBLIC AFFAIRS

Telephone: (408) 777-3262 • FAX: (408) 777-3366 • pio@cupertino.org
City Hall • 10300 Torre Avenue • Cupertino, CA 95014-3255

NEWSRELEASE

September 5, 2017

Santa Clara County Superior Court Grants Motion for Summary Judgment in Tafari v. City of Cupertino, De Anza Youth Soccer League

CUPERTINO, CA – On August 24, 2017 the Santa Clara County Superior Court granted the City of Cupertino's Motion for Summary Judgment in "Tafari v. City of Cupertino, De Anza Youth Soccer League."

This legal action arises out of a personal injury incident. On March 29, 2014 a youth soccer player participating in an athletic event organized by De Anza Youth Soccer League ("De Anza") hung from a portable soccer goal and fell at Creekside Park. The player suffered traumatic injuries as a result of the fall.

In so ruling, the court found that there was no evidence that the City "owned, maintained, managed, or operated" the soccer goal. Significantly, the court concluded that Creekside Park itself was not dangerous.

This court ruling ends the City's involvement in the action.

###

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

HEWAN TAFARI, by and through her Guardian Ad Litem, TEKLE TAFARI, Plaintiff, vs. CITY OF CUPERTINO; DE ANZA YOUTH SOCCER LEAGUE; DOES 1 TO 10, Defendants.	Case No. 2015-1-CV-275795 ORDER RE: MOTION FOR SUMMARY JUDGMENT

The Motion for Summary Judgment/Adjudication brought by Defendants City of Cupertino and DeAnza Youth Soccer League came on for hearing before the Honorable James L. Stoelker on August 24, 2017, at 9:00 a.m. in Department 3. The matter having been submitted, the Court finds and orders as follows:

This is an action for personal injuries incurred during/after an organized youth soccer game by Plaintiff Hewan Tafari ("Plaintiff"), a minor (7 years old at the time of injury), by and through her guardian ad litem Tekle Tafari. The injury occurred on March 29, 2014. Plaintiff's original and still operative Complaint was filed January 21, 2015. It is a form complaint stating

a claim for Premises Liability consisting of two counts, Negligence, now alleged against Defendant DeAnza Youth Soccer League ("DeAnza") only, and Dangerous Condition of Public Property, alleged against Defendant City of Cupertino ("City") only. DeAnza and the City filed a joint motion for summary judgment/adjudication.

As an initial matter the Court notes that Defendants have failed to comply with Rule of Court 3.1350(b) and that as a result summary adjudication in the alternative is unavailable. The motion is therefore one for summary judgment only on three separate grounds: 1) that the release language in a form (generally referred to by the parties as "Membership Form #1601") purportedly signed by Plaintiff's parents for the spring 2014 season provides both Defendants with a complete defense; 2) that the doctrine of primary assumption of the risk provides both Defendants with a complete defense, and; 3) that Defendant City is entitled to summary judgment on the only claim alleged against it because no dangerous condition of public property existed. (See Defendants' Notice of Motion at 1:27-2:6.)

The Court also notes that Plaintiff's opposition to the motion does not comply with Rule of Court 3.1113(f). The Court has exercised its discretion to consider the opposition regardless of this failure.

The pleadings limit the issues presented for summary judgment and the motion may not be granted or denied based on issues not raised by the pleadings. (See *Government Employees Ins. Co. v. Sup. Ct.* (2000) 79 Cal.App.4th 95, 98; *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258; *Nieto v. Blue Shield of Calif. Life & Health Ins.* (2010) 181 Cal.App.4th 60, 73 ["the pleadings determine the scope of relevant issues on a summary judgment motion."].) The moving party bears the initial burden of production to make a prima facie showing that there are no triable issues of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826,

850.) "A defendant seeking summary judgment must show that at least one element of the plaintiff's cause of action cannot be established, or that there is a complete defense to the cause of action. ... The burden then shifts to the plaintiff to show there is a triable issue of material fact on that issue." (*Alex R. Thomas & Co. v. Mutual Service Casualty Ins. Co.* (2002) 98 Cal.App.4th 66, 72; internal citations omitted.) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable finder of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar*, *supra*, at 850.)

Defendants' motion is DENIED in part and GRANTED in part as follows.

Defendants' motion for summary judgment on the ground that the release language in Membership Form #1601 (blank copies of which are attached to multiple supporting declarations as exhibit A) gives both Defendants a complete defense is DENIED. Defendants admit that only copy of the form in their possession purportedly signed by a parent of Plaintiff was subsequently shredded in December 2014. (See the declaration of Dianne Depositar.) Even if it is assumed for purposes of argument that the declaration of Tiki Tse (the only declarant who states that she saw a completed registration form for Plaintiff for the spring 2014 season) submitted by Defendants is sufficient to meet their initial burden as to this defense, when the burden shifts to Plaintiff, the deposition testimony of Plaintiff's parents (exhibits A & B to the declaration of Plaintiff's Counsel Brian Larsen) denying that they signed such a form clearly raises a triable issue as to whether a Membership Form for the spring 2014 season was ever signed for Plaintiff. Since this factual dispute is a sufficient basis on its own to deny the motion on this ground, the Court will not address the parties' arguments over the legal effect of the release language, its size, etc.

Defendants' motion for summary judgment on the ground that the primary assumption of the risk doctrine, as applied to an organized youth soccer game, provides them a complete defense is DENIED for failure to meet the initial burden.

"[W]here, by virtue of the nature of the activity and the parties' relationship to the activity, the defendant owes no legal duty to protect the plaintiff from the particular risk of harm that caused the injury--the doctrine [of assumption of risk]... operate[s] as a complete bar to the plaintiff's recovery." (*Knight v. Jewett* (1992) 3 Cal.4th 296, 314-315; see also *Connelly v. Mammoth Mountain Ski Area* (1995) 39 Cal.App.4th 8, 11 (stating that "[p]rimary assumption of risk arises where a plaintiff voluntarily participates in an activity or sport involving certain inherent risks; primary assumption of risk does bar recovery because no duty of care is owed as to such risks"), citing *Knight, supra*, 3 Cal.4th at 314-316; see also *Amezcua v. Los Angeles Harley-Davidson, Inc.* (2011) 200 Cal.App.4th 217, 228 (stating that "'assumption of risk' can be a complete defense to a claim of negligence"); see also *Childs v. County of Santa Barbara* (2004) 115 Cal.App.4th 64, "[p]rimary assumption of risk is a complete bar to recovery"; also stating "[t]he doctrine of primary assumption of risk is applied to certain sports or sports-related recreational activities where 'conditions or conduct that otherwise might be viewed as dangerous often are an integral part of the sport itself' and their removal would alter the nature of the sport"; also stating that "[t]he doctrine is based on the commonsense conclusion that where a person is playing an active sport, others involved in the activity should not be liable for injuries caused by risks that are an inherent part of the sport unless the defendant's conduct has increased the risk of harm").

Defendants have failed to establish that the actual alleged circumstances of Plaintiff's injury: her hanging and/or swinging from the crossbar of an unanchored portable goal, then

falling to the ground with the goal tipping over and the crossbar landing on top of her, has anything to do with the inherent risks of playing a game of soccer. Even if it is assumed that the youth soccer game was not yet over when Plaintiff was injured (and the Court notes that this is disputed) hanging from the crossbar of a goal is simply not an integral part of the game of soccer. It is not something that should occur in the normal course of play. This determination is properly made by the Court as, "the question of the existence and scope of a defendant's duty of care is a legal question which depends on the nature of the sport or activity in question and on the parties' general relationship to the activity, and is an issue to be decided by the court, rather than the jury." (*Knight, supra*, 3 Cal.4th at 313.) Whether a risk is an inherent part of an activity "is necessarily reached from the common knowledge of judges, and not the opinions of experts." (*Staten v. Superior Court* (1996) 45 Cal.App.4th 1628, 1635 [holding that collisions with other ice skaters are an inherent risk of figure skating].)

Defendants' motion for summary judgment on the ground that Defendant City is entitled to judgment on the only claim alleged against it because no dangerous condition of public property has been shown to exist is GRANTED.

"A public entity is generally liable for injuries caused by a dangerous condition of its property if 'the property was in a dangerous condition at the time of the injury, ... the injury was proximately caused by the dangerous condition, ... the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and ... either: [¶] ... [a] negligent or wrongful act or omission of an employee created the dangerous condition; or [¶] ... [t]he public entity had actual or constructive notice of the dangerous condition [in time to prevent the injury].' (Gov. Code § 835.) For [the] purposes of an action brought under section 835, a '"dangerous condition," as defined in section 830, is "a condition of property that creates a

substantial ... risk of injury when such property or adjacent property is used with due care" in a "reasonably foreseeable" manner. (§ 830, subd. (a).)' [Citation.]" (*Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1183.)

In order for liability for a dangerous condition to exist "the public property on which liability is based must be owned or controlled by the public entity at the time of the injury." (*Longfellow v. County of San Luis Obispo* (1983) 144 Cal.App.3d 379, 383. See also 5 Witkin, *Summary of Cal. Law* (10th ed. 2005) Torts §251 ["Property cannot be 'public property' unless owned or controlled by the public entity."])

Defendants have shown through admissible evidence, the declaration of Chris Mertens (attached exhibit E to the declaration of Defense Counsel Stacey Chau) and the declaration of Thomas Brough, that none of the goalposts used by Defendant DeAnza in Creekside Park on the day of Plaintiff's injury were owned, maintained, managed or operated by the City. This is sufficient to meet Defendants' initial burden to establish that Defendant City has no liability because Plaintiff has not established that a dangerous condition of public property existed at the subject location on the day in question.

When the burden shifts to Plaintiff, she is unable to raise any triable issues of material fact. Plaintiff is bound by her Complaint and her verified responses to Defendants' interrogatories and supplemental interrogatories (see exhibits B, C, F and G to the Chau declaration), particularly her response to special interrogatory no. 13 (in exhibit C to the Chau declaration), asking her to state "all facts" in support of her only claim against the City, "count two" of the premise liability claim asserting a dangerous condition of public property. The only "property" identified in that verified discovery response is the goalpost, which the City has established it did not own, maintain or manage. Neither the Complaint nor Plaintiff's verified

discovery responses identify any aspect or characteristic of Creekside Park itself as dangerous. Therefore no dangerous condition of *public* property has been identified, much less established to have been a factor in Plaintiff's injury. The argument in Plaintiff's opposition that the City could be liable on a failure to inspect theory is unpersuasive. Summary judgment cannot be granted or denied based on issues not raised by the pleadings and Plaintiff's Compliant cannot be reasonably interpreted as alleging any such theory, nor was it asserted in Plaintiff's verified responses to discovery asking her to state all facts in support of her dangerous condition of public property claim.

Dated: 8/24/17

James L. Stoelker
Judge of the Superior Court

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA
DOWNTOWN COURTHOUSE
191 NORTH FIRST STREET
SAN JOSÉ, CALIFORNIA 95113
CIVIL DIVISION

August 24, 2017

Stacey Dee Chau
Kronenberg Law
1 KAISER PLAZA SUITE 1675
OAKLAND CA 94612

RE: **H. Tafari vs City Of Cupertino, et al**
Case Number: **2015-1-CV-275795**

PROOF OF SERVICE

ORDER RE: MOTION FOR SUMMARY JUDGMENT was delivered to the parties listed below the above entitled case as set forth in the sworn declaration below.

If you, a party represented by you, or a witness to be called on behalf of that party need an accommodation under the American with Disabilities Act, please contact the Court Administrator's office at (408) 882-2700, or use the Court's TDD line (408) 882-2690 or the Voice/TDD California Relay Service (800) 735-2922.

DECLARATION OF SERVICE BY MAIL: I declare that I served this notice by enclosing a true copy in a sealed envelope, addressed to each person whose name is shown below, and by depositing the envelope with postage fully prepaid, in the United States Mail at San Jose, CA on August 24, 2017. CLERK OF THE COURT, by Robert Gutierrez, Deputy.

cc: Brian Larsen 530 Jackson St 2nd FL San Francisco CA 94133