

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONONDAGA

Addy V. Tauro,

Plaintiff,

vs.

AFFIDAVIT

Index no.: 2016EF4178

Gary Gait and Syracuse University,

Defendants.

Addy V. Tauro, being duly sworn, deposes and says that:

1. I am the plaintiff herein, and I submit this affidavit in opposition to the application by defendants to have my case dismissed.

2. In August, 2012, I entered Syracuse University as a full time student. That fall, I tried out for the Syracuse University women’s varsity lacrosse team. I made the team and participated as a player until October, 2013 without serious injury.

I have graduated and I am currently a graduate student in Marriage and Family Therapy at Syracuse University.

3. While I was a member of the lacrosse team, and at all times mentioned herein, the head coach was defendant Gary Gait. On his staff were several assistant coaches.

4. Throughout the team seasons, we would of course participate in practices and games. During practices, the team would naturally engage in various drills designed to hone specific skills and team strategies.

5. The team was instructed by defendant Gait and his staff on how to perform the

(2)

various drills that were used in the practices. We as players were told to practice the drills in accordance with the instructions of the coaches. Each practice drill had a specific process to be completed by the players and each drill had a specific purpose. The coaches spelled out the specific actions to be completed by the players and the purpose or purposes of the drills.

6. I have reviewed the affidavit sworn to by defendant Gary Gait on December 29, 2016. In his affidavit, he states that I was injured during a “passing warm-up exercise.” Defendant Gait also states that the ball bounced off the end of my lacrosse stick and deflected “in the direction towards (my) body.” These statements are false.

7. I was injured during what the coaches and players called the Post Drill. It was not exclusively a passing drill. We performed the Post Drill frequently and we were all familiar with it.

I was injured when defendant Gait threw the ball at my head, and the ball did not deflect off anything before striking me directly in the left temple. As I describe below, at the point in the drill when I was injured, there was no place in the drill for the ball to be thrown by defendant Gait anywhere near my head or upper body.

8. The Post Drill had many aspects to it. Parts of the drill centered around passing skills. Another part, the part we were performing when I was injured, involved honing ground-ball pick up and pass skills.

9. The ground-ball part of the Post Drill consisted of two parallel rows of coaches lined up generally back to back on the field. The coaches would be several feet apart.

The players lined up and ran in single file, down the sidelines of the field approximately 20-25 feet from the lines of coaches. The first coach in line would roll out a ball on the ground, always in an underhanded fashion, toward the player running down the rows of coaches. The player was instructed to try to pick up the ball cleanly and return it

(3)

back to the same coach with a pass. She would continue down the line of coaches and the next coach would roll out another ball along the ground and the process would be repeated. The next player in line would proceed in the same fashion.

10. Coach Gait and the other coaches instructed us, and we understood, that this part of the drill was intended to isolate and sharpen our skills at picking up ground balls cleanly and efficiently in the heat of the action. We were instructed to be focused generally on the ground to quickly perceive the ball visually in order to do this.

11. At the practice on October 8, 2013, the team was engaged in the ground-ball part of the Post Drill. I personally, the team and the coaches had performed this drill many times during practices over the course of the seasons in which I was a member of the team.

12. Defendant Gait was in one of the lines of coaches. As I ran past the coaches, he was to my left. As he and the coaches had instructed the team many times, and as we had practiced many times, I was expecting and anticipating a ground ball. I was visually focused toward the ground. We had never performed the ground-ball portion of the Post Drill in any manner other than with ground balls as I described above.

13. For no reason, without warning, in a manner never utilized before in any of our practices, defendant Gait overhanded a hard pass toward my head. Since I was expecting a ground ball, I was totally unprepared to receive a hard pass through the air. I never even saw it coming.

14. The ball struck me square in my left temple. The ball did not deflect off anything before striking my head. I was stunned and I staggered from the blow, but I did not fall or lose consciousness. I was at that time, and I continue to be to this day, wholly at a loss as to why defendant Gait would throw the ball at or toward my head.

15. As a consequence of defendant Gait's conduct, I have been treated for concussion and related symptoms continuously since the time of his totally unpredictable behavior.

16. We did not wear helmets when we practiced or when we played games, in full

(4)

compliance with NCAA rules.

Throwing the hard, rubber lacrosse ball toward a player's head, when she would not be expecting it would be extremely dangerous. There is no reason within a practice or the Post Drill for such behavior.

17. I never expected that defendant Gait would act in a way grossly outside the confines of the Post Drill. We had been instructed on and participated in this drill many times before I was injured. His actions were totally inconsistent with the drill and as such, throwing the ball toward my head was grossly negligent and extremely reckless.

18. I have been advised by my attorney that, by my voluntary participation on the varsity lacrosse team, the law is such that I am bound by the doctrine of "assumption of risk." That doctrine recognizes that I have "assumed the risk" of the injury-causing events which are known, apparent or reasonably foreseeable consequences of my presence on the team. The way it has been explained to me, this doctrine makes perfect sense. I have always understood that I am risking injury in any sport I play.

19. However, I never understood that, by being on the lacrosse team, I would be exposing myself to the risk of totally unpredictable and dangerous conduct of the head coach. There is no doubt that every practice and every game carried risk of injury. But defendant Gait's actions were not part of the practice and were not apparent or reasonably foreseeable. Since his conduct had no connection to the legitimate purposes of the drill or the team practice, it cannot be said that I "assumed the risk" of such actions. His actions were totally reckless and not part of his duties as head coach.

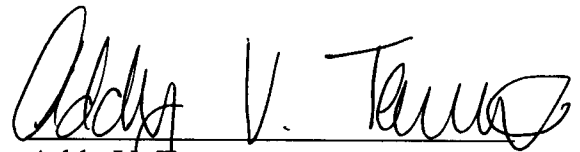
20. I am also aware of the terms of the Acknowledgement, Agreement, Authorization and Waiver that I signed in order to play lacrosse for Syracuse University. I do not believe that the terms of that document include the grossly negligent, reckless and unexplained conduct of defendant Gait.

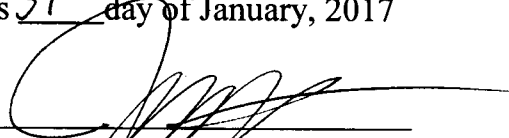
21. I do not believe that "assumption of risk" or the waiver and release have the effect that the head coach is immune from the consequences of his reckless and

(5)


unpredictable conduct.

Sworn to before me
this 31 day of January, 2017


Addy V. Tauro


NOTARY PUBLIC
JAMES B. FLECKENSTEIN
Notary Public, State of New York
Qualified in Onondaga Co., No. 02FL4674356
My Commission Expires Jan. 31, 2019

Dated: January 31, 2017


JAMES B. FLECKENSTEIN, Esq.
Attorney for Plaintiff
117 South State Street
Syracuse, New York 13202
(315) 475-3012

To:
BARCLAY DAMON, LLP.
Attorneys for Defendants
125 East Jefferson Street
Syracuse, NY 13202
(315) 425-2805