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DOORS AND WINDOWS ALONG GYM WALLS, OBVIOUS RISK?

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Under most circumstances, an unpadded gymnasium wall within several feet of the sideline of a basketball court would not pose an unreasonable risk of injury to users of the facility. An unreasonable risk of injury generally requires a condition which would *not* be open and obvious through the reasonable use of one's senses. In most instances where an ordinary gym wall is adjacent to a basketball court, the risk of injury associated with running into the wall should be readily apparent to those using the facility.

Under such circumstances, those using a gym facility must exercise reasonable care in looking out for their own safety. In choosing to continue to participate, those using a gym facility generally assume the open and obvious risks associated with such participation, including the proximity of the gym wall to the sidelines of a basketball court. On the other hand, as illustrated by the cases described below, the risk associated with doors and windows along a gym wall (particularly where the glass used is not screened or shatterproof) would not necessarily be considered an obvious and assumed risk by those using the gym facility.

GLASS IN GYM DOORS, DANGEROUS?

In the case of *Eddy v. Syracuse University*, 433 N.Y.S.2d 923, 78 A.D.2d 989 (1980), plaintiff was injured during an informal game of "ultimate frisbee" in defendant's gymnasium. The goal lines for the game were the outermost sidelines for the gym's two basketball courts. At the time of his injury, Eddy was running toward the goal and looking back over his shoulder to catch a thrown frisbee. The goal was line was approximately five to eight feet from the gymnasium's west wall which was of masonry construction with glass doors in the center.

While running to catch the frisbee, Eddy was unable to stop before striking one of the doors. He turned and saw the door, however, in time to raise his right arm in an attempt to protect himself. His body struck the handlebar across the door but because the door was locked, it did not open. The glass shattered and as Eddy's upper torso went through the door his right arm was severely lacerated.

Eddy acknowledged that he was aware of the presence of the walls and the doors when he participated in the game. In response to Eddy's negligence claim, Syracuse argued that "the gymnasium was not defective in its construction or design, nor was it unsuited for its ordinary purposes."

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As noted by the court, a landowner owes a legal duty of “reasonable care under the circumstances with foreseeability as a measure of liability.” Further, in determining whether a particular landowner is reasonable or negligent, the law balances the probability and gravity of the harm against the reasonableness of the burden on the landowner to take necessary precautions to alleviate a foreseeable risk of serious harm. Under the circumstances of this case, the court found sufficient evidence for a jury to conclude that “the glass doors, located as they were in a building intended to be used for strenuous physical activity, constituted a dangerous condition.”

The close proximity of the doors to the basketball court sideline could be found to present a danger to a player in a hotly contested basketball game. Their danger is enhanced, of course, with the playing of a running game employing the length of the gymnasium.

Thus the question arises of whether defendant should have foreseen that students might use the gymnasium for the playing of games other than those for which the basketball courts had been laid out. Here again, because of the propensity of college students to engage in novel games, a jury question was presented, and if such foreseeability was found, the probability and gravity of harm was readily apparent.

Moreover, the court found sufficient evidence for a jury to conclude that “the risk presented by the glass doors could have been obviated without imposing an undue burden upon defendant.” Specifically, the court noted that the obvious danger could have been protected against by “replacement of the glass with a solid material, or by placing a metal grill or a strong wire mesh over the glass.” The court, therefore, held that Syracuse had a legal duty to protect users of the gymnasium, including Eddy, from the dangers of the glass and the university’s negligent failure to do was the legal cause of plaintiff’s injuries. The court, therefore, affirmed the jury verdict awarding damages to Eddy.

BREAKABLE GLASS DANGER KNOWN?

In the case of *Thomas v. St. Mary’s Roman Catholic Church*, 283 N.W.2d 254 (S.D. 1979), plaintiff Howard Thomas was injured during a school basketball game between St. Mary’s and Chester High Schools held in St. Mary’s gymnasium. During the game, Thomas deflected the ball being handled by a St. Mary’s player and chasing the ball, lunged for it just as it was going out of bounds. Thomas succeeded in tapping the ball back into the playing area but his momentum carried him through a glass panel, not previously broken, located within six feet of the west boundary line of the basketball court.

During construction of the school, panels of glass were installed in four sections adjacent to the west entryway into St. Mary’s gymnasium. Two of the lower panels had previously been broken and

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replaced with plywood. Testimony disclosed that Thomas did not know the type of glass used in the gymnasium, nor did he realize that the glass was breakable. Moreover, Thomas did not receive any warning concerning the inherent danger of the glass panels so close to the playing floor.

In his complaint, Thomas alleged that St. Mary's was negligent in failing to provide him a reasonably safe place to play ball. In response, St. Mary's claimed "Thomas knew the dangerous condition and assumed the risk." The jury returned a verdict in favor of Thomas.

Under the circumstances of this case, the court found sufficient evidence for a jury to determine that "St. Mary's failed to exercise due care in protecting Thomas from the potential hazard of maintaining ordinary window glass in close proximity to the basketball court":

St. Mary's, through its agent and employees, knowingly installed breakable glass in a sidelight paneling. St. Mary's further admitted... that no warnings were given concerning the makeup or propensity of the glass to break or shatter; nor was there any policy protecting basketball players from colliding with the glass, although there were protective mats on the premises.

Neither party produced witnesses as to the dates of damage or repairs to the bottom glass panels; however, the jury could reasonably conclude in response to the evidence that two glass panels had previously been broken... [In addition,] St. Mary's knew or should have known of the danger in maintaining breakable glass in such close proximity to the basketball court and St. Mary's allowed this hazardous condition to exist.

The court also addressed St. Mary's contention that plaintiff had assumed the risk of injury because "Thomas, in the exercise of ordinary care, knew or should have discovered the danger of colliding into the glass panels."

Ordinarily, the question of the assumption of risk is for the jury, provided there is evidence to support it. It is well-established that in order to support an assumption of the risk defense under South Dakota law, the defendant must show that the plaintiff not only had knowledge of the existence of the danger involved (actual or constructive), and an appreciation of its character, but additionally, that he voluntarily accepted such risk, i.e., Thomas had a sufficient amount of time, knowledge, and experience to make an intelligent choice.

Applying these principles to the facts of the case, the court found St. Mary's had "failed to prove that Thomas either knew or should have known of the dangerous situation the glass panels presented."

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St. Mary's fallaciously reasons that Thomas should have appreciated the obvious danger involved in colliding into the glass panels and therefore, assumed the risk of said injury...

Thomas was not obliged to make a critical examination of the basketball court that he was about to use in order to determine whether or not it was safe. On the contrary, he had the right to assume that those in charge had exercised due care in the matter of inspection and had taken the proper precaution for the safety of the players.

Accordingly, the court concluded that "Thomas did not assume the risk that the glass panel, in such close proximity to the basket, would be of ordinary glass unable to withstand impact."

Reasonably assuming that the glass was safe, Thomas was unappreciative of the danger produced by the use of window glass. This glass panel was opaque, not transparent, and did not indicate to either the sixteen-year-old boy or any of the adult officials that a hazard existed. This was the first time that Thomas had played on the court. Although he witnessed one game played earlier that evening, at no time was he apprised of the glass panel's inability to withstand impact. Therefore, it cannot be said that Thomas possessed either actual or constructive knowledge sufficient to compel a finding that he had voluntarily assented to incur that risk...

Since knowledge and appreciation of a particular risk are essential to the defense of assumption of risk, a plaintiff must only be held to assume the risk he appreciates, not the risk which he does not. *Restatement (Second) of Torts* § 496c, comment I at 573 (1965).

While Thomas "may have assumed certain risks of danger inherent in the playing the game of basketball against St. Mary's," the court held that Thomas "did not assume the risk that the glass panel located in such close proximity to the basket would break upon impact." Moreover, the court found no evidence that "Thomas had a sufficient amount of time, knowledge, and experience to make an intelligent choice" in assuming the risk posed by glass in the gym wall."

St. Mary's contends that Thomas was availed of a means to resist injury by directing himself toward the open doorway a couple of feet away. According to the testimony of eyewitnesses, however, Thomas went out of bounds and struck the panel almost instantly. Clearly, Thomas was unable to stop before striking the panel and had no time to consider taking a less hazardous route.

The court, therefore, affirmed the jury verdict in favor of Thomas.

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APPRECIATION OF DANGER?

In the case of *Stevens v. Central School District*, 270 N.Y.S.2d 23, 25 A.D.2d 871 (1966), plaintiff was injured while participating in a game of basketball in a gymnasium owned and controlled by defendant school district. At the time of the accident, plaintiff was 30 years old and the building was being used as a community recreation center. The facts of the case were as follows:

The combination cafeteria, assembly and gymnasium, where the basketball game was being played, had a stage at one end and a wall in which there were two doors at the other end. The wall was four feet, three inches from the backboard to which the basket was attached and approximately two feet from the "end line" of the court. Each of the doors had an 8 inch by 12 inch glass panel which was constructed of one-eighth inch double-thick window sheet glass. One of the doors was almost directly behind the basket. Plaintiff, while running along the court at considerable speed and "going up" for a shot at the basket, was carried by his momentum beyond the "end line" and into the door behind the basket, causing his arm, with which he tried to brace his body, to go through the pane of glass.

In his negligence claim, Stevens alleged that the basketball court was improperly constructed and designed "so that the wall of the gymnasium was dangerously close to one end of the basketball court and to the backboard at that end." Stevens also alleged that a glass window in the door was immediately behind and too close to the backboard. In addition, Stevens contended that this window was "constructed and maintained" by defendant without any warning that the glass in this window was "ordinary glass, not shatterproof, and not reinforced."

The school district claimed Stevens had assumed the risk of injury based upon the reasoning of the court in the case of *Maltz v. Board of Education*. (32 Misc. 2d 492, affirmed. 282 App. Div. 888). In this case, "the plaintiff was injured when his momentum carried him beyond the basket, causing him to hit against the jamb of an open doorway in a wall which was two feet from the basket." In *Maltz*, the court had found that "the plaintiff's prior experience made him aware of the very hazards and dangers of which he complained." Specifically, the court found Maltz "not only knew of the existing conditions but had or should have had an appreciation of the danger produced by the physical conditions existing":

On previous occasions, he had landed in the same direction as at the time of the accident; sometimes he went through the doorway and at other times he came into contact with the wall. It is apparent that in *Maltz* the risks of the court -- the door being open and the wall being so close to the end of the court -- were risks that were obvious

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and necessary to the sport as played on that particular court.

The court, however, found the circumstances in this particular instance distinguishable from *Maltz*. Unlike the plaintiff in *Maltz*, the court found Stevens had not necessarily “assumed the risk of the dangerous condition caused by the use of ordinary window glass.” On the contrary, the court stated that Stevens “could have reasonably assumed that since the glass was so close to the basket it was, at least, of a type which would resist the pressure of an impact such as may ordinarily occur during the course of a basketball game.”

While plaintiff may have assumed certain risks of danger inherent in the playing of basketball on this particular court under the conditions existing at the time of the accident, he did not assume the risk that the glass panel which was in such close proximity to the basket would be of ordinary glass unable to withstand impact...

The essential requisite to the invocation of the application of the doctrine of assumption of risk embraces not only a knowledge of the physical defect but includes also an appreciation of the danger produced by the physical condition.

While Stevens may have been “unappreciative of the danger produced by the use of window glass,” the court found that the school district was aware of this hazardous condition. In particular, the court noted the following testimony regarding “other types of glass available when the school was constructed which could have been used and which could have prevented the injuries which plaintiff sustained.”

[T]he architect who designed the building testified that the room where the accident occurred was not architecturally designed or constructed for basketball games and that it was poor planning to place a window in a door behind a basketball backboard that was only a few feet from the wall.

As a result, the court found sufficient evidence for a jury to conclude that the school district was “negligent in failing to use safety or shatterproof glass which was available at the time of the building's construction and subsequent thereto.”