IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

MAYA PAVEZA, Individually, Plaintiff,	)	
v.	)	C. A. No. N13C-12-190 ALR
THE POND, INC., a Delaware corporation, Defendant.	)	

Submitted: May 29, 2015
Decided: June 3, 2015

UPON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
GRANTED

Defendant, The Pond, Inc., requests entry of summary judgment pursuant to Superior Court Civil Rule 56 in its favor and against Plaintiff Maya Paveza who opposes the entry of judgment. In consideration of Defendant's motion and Plaintiff's opposition, as well as the decisional law and undisputed facts, the Court finds as follows:

1. The Court may grant summary judgment only where the moving party can "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."[1] The moving party bears the initial burden of proof, and once that is met, the burden shifts to the non-moving

[1] Super. Ct. Civ. R. 56.

party to show that a material issue of fact exists.[2] At the motion for summary judgment phase, the Court must view the facts "in the light most favorable to the non-moving party."[3]

2. The Plaintiff alleges that that she was a business invitee on December 23, 2011, participating at the "open skate" at the ice skating rink operated by Defendant in Newark, Delaware, when she fell on the ice. Plaintiff further alleges that she slipped and fell on debris while she was skating. Plaintiff alleges that Defendant negligently failed to remove the debris which caused her to fall and/or failed to warn her about it. Plaintiff alleges that, as a direct and proximate result of Defendant's negligence, she suffered serious bodily injuries.

3. Plaintiff alleges negligence by Defendant. Specifically, according to Plaintiff, in an action for personal injuries resulting from a defendant's breach of duty to keep its premises in reasonably safe condition for use by its customers, a plaintiff must show that (1) there was an unsafe condition on the defendant's premises (2) which caused the injuries complained of, and (3) the premises owner had actual notice of the unsafe condition or could have discovered it through reasonable inspection.[4]

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[2] *Moore v. Sizemore*, 405 A.2d 679, 680-81 (Del. 1979).
[3] *Brzoska v. Olson*, 668 A.2d 1355, 1364 (Del. 1995).
[4] *See Argentieri v. Apple Am. Group, LLC*, 2013 Del. Super. LEXIS 366, at *7 (August 27, 2013) (citing *Hazel*, 953 A.2d at 709 (Del. 2008)).

4. Viewing the evidence in the light most favorable to Plaintiff, Plaintiff cannot establish that Defendant had actual notice of the unsafe condition or could have discovered it through reasonable inspection.

5. Plaintiff was deposed on August 19, 2014 and the relevant portions of her deposition concerning her fall are as follows: (a) Plaintiff was born on March 11, 1970[5] and began skating at the age the age of four (4);[6] (b) she had been using the skates since age thirteen (13);[7] (c) on the day in question Plaintiff could not get a feel for the ice;[8] (d) at the time Plaintiff fell, there were 30 to 50 people on the ice which was not terribly crowded;[9] (e) Plaintiff has a tendency to look at the ice when skating[10] but she did not see anything on the ice as she was skating;[11] (f) a couple had skated in front of Plaintiff at a normal safe distance just before Plaintiff fell;[12] (g) Plaintiff did not see anything on the ice but was looking for chips and gouges on the ice;[13] and (h) while Plaintiff was not as comfortable on the ice, it did not stop her from skating.[14]

[5] Depo. Tr. 4: 5–6.
[6] Depo. Tr. 11: 5–15.
[7] Depo. Tr. 12: 7–14.
[8] Depo. Tr. 14–15: 17–15.
[9] Depo. Tr. 16: 15–21.
[10] Depo. Tr. 22: 15–22.
[11] Depo. Tr. 24: 9–12.
[12] Depo. Tr. 23: 20–24.
[13] Depo. Tr. 25-26: 17–5.
[14] Depo. Tr. 27-28: 3–6.

6. Katrina Paveza, Plaintiff's daughter, was also deposed on August 19, 2014 and the relevant portions of her deposition testimony are as follows: (a) there were not too many people at the rink, maybe 3 families;[15] (b) Katrina was turning as her mother started to fall and Katrina did not see the complete fall;[16] (c) Katrina saw a rubber band before her mother fell and Katrina saw the rubber band after her mother fell but after a minute when Katrina looked back the band was gone;[17] (d) a couple skated in front of her mother right before her mother fell;[18] and (e) the couple skated back over to the area after her mother fell and then the band was gone.[19]

7. An eyewitness, Elizabeth Sneider, not an employee of the Defendant, was with her own child who was taking skating lessons at the time of Plaintiff's fall, gave a statement which she affirmed by affidavit as true and correct. Sneider observed the following: (a) the rink was not crowded at the time of the incident, 35 to 40 skaters compared to the more usual 200 to 300 skaters during open skate;[20] (b) "I almost thought, when I was watching her that oh she must have like by accident turned and just her foot went under her and she just sat;"[21] (c) "When I saw her she was just like in slow motion sitting, like just going down. So I'm not

[15] Depo. Tr. 9–10: 23–6.
[16] Depo. Tr. 13: 18–22.
[17] Depo. Tr. 16–17: 16–4.
[18] Depo. Tr. 17: 8–11.
[19] Depo. Tr. 18: 11–14.
[20] Sneider Aff. Ex. A at 3.
[21] Sneider Aff. Ex. A at 4.

sure if she was speeding before that but she didn't look like she knew really how to skate that well;"[22] and (d) "Question there was no debris, no trash nothing, nobody dropped anything? Answer no, no, no cause there's no food out on that ice, even the ice skaters…"[23]

8. It is Plaintiff's contention that Defendant should have known there was debris on the ice. Plaintiff argues that there is a genuine issue of material fact with respect to Defendant's actual or constructive notice. Plaintiff relies upon Defendant's concession that the ice was last resurfaced the night before Plaintiff's fall and that the undisputed testimony is that skaters were on the ice for as long as an hour before Plaintiff fell. According to Plaintiff, given that there were 30-50 skaters on the ice during that hour and no evidence in the record that Defendant performed any inspection of the ice during that time or any supervision of the skaters to determine whether a hazard or defect existed on the ice, there are sufficient facts from which a jury can conclude that Defendant should have known of the presence of the bracelet/band on the ice.[24]

9. However, even if the Court were to assume that a band was on the ice in the area where the Plaintiff fell and that somehow the band was involved in the causation of the incident, Defendant's liability for negligence cannot be established

[22] Sneider Aff. Ex. A at 4.
[23] Sneider Aff. Ex. A at 6.
[24] *See Hazel*, 953 A.2d at 710; *Argentieri*, 2013 Del. Super. LEXIS 366 at *9-*10.

by those facts. The ice had been cleaned and resurfaced the evening before Plaintiff's fall; the free skate was the first event on the ice; the witness Katrina Paveza had received her ice skating lesson in the same general vicinity of the fall; others were skating without incident or accident. No foreign object was observed on the ice in the area of the fall until just moments before the fall occurred and it was not observed moments after Plaintiff's fall. Both Plaintiff and her daughter testified that a couple had skated in front of Plaintiff just before Plaintiff fell and that the same couple skated over the same area after Plaintiff fell. After that same couple skated through the area post-fall, the band was then absent from the ice.

10. The undisputed testimony and evidence permits only one conclusion, that the "band" was only on the ice for moments before the fall, having been dropped by the couple just prior to the incident, and being immediately retrieved by them after the incident. There is no evidence of record which supports that Defendant knew or should have known of the presence of the band in the short interval between when Plaintiff claims it was dropped and when Plaintiff fell. Plaintiff does not claim that Defendant is strictly liable for her injuries. To establish negligence, Plaintiff has to show that Defendant had notice or should have had notice of debris on the ice.[25] The testimony of the persons present, Plaintiff, her daughter Katrina, and the witness Sneider cannot support a legal

[25] *See Tedesco v. Harris*, 2006 Del. Super. LEXIS 267 (Del. Super. June 15, 2006).

finding that Defendant had notice or should have had notice that there was debris on the ice.

11. Primary assumption of the risk generally applies to participants in sporting events.[26] Accordingly, Plaintiff assumed the risk that she might fall. Absent negligence by Defendant, Defendant cannot be held responsible.

11. There is no genuine dispute of material fact which could support a finding of Defendant's liability. Accordingly, Defendant is entitled to the entry of summary judgment in its favor as a matter of law.

NOW, THEREFORE, this 3rd day of June, 2015, Defendant's Motion for Summary Judgment is hereby GRANTED and JUDGMENT is entered in favor of Defendant and against Plaintiff.

IT IS SO ORDERED.

Andrea L. Rocanelli

Andrea L. Rocanelli

[26] *Farrell v. University of Delaware*, 2009 Del. Super LEXIS 368.