FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2012CP4005356

Jeremy Cantrell
PLAINTIFF(S)

Plex Indoor Sports LLC
DEFENDANT(S)

Submitted by: _____ Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:** ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

RICHLAND COUNTY FILED DEC 11 2013 52

**ORDER INFORMATION**

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---|---|
| | | $ |
| | | $ |
| | | $ |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date 12/10/2013

**For Clerk of Court Office Use Only**

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this 11 day of Dec, 20 13 to attorneys of record or to parties (when appearing pro se) as follows:

Mario Anthony Pacella

Lee Edward Dixon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

SCANNED

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA<br>COUNTY OF RICHLAND | ) | IN THE COURT OF COMMON PLEAS<br>FIFTH JUDICIAL CIRCUIT |
| Jeremy Cantrell,<br><br>Plaintiff,<br><br>vs.<br><br>Plex Indoor Sports, LLC.,<br><br>Defendant. | ) | CASE NO. 2012-CP-40-05356<br><br>**ORDER** |



This matter came before the Court on September 4, 2013 at a hearing on Defendant's Motion for Summary Judgment. Present at the hearing were Mario Pacella, Esquire, counsel for Plaintiff, and Lee Dixon, Esquire, counsel for Defendant. After considering the law, the briefs filed by the parties, the arguments of counsel, and all matters submitted, Defendant's Motion for Summary Judgment is **GRANTED.**

## FACTS

This matter arises from an ankle injury Plaintiff suffered on July 30, 2009. On July 28, 2009, Plaintiff visited Plex Indoor Sports, LLC ("Plex"). Plaintiff was fifteen years old at the time. At this visit, Plaintiff was provided a copy of the "Plex Indoor Sports Individual Player Release and Waiver Form" ("release"). Plaintiff signed the release, but he did not read it. On July 30, 2009, Plaintiff again visited Plex for the purpose of skateboarding at the indoor skate park. While at the skate park, Plaintiff fell from his skateboard and injured his ankle.

On August 7, 2012, Plaintiff filed a complaint against Defendant. Defendant answered on October 11, 2012. On July 18, 2013, Plaintiff filed a First Amended Complaint alleging negligence and premises liability against Defendant. On August 28, 2013, Defendant filed a motion for summary judgment.

## STANDARD OF REVIEW

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRCP. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. *Wogan v. Kunze*, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008). "In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the

non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). "A motion for summary judgment on the basis of the absence of a duty is a question of law for the court to determine." *Oblachinski v. Reynolds*, 391 S.C. 557, 560, 706 S.E.2d 844, 845 (2011). If a legal duty is established, whether the defendant breached that duty is a question of fact. *Singletary v. S.C. Dept. of Educ.*, 316 S.C. 153, 157, 447 S.E.2d 231, 233 (Ct. App. 1994).

**DISCUSSION**

Defendant makes several arguments as to why summary judgment should be granted. First, Defendant argues that it was under no duty to protect Plaintiff from the inherent dangers of skateboarding. Second, Defendant argues there is no evidence of any breach proximately causing Plaintiff's injury. Third, Defendant argues Plaintiff executed a waiver of liability. Plaintiff argues that summary judgment is not appropriate because Defendant owed Plaintiff a duty to warn, Defendant undertook a heightened duty by failing to secure parental permission for Plaintiff to use its facility, and Defendant's breach proximately caused Plaintiff's injury.

In order to prevail in a cause of action for negligence, Plaintiff must prove: (1) a duty of care owed by the defendant; (2) a breach of that duty by a negligent act or omission; (3) the breach was the actual and proximate cause of the injury; and (4) plaintiff suffered damages or an injury. *See Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 135, 638 S.E.2d 650, 656 (2006). The same elements are required to plead and prove negligence in a premises liability action. *See Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). In premises liability actions where the Plaintiff is a business invitee, the business generally owes the visitor the duty of exercising reasonable or ordinary care for his safety and must warn only of latent or hidden dangers. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000).

In the present case, the elements of negligence are not met because Defendant did not owe a duty of care to Plaintiff. In the context of sporting activities, a defendant has no duty to protect an invitee from the inherent dangers of the sport because of the doctrine of primary implied assumption of risk. *See, e.g., Hurst v. E. Coast Hockey League, Inc.*, 371 S.C. 33, 38, 637 S.E.2d 560, 562-63 (2006) (doctrine applied to spectator hit by hockey puck). "Primary implied assumption of risk arises when the plaintiff impliedly assumes those risks that are inherent in a particular activity." *Davenport v. Cotton Hope Plantation Horizontal Prop.*

*Regime*, 333 S.C. 71, 81, 508 S.E.2d 565, 570 (1998). The doctrine of primary implied assumption of risk is not a defense, but rather "goes to the initial determination of whether the defendant's legal duty encompasses the risk encountered by the plaintiff." *Id.* Absent a legally recognized duty, the defendant in a negligence action is entitled to a judgment as matter of law. *Hurst*, 371 S.C. at 37, 637 S.E.2d at 562. The doctrine was applied in the sports context in *Hurst v. East Coast Hockey League, Inc.* when the South Carolina Supreme Court held that "a flying puck is inherent to the game of hockey and is also a *common, expected, and frequent risk* of hockey" and that the plaintiff assumed the risks inherent in the sport of hockey when he attended a hockey game. *Id.* at 38, 637 S.E.2d at 562–63 (emphasis added). Since *Hurst*, the doctrine has been extended to casual games and games played by minors. In *Cole v. Boy Scouts of America*, the South Carolina Supreme Court applied the doctrine to a pick-up game of softball played on a camping trip. *See Cole v. Boy Scouts of Am.*, 397 S.C. 247, 252-53, 725 S.E.2d 476, 479 (2011). Additionally, the federal district court, applying South Carolina law, held that the doctrine applied to minors, ages nine and eleven, playing golf. *See Rudzinski v. BB*, 2010 WL 2723105, at *1, *4 (D.S.C. 2010).

The undisputed facts of this case are that Plaintiff came to Plex for the sole purpose of skateboarding and, while doing so, he fell and sustained an injury. Falling is an inherent, common, expected, and frequent risk of skateboarding. The fact that Plaintiff's injuries were more severe than he expected is irrelevant. The doctrine of primary implied assumption of risk leads to the determination that any duties Defendant had did not encompass the inherent risk Plaintiff encountered in skateboarding. Plaintiff has admitted that his fall was not caused by any defect in the skate park, and the only allegations in the Complaint related to any danger or hazard refer solely to the dangers of skateboarding. Although Plaintiff also argues that Defendant should have assessed his skill before allowing him to skate, the inherent risks associated with skateboarding exist regardless of skill level. Defendant has no duty to assess skill because of the inherent risks which are impliedly assumed when a person participates in that activity. Under South Carolina law, Defendant was under no duty to protect Plaintiff from the inherent risks associated with skateboarding.

Plaintiff also argues that the release he signed imposed a duty upon Defendant to warn. The release Plaintiff signed purports to require a parent or legal guardian's signature if the participant is under the age of eighteen. It is undisputed that Plaintiff's parents did not sign the

release. Defendant argues that it is error for Plaintiff to imply that this waiver imposed a duty upon Defendant to warn, and this Court agrees. The duty to warn under premises liability law only exists for latent or hidden dangers created by the premises itself. *See Larimore v. Carolina Power & Light*, 340 S.C. 438, 444-45, 531 S.E.2d 535, 538 (Ct. App. 2000). It does not extend to the duty to warn about the activity. There is no law in this state establishing such a requirement.

Therefore, Defendant owed no duty to Plaintiff in a cause of action for negligence or premises liability. Because Defendant owed no duty to the Plaintiff and therefore cannot be held liable for Plaintiff's actions, Defendant's other arguments for granting its motion for summary judgment need not be considered. Additionally, Plaintiff has provided no evidence of a latent or hidden danger at the skate park. Therefore, the premises liability cause of action cannot be maintained.

**ORDER**

For the reasons stated above, it is therefore **ORDERED** that Defendant's Motion for Summary Judgment is **GRANTED.**

**AND IT IS SO ORDERED.**

ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
December 10, 2013