IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

MEGAN MCGREGOR and KYLE MCGREGOR, Plaintiffs, v. MESA JAME CORP., SKY ZONE LLC, SKY ZONE FRANCHISE GROUP, LLC, CIRCUSTRIX HOLDINGS, LLC, TRAMPOLINE ACQUISITION HOLDINGS, LLC, and TRAMPOLINE ACQUISITION PARENT HOLDINGS, LLC, Defendants.	)	C.A. No. N25C-03-376 CLS

Date Submitted: January 19, 2026
Date Decided: April 21, 2026

Upon Consideration of the Defendant's Motion for Judgment on the Pleadings, **GRANTED in part, DENIED in part.**

MEMORANDUM OPINION

Patrick C. Gallagher, Esquire of JACOBS & CRUMPLAR, P.A., *Attorney for Plaintiffs*.

Eric Scott Thompson, Esquire of MARSHALL DENNEHEY, PC, *Attorney for Defendants*.

SCOTT, J.

Before the Court is Defendants', Mesa Jame Corporation's, Sky Zone, LLC's, Sky Zone Franchise Group, LLC's, CircusTrix Holdings, LLC's, Trampoline Acquisition Holdings, LLC's, and Trampoline Acquisition Parent Holdings, LLC's (collectively, "Defendants"), Motion for Judgment on the Pleadings, asking the Court to enter judgment in their favor as to Megan McGregor's and her husband, Kyle McGregor's (collectively, "Plaintiffs"), claims under Superior Court Civil Rule 12(c). For the following reasons, the Defendants' Motion is **GRANTED in part, DENIED in part**.

FACTUAL AND PROCEDURAL BACKGROUND

On January 15, 2024, Plaintiffs visited Sky Zone, a trampoline park, with their children.[1] During the visit, Megan used the trapeze swing.[2] Megan alleges that when she let go of the swing, she "fell onto an underinflated or partially inflated airbag" and sustained injuries.[3] When Kyle was called over to the area where Megan was injured, he purportedly "noticed multiple areas of duct tape applied to the airbag."[4]

On August 26, 2023, Megan signed a release, titled "Participant and Arbitration Agreement, Indemnification, General Release and Assumption" (the "Release") for the Newark, Delaware Sky Zone location, for herself and on behalf

[1] Compl., D.I. 1, ¶¶ 16–17.
[2] *Id.* ¶¶ 18–19.
[3] *Id.* ¶¶ 19–21.
[4] *Id.* ¶ 23.

of her children.[5] The Release insulates Defendants from liability and states that Megan understood she "was voluntarily participating in the ACTIVITIES, which [she] agree[d] are dangerous and entail both known and unknown inherent risks[.]"[6] The Release expired on August 25, 2024.[7]

Plaintiffs filed a Complaint on March 30, 2025, alleging claims for premises liability, gross negligence/recklessness, and loss of consortium.[8] Defendants moved for judgment on the pleadings on November 4, 2025.[9] Plaintiffs responded in opposition on January 19, 2026.[10] The matter is now ripe for decision.

STANDARD OF REVIEW

Under Superior Court Civil Rule 12(c), "any party may move for judgment on the pleadings." "In resolving a Rule 12(c) motion, the Court accepts the truth of all well-pleaded facts and draws all reasonable factual inferences in favor of the non-movant."[11] The standard of review on a motion for judgment on the pleadings tracks the standard for a motion to dismiss under Rule 12(b)(6).[12] Accordingly, "[t]he

---

[5] Defs.' Mot. for J. on the Pleadings, D.I. 21, Ex. F ("Release").
[6] Release ¶ 1.
[7] *See generally id.*
[8] *See generally* Compl.
[9] *See generally* Defs.' Mot. for J. on the Pleadings.
[10] *See generally* Pls.' Resp. to Def.'s Mot. for J. on the Pleadings, D.I. 26 ("Pls.' Resp.").
[11] *Fortis Advisors LLC v. Boston Dynamics Inc.*, 2025 WL 1356521, at *3 (Del. Super. Apr. 29, 2025) (citing *D'Antonio v. Wesley Coll., Inc.*, 2023 WL 9021767, at *2 (Del. Super. Dec. 29, 2023)).
[12] *Silver Lake Office Plaza, LLC v. Lanard & Axilbund, Inc.*, 2014 WL 595378, at *6 (Del. Super. Jan. 17, 2014) (quoting *Blanco v. AMVAC Chem. Corp.*, 2012 WL 3194412, at *6 (Del. Super. Aug. 8, 2012)).

Court will not grant judgment on the pleadings unless, after drawing all reasonable inferences in favor of the non-moving party, no material issues of fact exists and movant is entitled to judgment as a matter of law."[13]

DISCUSSION

Defendants ask the Court to enter judgment in their favor because the Release bars any claims against them as Plaintiffs expressly assumed the risk of an inherently dangerous activity.[14] Defendants also argue that Plaintiffs' claim for gross negligence/recklessness is conclusory and barred by the doctrine of the implied assumption of the risk.[15] Plaintiffs concede that Megan signed the Release, but aver that the claim for gross negligence is outside the scope of the Release.[16] In addition, Plaintiffs proffer that Megan did not impliedly assume the risk of any injuries resulting from the facts of this case.[17] Otherwise, Plaintiffs argue that the Complaint adequately states a claim for gross negligence/recklessness.[18]

I. The Release does not bar claims for gross negligence/recklessness.

Under Delaware law, "primary assumption of the risk is implicated when the plaintiff expressly consents 'to relieve the defendant of an obligation of conduct

---

[13] *Four Cents Holdings, LLC v. M&E Printing, Inc.*, 2025 WL 2366460, at *4 (Del. Super. Aug. 12, 2025) (citing *Ford Motor Co. v. Earthbound, LLC*, 2024 WL 3067114, at *7 (Del. Super. June 5, 2024)).
[14] Defs.' Mot. for J. on the Pleadings ¶ 10.
[15] *Id.* ¶¶ 11, 14.
[16] Pls.' Resp. ¶ 5.
[17] *Id.* ¶¶ 7–9.
[18] *Id.* ¶¶ 10–12.

toward him, and to take his chances of injury from a known risk arising from what the defendant is to do or leave undone.'"[19] As such, "parties may enter into an agreement that relieves a business owner of liability for injuries to business invitees that result from the owner's negligent conduct[,]" provided that the release is "clear and unequivocal" and "unambiguous, not unconscionable, and not against public policy."[20]

Plaintiffs concede that Megan signed the Release, which clearly and unequivocally waives any claims of simple negligence against Defendants.[21] Thus, any claim for negligence against Defendants are dismissed. Plaintiffs argue, however, that consistent with *Lynam v. Blue Diamond, LLC*[22] and *Barth v. Blue Diamond, LLC*,[23] the Release does not cover claims of gross negligence or recklessness.[24] The Court agrees with Plaintiffs.

In both *Lynam* and *Barth*, the releases at issue relieved the defendants from liability caused by the "NEGLIGENCE OF THE 'RELEASEES' OR

---

[19] *Barth v. Blue Diamond*, *LLC*, 2017 WL 5900949, at *2 (Del. Super. Nov. 29, 2017) (quoting *Helm v. 206 Mass. Ave., LLC*, 107 A.3d 1074, 1080 (Del. 2014)) (internal quotation marks omitted).
[20] *Lynam v. Blue Diamond LLC*, 2016 WL 5793725, at *3 (Del. Super. Oct. 4, 2016) (citing *Ketler v. PFPA, LLC*, 132 A.3d 746 (Del. 2016); *Riverbend Cmty., LLC v. Green Eng'g, LLC*, 55 A.3d 330, 336 (Del. 2012)).
[21] Pl.'s Resp. ¶ 5.
[22] 2016 WL 5793725, at *4.
[23] 2017 WL 5900949, at *1.
[24] Pl.'s Resp. ¶¶ 4–6.

OTHERWISE.'"[25] In *Lynam*, this Court held that while an agreement can "insulate [d]efendants from liability for negligent conduct, it does not bar claims of 'more extreme forms of negligence,' such as 'reckless' conduct."[26] Similarly, in *Barth*, this Court concluded that the release form insulated the defendants from liability for negligence, but not recklessness.[27]

The Release states that:

> Despite all known and unknown risks . . . I hereby expressly, unconditionally and voluntarily remise, release, waive, relinquish, acquit, satisfy and forever discharge and agree and covenant not to sue MESA JAME CORP., . . . and agree to hold said parties harmless of and from any and all manner of actions or omission(s), causes of action, suits, sums of money, controversies, damages, judgments, executions, claims and demands . . . in law or in equity, including, but not limited to, any and all claims which allege negligent acts and/or omissions committed by MESA JAME CORP[.][28]

Though the Release relieves Defendants of liability for negligent conduct, like *Lynam* and *Barth*, the Release does not insulate Defendants from liability for gross negligence/recklessness given that such agreements are generally not construed to cover these more extreme forms of negligence. The Court is not persuaded by Defendant's reliance on *Ketler v. PFPA, LLC*, given that the scope of the release there was only addressed in the context of a negligence claim.[29] Consequently, the

---

[25] *Id.* at *3; *Lynam*, 2016 WL 5793725, at *3.
[26] *Lynam*, 2016 WL 5793725, at * 4 (internal citation omitted).
[27] *Barth*, 2017 WL 5900949, at *3 (citing *Lynam*, 2016 WL 5793725, at *4).
[28] Release ¶ 1.
[29] 132 A.3d at 747–48.

Court must next determine whether the Complaint adequately states a claim for gross negligence/recklessness.

II. A material issue of fact exists as to whether Defendants' conduct was grossly negligent/reckless.

Relying on *Smith v. Silver Lake Elementary School*, Defendants argue that Plaintiffs' claim for gross negligence/recklessness makes conclusory allegations that do not state a claim for relief.[30] Plaintiffs, on the other hand, contend that the allegations in the Complaint sufficiently allege that Defendants engaged in grossly negligent/reckless conduct regarding the inflation of the airbag.[31]

Under Superior Court Rule of Civil Procedure 9(b), claims for gross negligence must be stated with particularity so that the defendant is aware of potential liability.[32] Gross negligence "requires a showing of negligence that is a 'higher level' of negligence representing extreme departure from the ordinary standard of care."[33] "A recitation of conclusory allegations is not sufficient to meet the particularity requirement when the plaintiff has not provided any facts supporting a claim of extreme departure from the standard of care."[34]

---

[30] Defs.' Mot. for J. on the Pleadings ¶¶ 11–13.
[31] Pls.' Resp. ¶ 10.
[32] *Smith v. Silver Lake Elementary School*, 2012 WL 2393722, at *2 (Del. Super. June 25, 2012).
[33] *Id.* (quoting *Hughes v. Christiana Sch. Dist.*, 2008 WL 73710, at *4 (Del. Super. Jan. 7, 2008)) (internal quotation marks omitted).
[34] *Id.* (citing *Brown v. Robb*, 583 A.2d 949, 953 (Del. 1990)).

Here, unlike the plaintiffs in *Smith*, Plaintiffs plead facts demonstrating that a material issue of fact exists as to whether Defendants' conduct was an extreme departure from the standard of care. As alleged in the Complaint, Kyle noticed that duct tape was applied to the airbag when Megan was injured.[35] Moreover, the Complaint alleges that Megan did not hear any alarms ringing even though industry standards require working pressure alarms on inflatable structures and that similar injuries have resulted from underinflated/partially inflated airbags in the other Sky Zones across the United States.[36] The Complaint also asserts the date of the injuries and the location of the Sky Zone facility where the injuries occurred. From these facts as alleged in the Complaint, Defendants are aware of their potential liability, and the Court can draw a reasonable inference that Defendants knew or should have known there was an issue with the inflation of the airbag that raises material issues of fact as to whether Defendants' actions were grossly negligent/reckless.

III. A material issue of fact exists as to whether Plaintiff implied assumed the risk of injury.

Alternatively, Defendants claim that Plaintiffs' claims are barred by implied assumption of the risk.[37] Plaintiffs argue that implied assumption of the risk is not a valid defense because Megan could not appreciate the risk she was assuming—i.e.,

---

[35] Compl. ¶¶ 23, 28.
[36] *Id.* ¶¶ 25–29.
[37] Defs.' Mot. for J. on the Pleadings ¶ 14.

that Defendants "'increase[d] the risk of harm beyond what is inherent in the sport' by ignoring [industry] standards" and previous similar incidents at other Sky Zone locations.[38]

This Court has held that the "doctrine of implied primary assumption of risk does not insulate a tortfeasor from liability for intentional or reckless conduct."[39] The *Barth* Court reasoned that while "defendants do not owe a duty to protect a plaintiff from the risks inherent in an activity to which the doctrine of implied primary assumption of risk applies," defendants owe plaintiffs a duty "not to increase the risk of harm beyond what is inherent in the sport through intentional or reckless behavior that is completely outside the range of the ordinary activity in the sport."[40]

Neither party disputes that participating in the activities at Sky Zone qualifies as an inherently dangerous activity. There is, however, an issue of material fact that exists as to whether Defendants recklessly failed to maintain the inflation of the airbags under the trapeze swing and whether this conduct increased Megan's risk of

---

[38] Pl.'s Resp. ¶ 9 (quoting *Barth*, 2017 WL 5900949, at *6) (internal quotation marks omitted).
[39] *Barth*, 2017 WL 5900949, at *6.
[40] *Id.* (quoting *Peart v. Ferro*, 13 Cal. Rptr. 3d 885, 894 (Cal. Dist. Ct. App. 2004)) (internal quotation marks omitted). The activities considered inherently dangerous include spectating certain sporting events, participating in a contact sport, bungee jumping or bouncing, operating a jet ski or engaging in other noncompetitive water sports, drag racing, and skydiving. *Storm v. NSL Rockland Place, LLC*, 898 A.2d 874, 883 (Del. Super. 2005).

harm. Therefore, Defendants' Motion for Judgment on the Pleadings on this issue is denied.

In sum, the only claim that Defendants are entitled to judgment on is any claim for simple negligence. Otherwise, drawing all reasonable inferences in Plaintiffs' favor, material issues of fact exist, and Defendants are not entitled to judgment as a matter of law for the claims concerning gross negligence/recklessness.

CONCLUSION

For the foregoing reasons, Defendants' Motion for Judgment on the Pleadings is **GRANTED in part, DENIED in part**.

IT IS SO ORDERED.

/s/ Calvin Scott
Judge Calvin L. Scott, Jr.