To be Argued by:
W. BRADLEY HUNT
(Time Requested: 15 Minutes)

New York Supreme Court

Appellate Division—Third Department

DAVID KATLESKI,

Plaintiff-Respondent,

– against –

CAZENOVIA GOLF CLUB, INC.,

Defendant-Appellant,

– and –

JUSTIN HUBBARD and RICHARD HUBBARD,

Defendants.

Case No.: CV-23-0642

BRIEF FOR DEFENDANT-APPELLANT

MACKENZIE HUGHES LLP
Jennifer D. Caggiano, Esq.
W. Bradley Hunt, Esq.
Attorneys for Defendant-Appellant
Mackenzie Hughes Tower
440 South Warren Street, Suite 400
Syracuse, New York 13202
(315) 474-7571
jcaggiano@mackenziehughes.com
mailto:bhunt@mackenziehughes.com

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QUESTIONS PRESENTED

Q: Did plaintiff David Katleski assume the risk of being hit by an errant golf shot while he was playing golf?

A: Yes. Under established New York law, golfers such as Katleski assume the risk of being hit by an errant shot.

Q: Did defendant Cazenovia Golf Club, Inc. ("CGC") subject itself to liability by unreasonably enhancing the risk that a golfer could be hit by an errant shot?

A: No. Under settled law, CGC did not unreasonably enhance the risk because it did not create a dangerous condition that was unique and distinct from those risks inherent in the sport of golf that all golfers are deemed to assume.

PRELIMINARY STATEMENT

This is a classic golf course injury case in which, under settled New York law, plaintiff David Katleski assumed the risk of being hit by an errant shot. *See Anand v. Kapoor,* 15 N.Y.3d 946, 947-48 (2010) (applying assumption of risk doctrine and dismissing complaint of plaintiff hit by golf shot that "went in an unintended direction"; ruling that "being hit without warning by a 'shanked shot'" is a "commonly appreciated risk of golf").

Katleski sued defendants Justin Hubbard, who hit the errant ball that injured Katleski from a hole adjacent to the hole that Katleski was playing; Richard Hubbard, who was playing with Justin; and the Cazenovia Golf Club, Inc. ("CGC"), the owner and operator of the course. Record on Appeal ("R") 12-20. The Supreme Court, Madison County, correctly dismissed the claims against Justin and Richard Hubbard, ruling that, under established principles of law, Katleski assumed the risk. R 1280 ("It is well established that when engaged in a sporting event, such as golf, the golfers assume the risk of foreseeable injury."). Although these same principles support dismissal of the claims against CGC, the court below denied CGC's summary judgment motion. R 4-9. CGC now appeals.

As discussed in point I below, the law leaves no doubt whatsoever that all golfers assume risk of being struck by a mis-hit ball – a danger that the Court of

Appeals has described as "a risk inherent in the game." *Rinaldo v. McGovern*, 78 N.Y.2d 729, 733 (1991).

As discussed in point II, CGC did not subject itself to liability by unreasonably enhancing the risk. To overcome the assumption of risk doctrine, a plaintiff must do more than prove that there were "suboptimal playing" conditions – a plaintiff must show that the defendant created a risk that was unique and different from the dangers "inherent in the sport" that all players are deemed to assume. *Bukowski v. Clarkson Univ.*, 19 N.Y.3d 353, 357 (2012) (internal quotation marks omitted). Katleski totally failed to carry this burden.

Furthermore, Katleski's theory – (1) that CGC should have installed "impenetrable barriers" (R 2089) between the contiguous, parallel golf holes so as to block errant balls; and (2) inconsistently, that CGC somehow should have designed the course to provide complete visibility between the holes – would effect a profound departure from New York law and from the way that golf courses are constructed and managed in practice. This Court should decline Katleski's invitation to break new legal ground by eviscerating the established assumption of risk doctrine and imposing onerous requirements that would undermine that doctrine's purpose: to facilitate "free and vigorous participation in athletic activities" by shielding defendants from "potentially crushing liability." *Bukowski*, 19 N.Y.3d at 358 (internal quotation marks omitted).

STATEMENT OF FACTS

The CGC Course

The CGC course was constructed in 1924. R 1939, 2042. It is a nine-hole course but rated for 18 holes, meaning that each hole serves as two different holes by using different tee and pin placements. R 2000, 2042. The basic layout of the course has remained the same for the 99 years it has existed. R 473-74, 2001, 2042. The only changes have been the addition or removal of trees, bunkers, and tee boxes. R 473-74, 2001, 2042.

The Layout of Holes Three and Seven

The accident took place on June 20, 2020, while Katleski and the Hubbards were playing in the CGC annual Member-Member tournament. R 2042.

At the time of the accident, Katleski was on the seventh fairway, riding in a golf cart and looking for a ball. R 2048; R 178-81. Justin Hubbard was at tee box A on hole three. R 2048. Holes three and seven are adjacent and parallel, and they run in opposite directions – meaning that the tees on hole three neighbor the seventh green. R 1943-44, 2044.

The Accident

Justin Hubbard took his tee shot on hole three. R 723, 2048. He intended to hit the ball straight down the fairway of hole three. R 700, 2048. Justin did not know if there were golfers on the seventh fairway when he hit his shot, and that was

not where he intended to hit the ball. R 696, 700, 725, 2048. Unfortunately, the ball hooked hard to the left, traveled to the seventh fairway, and struck Katleski in the eye. R 578-79, 2048-49. This was an errant, mis-hit shot. R 1280, 2049.

Katleski's Knowledge of the Risk

At the time of the accident, Katleski had been playing golf for over 50 years. R 98, 2046. He had been a member of CGC for 18 years and had played the CGC course about 100 times. R 99, 102, 2046. Katleski estimated that he had played the CGC course about 20 times during 2020 in the months leading up to the accident. R 280, 2047. On the day of the accident, Katleski had already played hole seven twice and hole three twice when the accident happened. R 118, 165, 405, 2047. Katleski was aware that other golfers were playing the course during the Member-Member tournament. R 121-23, 2047. He was also aware that he could not observe whether golfers were teeing off from tee box A on hole three while he was on the seventh fairway. R 224, 408-09, 2047. Katleski acknowledged in his deposition that being struck by a ball was a risk of playing golf. R 352, 2047.

POINT I

UNDER SETTLED NEW YORK LAW, GOLFERS LIKE KATLESKI ASSUME THE RISK OF BEING STRUCK BY AN ERRANT SHOT.

The Court of Appeals has explained the circumstances in which the assumption of risk doctrine applies, as follows:

> The assumption of risk doctrine applies where a consenting participant in sporting and amusement activities is aware of the risks; has an appreciation of the nature of the risks; and voluntarily assumes the risks …. *risks which are commonly encountered or "inherent" in a sport*, such as being struck by a ball or bat in baseball, *are risks for which various participants are legally deemed to have accepted personal responsibility*.

Bukowski v. Clarkson University, 19 N.Y.3d 353, 356 (2012) (emphasis added; quotation marks and brackets omitted) (citing *Morgan v. State*, 90 N.Y.2d 471 (1997)). *See also Secky v. New Paltz Cent. Sch. Dist.*, 195 A.D.3d 1347, 1347-48 (3rd Dept. 2021) ("A person who voluntarily participates in a sport or recreational activity assumes the risks which are inherent in and arise out of the nature of the sport") (internal quotation marks omitted).

As discussed below, New York law makes absolutely clear that the risk of being struck by an errant golf shot is "inherent" in the game of golf – and, thus, that all golfers are deemed to have assumed that risk.

A. The risk of being struck by an errant shot is inherent in the game of golf.

New York law is perfectly clear that the possibility of being struck by a mis-hit golf ball is a danger "inherent in golf" – such that any golfer is deemed to have assumed that risk. *Anand v. Kapoor,* 15 N.Y.3d 946, 948 (2010).

In *Anand,* the Court of Appeals dismissed the claim of a golfer who – much like Katleski here – had been hit by a "shot that went in an unintended direction"; the Court of Appeals noted that "being hit without warning by a 'shanked' shot while one searches for one's own ball" is "a commonly appreciated risk of golf." 15 N.Y.3d at 947, 948. Likewise, in *Rinaldo v. McGovern,* 78 N.Y.2d 729, 733 (1991), the Court of Appeals observed that "the possibility that the [golf] ball will fly off in another direction is a risk inherent in the game" (dismissing complaint).

Notably, the Appellate Division, Second Department has dismissed two cases filed against golf courses by plaintiffs who had been struck by balls and who alleged negligent design and maintenance of the courses. In *Lundin v. Town of Islip,* 207 A.D.2d 778 (2nd Dept. 1994), the plaintiff – just like Katleski in this case – "was injured by a golf ball that had been played from another tee." 207 A.D.2d at 779. The *Lundin* plaintiff – again, like Katleski – argued "that the injury was the result of … negligence in the design and maintenance of the golf course." 207 A.D.2d at 779. The court granted summary judgment to the golf course operator, ruling that "the

injured plaintiff willingly assumed the risks consistent with participating in the sport of golf." 207 A.D.2d at 779.

Similarly, in *Thornberg v. Town of Islip*, 127 A.D.3d 1162 (2nd Dept. 2015), the Appellate Division granted summary judgment to a golf course operator where the plaintiff had been struck in the head by a ball. The court applied the settled rule of law that "being struck in the head without warning by an errantly hit golf ball is a risk inherent in playing golf." 127 A.D.3d at 1162.

In addition, in *Hornstein v. State*, 46 Misc.2d 486 (Ct. Cl. 1965), the New York Court of Claims dismissed a complaint against a golf course operator on the basis that the plaintiff had assumed the risk of being struck by a ball hit from a contiguous hole – just like Katleski in this case. The court observed as follows:

> it is a matter of *common knowledge* that on practically all golf courses, including those constructed on vast acreages, where the fairways are wide and well separated by rough and shrubs, there are *parallel holes, played in opposite directions, where a sliced or hooked ball may and frequently does go into another fairway*. This is one of the incidents of all courses, with which golfers are generally familiar.

46 Misc.2d at 488 (emphasis added; quotation marks omitted).

B. The purpose of the assumption of risk doctrine – to facilitate participation in sports by protecting facilities like CGC from "prohibitive liability" – supports dismissal of this case.

The Court of Appeals has explained that the assumption of risk doctrine serves an important social purpose by making it possible for athletic activities to occur without the operators facing "prohibitive liability":

> We have recognized that athletic and recreative activities possess enormous social value, even while they involve significantly heightened risks, and have employed the notion that these risks may be *voluntarily assumed to preserve these beneficial pursuits as against the prohibitive liability* to which they would otherwise give rise.

Trupia v. Lake George Cent. School Dist., 14 N.Y.3d 392, 395 (2010) (emphasis added). In *Bukowski*, 19 N.Y.3d 353, the Court of Appeals granted summary judgment to a college where a pitcher on the college baseball team had been hit by a ball in practice; the Court of Appeals noted that the assumption of risk doctrine "shields college athletics from potentially *crushing liability*." 19 N.Y.3d at 358 (emphasis added).

Other cases, from New York and other states, also support this established principle. *See Morgan*, 90 N.Y.2d at 484 (assumption of risk doctrine supports "a social policy to facilitate free and vigorous participation in athletic activities") (quoting *Benitez v. New York City Bd. of Educ.*, 73 N.Y.2d 650, 657 (1989)). *See also Dilger v. Moyles*, 54 Cal.App.4th 1452, 1455 (Cal. App. 1997) ("That shots go awry is a risk that all golfers, even the professionals, assume when they play.

Holding participants liable for missed hits would only encourage lawsuits and deter players from enjoying the sport.").

In this case, endorsing Katleski's argument that CGC may face liability for a mis-hit golf ball would constitute a stark departure from New York law applying the assumption of risk doctrine. It would also undermine the purpose of that doctrine by subjecting golf courses to unprecedented and burdensome requirements. Indeed, as discussed in point II below, Katleski's specific complaints about CGC – that it should have constructed buffers between the holes or somehow altered the course to provide for 100% visibility across adjacent holes – effectively propose new rules that would transform the law governing golf courses throughout the State.

POINT II

UNDER SETTLED NEW YORK LAW, CGC DID NOT UNREASONABLY ENHANCE THE RISK – BECAUSE IT DID NOT CREATE A UNIQUE AND DANGEROUS CONDITION THAT WAS NOT INHERENT IN THE SPORT OF GOLF.

A. CGC did not create a unique hazard that is not inherent in the sport of golf.

As discussed above, New York law is settled that, as a general matter, a golfer assumes the risk of being hit by an errant shot. *See, e.g., Thornberg,* 127 A.D.3d at 1163 ("being struck in the head without warning by an errantly hit golf ball is a risk inherent in playing golf"). Katleski has not argued otherwise. What Katleski argues

is that an exception to this general rule applies because CGC unreasonably enhanced the risk. This is simply wrong.

It is true that courts have sometimes stated that, in a case involving assumption of the risk involved in athletic activities, a defendant may be held liable if it "unreasonably enhanced the condition that allegedly led to the subject accident." *Thornberg*, 127 A.D.3d at 1163. But this does *not* mean that assumption of risk cases are governed by ordinary negligence principles applicable to run of the mill premises liability actions. Quite the contrary.

In *Morgan*, 90 N.Y.2d 471 – perhaps the leading case in the area, in which the Court of Appeals explained that the assumption of risk doctrine survives the adoption of comparative fault as codified in CPLR 1411 – the Court of Appeals instructed that a defendant may be held liable for unreasonably enhancing a risk only if it creates a danger that is not "inherent" in the sport, as follows:

> Therefore, in assessing whether a defendant has violated a duty of care within the genre of tort-sports activities and their inherent risks, the applicable standard should include whether the conditions caused by the defendant's negligence are *unique* and created a dangerous condition over and *above the usual dangers that are inherent in the sport.*

90 N.Y.2d at 485 (emphasis added; internal quotation marks omitted). *See also Bukowski*, 19 N.Y.3d at 357 (citing and approving same holding from *Morgan*). The Court of Appeals emphasized in *Morgan* that, "in determining the extent of the

threshold duty of care, knowledge plays a role but *inherency is the sine qua non*." 90 N.Y.2d at 484 (emphasis added).

Thus, in this case, the key question is whether CGC unreasonably enhanced the risk by creating a dangerous condition that was "unique" and "over and above the usual dangers that are inherent in the sport" of golf. *Morgan,* 90 N.Y.2d at 485. It did not. The danger that led to Katleski's injury – the risk of being hit by an errant golf shot – is a danger that the Court of Appeals has recognized as "commonly appreciated" and "inherent in golf." *Anand,* 15 N.Y.3d at 948.

Finally, to understand the circumstances in which the assumption of risk doctrine applies, it is also instructive to consider the kind of cases where the doctrine does *not* apply. In the court below, Katleski principally relied on two cases. *Hawkes v. Catatonk Golf Club, Inc.*, 288 A.D.2d 528 (3rd Dept. 2001); *Shapiro v. City of Amsterdam*, 96 A.D.3d 1211 (3rd Dept. 2012). Both of these cases involved unique risks that were totally different from the ordinary risks inherent in golf. In *Hawkes,* the plaintiff was struck by a golf ball "while standing in the parking lot of defendant's golf course." 288 A.D.2d at 529. And in *Shapiro,* the plaintiff was struck by a ball "when his tee shot ricocheted off a masonry-block retaining wall allegedly protruding above grade level at the front of the tee box." 96 A.D.3d at 1212.

Nothing remotely similar to what happened in *Hawkes* or *Shapiro* happened here. Katleski was struck by an errant golf ball while he was on the fairway of the hole next to the hole from which the ball was hit. Under longstanding New York law, Katleski is deemed to have assumed that risk. *See Lundin*, 207 A.D.2d at 779 (dismissing complaint of plaintiff who "was injured by a golf ball that had been played from another tee …. Plaintif willingly assumed the risks consistent with participating in the sport of golf").

B. This Court should not create a new requirement that golf course holes must be (1) separated by buffers, or (2) completely visible from other holes.

Katleski's main argument in the court below was that CGC unreasonably enhanced the risk because CGC should have designed the course to provide for more distance, or some kind of buffer or barrier, between holes 3 and 7. R 2067-69; 2088-89; 2095-97. His second argument – which contradicts the first – was that CGC should have designed the course to provide complete visibility between the holes. R 2086, 2095-96.

On both counts, Katleski is incorrect. To begin with, Katleski fails to identify any danger created by CGC that was "unique" or different from the "commonly appreciated" danger of being struck by a mis-hit ball – a danger that the Court of Appeals has recognized as "inherent in golf" and subject to the assumption of risk doctrine. *Anand,* 15 N.Y.3d at 948; *Morgan,* 90 N.Y.2d at 485. Nor does Katleski

identify any danger that was concealed or not apparent – CGC did not, of course, hide the fact that its course contains multiple holes from which golfers can hit shots. CGC thus fulfilled its duty to make conditions on the course "as safe as they appear to be." *Morgan*, 90 N.Y.2d at 484.

Katleski relies chiefly on the opinion of his expert witness Stephen Eisenberg (who is not a licensed architect; R 2113-2123) that CGC should have placed some sort of "impenetrable barriers" (R 2089) between the third and seventh holes. R 2088-89; 2095-97. Eisenberg, however, cites to absolutely no specific standard or authority requiring impenetrable buffers between adjacent golf holes, nor to any standard explaining when, where, and how such buffers should be provided. R 2086-89; 2095-97. Nor does Eisenberg cite any specific standard or authority requiring complete visibility between adjacent holes on a golf course. R 2086-89; 2095-97. Furthermore, Eisenberg's diagram purporting to show that Katleski was within the "zone of danger" when he was injured does not even identify Katleski's position or the position of either hole on the course. R 2097.

Eisenberg claims that "custom and practice in the industry" favor the creation of barriers, but he cites to no particular rule, guideline, or other authority to support this assertion. R 2089. According to Eisenberg's own report, none of the purported standards that he cites actually says there should be barriers between holes. To the contrary, the purported "industry standards" cited by Eisenberg merely state, in

general terms, that golf course operators should consider safety issues and develop safety policies. R 2098-2103. Under established New York law, Eisenberg's unsupported and conclusory opinion should be rejected as a matter of law. *See Grandeau v. South Colonie Cent. School Dist.*, 63 A.D.3d 1484, 1486 (3rd Dept. 2009) (where expert opinions are "purely conclusory," they "have no probative force and are, therefore, insufficient to raise a question of fact:); *Stocklas v. Auto Solutions of Glenville, Inc.*, 9 A.D.3d 622, 624 (3rd Dept. 2004) (conclusory expert opinion is "insufficient to defeat summary judgment").

Furthermore, the two (contradictory) standards that Katleski proposes – that all golf courses should be required (1) to install buffers between adjacent holes, and (2) to provide complete visibility between such holes – would rewrite the law governing golf courses and would be incredibly, and unfeasibly, burdensome. As noted by CGC's expert witness, licensed golf course architect Barry Jordan:

> I am *not aware of any course within our region of New York State where lengthy barricades or nets are installed between holes* to prevent errant shots from traveling from one hole to another adjacent hole. If Mr. Katleski's proposal were to be implemented as the standard, then a majority of holes on classic and even contemporary courses would require some type of barricade between them to attempt to eliminate all risk of an errant shot.

R 1945-46 (emphasis added). In addition, as also noted by expert witness Jordan, Katleski's proposal "that golfers be visible to each other at all times on the course," would be "impossible to meet" and would "render any course inoperable." R 2227.

Needless to say, adopting Katleski's proposed standards would undermine the purpose of the assumption of risk doctrine: to shield athletic venues from "crushing liability" and "to facilitate free and vigorous participation in athletic activities." *Bukowski,* 19 N.Y.3d at 258; *Morgan*, 90 N.Y.2d at 484.

C. CGC need not prove the total absence of any "suboptimal conditions" on the golf course.

In the court below, Katleski argued that there are issues of fact precluding summary judgment because Katleski's expert has opined that CGC could have taken reasonable measurers to make the course safer. R 2073. This misapprehends the legal standard applicable to an assumption of risk case. As discussed above, what Katleski must establish is that CGC unreasonably enhanced the risk by creating a dangerous condition that was "unique" and distinct from the ordinary dangers that are "inherent" in the sport of golf. *Morgan,* 90 N.Y.2d at 485. He cannot do that here.

Indeed, the law is clear that, in an assumption of risk case, the operator of a sports facility will *not* be held liable merely for failing to remedy "suboptimal playing conditions." *Bukowski,* 19 N.Y.3d at 357. In *Bukowski*, the Court of Appeals held that a baseball pitcher assumed the risk of being hit by a ball while engaging in batting practice without a protective screen. The Court of Appeals ruled: "The primary assumption of risk doctrine also encompasses *risks involving less than optimal conditions.*" 19 N.Y.3d at 357 (emphasis added).

Likewise, in *Secky*, 195 A.D.3d at 1348, this Court quoted and applied *Bukowski's* ruling that the assumption of risk doctrine applies to risks involving "less than optimal conditions." This Court dismissed the claim of a child injured by colliding with bleachers outside of the court's boundary lines during basketball practice. Tellingly, in a ruling that is directly applicable to this case, this Court ruled in *Secky* that a dispute between the parties' experts about the safety of the basketball practice did *not* create an issue of fact sufficient to overcome summary judgment, because there was no showing that the defendant created a dangerous condition that was not "inherent" in the sport of basketball. This Court ruled:

> The *opinion of plaintiff's expert* that the drill could have been safer by utilizing the boundary lines of the basketball court and having more space was *insufficient to raise an issue of fact* given that the failure to do so *did not unreasonably increase the inherent risks* of the drill or playing basketball.

195 A.D.3d at 1348 (emphasis added). The same could be said in this case: the opinion of Katleski's expert that the course could have been safer with more buffers or greater visibility between the holes does not create an issue of fact given the total lack of any evidence that CGC created a "unique" risk that was not "inherent" in the game of golf. *Morgan*, 90 N.Y.2d at 485.

Finally, it bears noting that the assertion of Katleski's expert that CGC violated certain purported industry standards requiring safety reviews and policies is beside the point. R 2098-2103. Any failure on the part of CGC to develop safety

policies (assuming there was such a failure and that such a failure actually violated an industry standard, which is not the case) does not establish that CGC created a "unique" risk that was not "inherent" in golf. *Morgan*, 90 N.Y.2d at 485. *See also Gavreau v. Course*, 1980 Ohio App. Lexis 11510, *4 (Ohio App. 1980) ("since one who plays golf assumes the risks of the game, whether or not [the course operator] had safety rules was not material"; granting summary judgment to defendant).

Again, Katleski is trying to create an issue of fact by pointing out any conceivable actions that CGC (allegedly) failed to take to make the golf course safer, as though this were an ordinary negligence case. It is not. As the Court of Appeals has instructed, the legal issue in an assumption of risk case is not whether the defendant acted reasonably in all respects; it is whether, as a threshold matter, the defendant had a legal *duty* to address the particular risk in question. *See*, 90 N.Y.2d at 483-84, 485 ("assumption of risk is not an absolute defense but a *measure of the defendant's duty of care* …. assumption of risk in this form is really a *principle of no duty*, or no negligence and so *denies the existence of any underlying cause of action*.) (emphasis in original; quotation marks omitted). Here, Katleski has totally failed to establish that CGC had a legal duty to mitigate the well known, "commonly appreciated" risk of a golfer being struck by an errant ball while playing golf. *Anand*, 15 N.Y.3d at 948.

POINT III

THE DECISIONS OF THE COURT BELOW DISMISSING KATLESKI'S CLAIMS AGAINST JUSTIN AND RICHARD HUBBARD SUPPORT DISMISSAL OF THE CLAIMS AGAINST CGC.

The court below correctly dismissed the claims against Justin and Richard Hubbard, ruling that, under established principles of law, Katleski assumed the risk. R 1280 ("It is well established that when engaged in a sporting event, such as golf, the golfers assume the risk of foreseeable injury."). Katleski did not appeal the orders dismissing the claims against the Hubbards, and the time to appeal those orders has expired. Those orders are now the law of the case. *See Martin v. Cohoes,* 37 N.Y.2d 162, 165 (1975) ("The doctrine of the 'law of the case' is a rule of practice, an articulation of sound policy that, when an issue is once judicially determined, that should be the end of the matter as far as Judges and courts of co-ordinate jurisdiction are concerned").

Although the same principles that required dismissal of the claims against the Hubbards also compel dismissal of the claims against CGC, the court below denied CGC's summary judgment motion. R 4-9. Furthermore, in the decision denying CGC's motion, the court ruled that "*CGC does not owe Katleski an independent duty of care* for a mishit ball" and that "[b]eing hit by a mishit ball is a foreseeable injury in the sport of golf. Therefore, *Katleski assumed the risk*." R 7 (emphasis added). We respectfully submit that these findings, as well as the court's previous decisions

dismissing the claims against the Hubbards, require dismissal of the claims against CGC.

POINT IV

THE DRAM SHOP AND NEGLIGENT HIRING/SUPERVISION CLAIMS SHOULD BE DISMISSED.

In its motion papers, CGC established that it is entitled to summary judgment insofar as Katleski alleges negligent hiring, negligent supervision, and a dram shop claim. R 53. Katleski did not oppose CGC's motion on these issues. R 2050-2075. The court below did not address this issue in its decision. R 4-10. Accordingly, at the very least, CGC should be granted summary judgment dismissing these claims.

CONCLUSION

For these reasons, CGC respectfully requests that this Court issue an order granting CGC summary judgment pursuant to CPLR 3212; dismissing Katleski's claims against CGC in their entirety with prejudice; and granting CGC such other relief as the Court deems proper.

Dated: August 28, 2023

MACKENZIE HUGHES LLP

W. Bradley Hunt, Esq.
Jennifer D. Caggiano, Esq.
Attorneys for Defendant-Appellant Cazenovia Golf Club, Inc.
Mackenzie Hughes Tower
440 South Warren Street, Suite 400
Syracuse, New York 13202
(315) 474-7571

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