

SUPREME COURT OF THE STATE OF NEW YORK  
NASSAU COUNTY

-----x Sequence 001,002, 003,004  
ANN MARIE ZABIELSKI, Mother and Natural Guardian  
of REECE RAMOS, Index No.: 605997/2023  
Plaintiffs Hon. GARY M. CARLTON

**DECISION AND ORDER**

-against-

THE NORTH SHORE CENTRAL SCHOOL DISTRICT  
and NORTH SHORE HIGH SCHOOL,

Defendants.

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THE NORTH SHORE CENTRAL SCHOOL DISTRICT  
and NORTH SHORE HIGH SCHOOL,

Third-Party Plaintiffs,

-against-

THE LANDTEK GROUP, INC., FIELDTURF USA, INC.,  
and FIELDTURF, INC.,

Third-Party Defendants

-----x  
The following papers read on this motion:

- 001
  - Notice of Motion/Supporting Exhibits.....X
  - Affirmation in Opposition/Supporting Exhibits .....X
  - Reply Affirmation/Supporting Exhibits .....X
  
- 002
  - Notice of Motion/Supporting Exhibits.....X
  - Affirmation in Opposition/Supporting Exhibits .....X
  - Reply Affirmation/Supporting Exhibits .....X

003

Notice of Cross Motion/Supporting Exhibits.....	X
Affirmation in Opposition/Supporting Exhibits .....	X
Reply Affirmation/Supporting Exhibits .....	X

004

Notice of Cross Motion/Supporting Exhibits.....	X
Affirmation in Opposition/Supporting Exhibits .....	X
Reply Affirmation/Supporting Exhibits .....	X

**FACTS**

On June 10, 2022, while engaging in football practice on the synthetic turf field at North Shore High School, Plaintiff Reece Ramos' right foot was caused to become stuck in the turf field, causing him to suffer injuries to his right knee and leg.

Ramos served a Notice of Claim on the school district on August 26, 2022 and a 50-H hearing was held on December 28, 2022.

The Ramos case was commenced in April of 2023 and the School District served its answer in May of 2023.

Defendants North Shore Central School District and North Shore High School (North Shore) admitted to having destroyed and replaced the Subject Field during the summer of 2023.

Defendant FIELD TURF supplied the artificial surface that was installed by Defendant LANDTEK in February of 2012. LANDTEK performed repairs on the turf in September 2021.

Plaintiffs move (002) for an Order striking the Answer of THE NORTH SHORE CENTRAL SCHOOL DISTRICT and NORTH SHORE HIGH SCHOOL (NORTH SHORE) due to their "spoliation" of the subject artificial turf during the pendency of this Action, and for Summary Judgment in favor of the Plaintiffs as to the issue of Defendants' liability to the Plaintiffs.

Defendants THE NORTH SHORE CENTRAL SCHOOL DISTRICT and NORTH SHORE HIGH SCHOOL (NORTH SHORE) move (004) for Summary Judgment.

Defendants Field Turf USA, Inc. and Field Turf, Inc. (FT) (001) and THE LANDTEK GROUP, INC (LANDTEK) (003) move to Preclude defendant/ third-party plaintiff North Shore Central School District or any party from asserting as a claim in this matter that some act or omission of FT or LANDTEK caused or contributed to the plaintiff's alleged injuries due to spoliation of evidence which prevented FT from testing the subject turf; dismissing both of the third party action and granting summary judgment.

### ARGUMENTS

Counsel for Plaintiff REECE RAMOS argues that after NORTH SHORE received a written Notice of Claim and conducted a 50-H hearing NORTH SHORE was aware of the allegations of defects to the subject turf athletic field which were said to have caused personal injuries.

NORTH SHORE nevertheless contacted LANDTEK to destroy the subject turf in the summer of 2023. At that point LANDTEK claims it was unaware of the plaintiff's claim.

Defendant FT argues that its involvement with the replacement of the subject field was extremely limited. FT received a Purchase Order from Landtek on or about June 15, 2023, to begin production to supply the synthetic turf for a new field. FT did not remove the subject field nor did FT install or maintain the new field.

NORTH SHORE argues that it was unaware of any turf defects and that the plaintiffs and third party defendants have not been prejudiced.

### **QUESTIONS RAISED**

At the November 16, 2022 50-H hearing of plaintiff Ramos references five additional instances (p.52 line 16-22) of his fellow classmates suffering injury on this turf. These took place after damage to the turf as the result of Hurricane Ida. Landtek performed repairs to the field in or about September 2021.

NORTH SHORE attaches several self serving Affidavits and photos (never previously exchanged) questioning the turf as the reason for plaintiffs' injuries. These affidavits do not constitute expert opinion.

NORTH SHORE maintains that after ten years it was time to replace the field. Curiously absent from North Shore's papers are admissions that the field

was damaged in 2021 as the result of Hurricane Ida.

Plaintiff's expert said that "It is inconceivable that flooding severe enough to cause wrinkles and seam separation, would not also require replacement of the crumb rubber".

North Shore did not share any investigation or District Board minutes or the findings of the Construction Steering Committee which resulted in approval of a new turf field. Community and School Board concerns were apparent from plaintiff's attachment of local press coverage from the Long Island Herald.

### LAW

Spoilation is defined as the negligent or intentional destruction of evidence, DiDomenico v. C&S Aeromatik Supplies, Inc., 252 A.D.2d 41, 53 (2d Dept. 1998). Once a party reasonably anticipates litigation, it must suspend its routine retention/destruction policy and put in place a 'litigation hold' to ensure the preservation of relevant evidence. Gregorian v. New York Life Ins. Co., 211 A.D.3d 706, 710 (2d Dept. 2022).

At no time prior to the scheduled Expert Inspection Date, were the Plaintiffs ever advised by Defendant NORTH SHORE that the turf field no longer existed and that it had been destroyed.

When a party altered, lost, or destroyed key evidence before it could be examined by the other party's expert, the court may dismiss the pleadings of the

party responsible for the spoilation of evidence. Squitieri v. City of New York, 248 A.D.2d 201, 201 (1st Dept. 1998).

Plaintiff's expert, SCOTT A. BILLS, CSFM, submits an Affidavit that the actions of North Shore have prevented him from conducting tests on behalf of the plaintiffs. He further indicates that if he could have inspected and tested the turf field, he would have been able to determine the defective condition which caused plaintiffs' injuries. The passage of 22 months or the "grooming" on two occasions by Landtek, would not change the analysis and the defective condition would still be discoverable. North Shore prejudiced plaintiffs ability to prove their cases.

NORTH SHORE's counsel argues that the passage of time during which Landtek repeatedly aerated, raked and swept the synthetic field's playing surface would have made it impossible to render a determination that the field conditions extant when tested were substantially similar to how they existed on the dates that each plaintiffs' respective injury.

NORTH SHORE's Affidavits used in support of its motion for summary judgment fail to constitute testimony from experts. Maintenance records are notably absent from North Shore's papers.

Plaintiff's expert, Scott A. Bills, maintains that Turf/Pile Height testing could have been performed regardless of the passage of approximately 22 months.

FIELD TURF, Third Party Defendant's expert Michael Gentile maintains that without the subject field, FT will never know if, for example, it was altered, whether the turf had separated in any areas, and what the drainage conditions were like, if there was weather damage, improper use, lack of maintenance and upkeep.

Gentile identified the following if the synthetic turf surface had been preserved, several standardized tests would have been conducted, these tests include: Force Reduction (ASTM F3189): This test measures the softness of the surface underfoot, which affects the stress on an athlete's joints. Adequate force reduction helps reduce the risk of joint injuries, Vertical Deformation (ASTM F3189): This test evaluates how much the surface deforms underfoot, impacting speed of play and underfoot stability. Excessive vertical deformation can lead to increased fatigue and instability. Rotational Resistance (EN 15301-1): This test measures the force required to rotate a foot or cleat on the surface, simulating an athlete's pivot or change of direction. Proper rotational resistance is crucial to preventing injuries such as ligament tears or sprains. Skid Resistance/Linear Traction (ASTM E303/EN 13036-4): This test assesses the surface's ability to prevent slipping during starts and stops. Both high and low skid resistance can lead to athlete instability and increase the risk of injury. Infill Depth (EN 1969): This test measures the depth of the infill material, which plays a critical role in the surface's performance and interaction with athletes. Variations in infill depth can

affect traction, shock absorption, and stability. Planarity Testing (EN 15330-1):

This test identifies abrupt vertical deviations on the playing surface that could pose tripping hazards. Visual Assessment (FIFA Method): This method involves a thorough visual inspection to indemnify any visible defects or hazards, such as separated seams, foreign objects, or installation defects.

“The destruction of the subject field before it could be inspected has fatally compromised FT’s ability to accurately determine whether the subject field played a role in the injuries as alleged by these plaintiffs...(NORTH SHORE’s) photos alone lack the depth required to fully assess field performance, as they cannot reveal critical subsurface or material performance factors, such as infill depth and compaction, that could contribute to injury” (Gentile affidavit).

LANDTEK’s Christopher Walsh said, The G-Max test, on the subject turf, of ten different field locations performed by LandTek on June 10, 2021, confirmed an average "gravity" of 140.15, which is less than the recommended 200 gravities. The G-Max test of ten different field locations performed on June 27, 2022, confirmed an average gravity of 154.40, also less than the recommended 200 g's. The School District Defendants’ spoliation of evidence has rendered claims against LANDTEK impossible to prove.

The Supreme Court has broad discretion in determining what, if any, sanction should be imposed for spoliation of evidence even if the destruction



occurred through negligence rather than wilfulness, provided the spoliator was on notice that the evidence might be needed for future litigation. Lentz v. Nic's Gym, Inc., 90 A.D.3d 618, 618 (2d Dept. 2011).

Where critical evidence is disposed of by a litigant before an opposing party has an opportunity to inspect, elementary fairness requires that defendant's answer be stricken, see Pegasus Aviation I, Inc. v. Varig Logistica S.A., 26 N.Y.3d 543 (2015).

Counsel for NORTH SHORE incorrectly argues that Klein v. Ford Motor Co., 303 A.D.2d 376, 377 (2d Dept. 2003) supports the School Districts position. That holding applied where the evidence lost is not central to the case or its destruction is not prejudicial. NORTH SHORE incorrectly argues that plaintiffs' cases are solely based upon the failure to properly maintain.

The turf destruction by NORTH SHORE was central to these cases and the destruction prejudicial to plaintiffs justifying the striking of the answer of NORTH SHORE, see Lentini v Weschler, 120 A.D.3d 1200, 1201 (2d Dept. 2014).

It is within the discretion of the Supreme Court to strike a defendant's answer where a party destroys key evidence such that its opponents are deprived of appropriate means to confront a claim with incisive evidence, De Los Santos v. Polanco, 21 A.D.3d 397, 398 (2d Dept. 2005).

The standards for review on a motion for summary judgment are well settled. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers", (Winegrad v. N.Y. Univ. Med. Ctr., 64 NY2d 851, 853 [1985]).

NORTH SHORE has failed to make a prima facie case. NORTH SHORE is precluded from raising assumption of the risk due to its spoliation.

As to Defendants FT and LANDTEK the instrumentality and/or harm that allegedly caused Plaintiff's injuries, is the subject field. Without the field, the parties cannot prove nor defend that FT and/or LANDTEK launched the instrumentality of harm, Espinal v. Melville Snow Contractors, 98 N.Y.2d 136 (2002).

How can North Shore argue that FT and LANDTEK were negligent while arguing that there was nothing wrong with the turf, but if there was something wrong with the turf, not permitting FT and LANDTEK the opportunity to test that turf before North Shore destroyed it.

NORTH SHORE's destruction of the turf field has also made it impossible for Plaintiffs to prove its cross claims against LANDTEK and FIELD TURF.

The record demonstrates that the defendant disposed of the turf field while aware of two pending cases, despite having received two Notices of Claim alleging a defective surface and having conducted two 50-H hearings alleging the same. Plaintiffs have demonstrated that they were unduly prejudiced by the defendant's conduct in disposing of the turf field without affording plaintiff's expert the opportunity to test it. This warrants striking the school district's answer in both cases and thereupon awarding the plaintiffs summary judgment on the issue of liability pursuant to CPLR 3126. Biniachvili v. Yeshivat Shaare Torah, Inc., 120 A.D.3d 605, 606-607 (2d Dept. 2014).

Accordingly, it is hereby

ORDERED, that the motions for spoliation and summary judgment by the plaintiffs in action #1 is granted (002) and it is

ORDERED, that the motions for spoliation and summary judgment by FIELDTURF USA, INC. and FIELDTURF INC., Third Party Defendant in action #1 (001) is granted and it is

ORDERED, that the motion for spoliation and summary judgment by THE LANDTEK GROUP, INC the Third Party Defendant in action #1 is granted (003) and it is

ORDERED, that the motion for summary judgment by the THE NORTH SHORE CENTRAL SCHOOL DISTRICT and NORTH SHORE HIGH SCHOOL

Defendants and Third Party Plaintiff in action #1 is denied (004) and it is

ORDERED, that the answer of NORTH SHORE CENTRAL SCHOOL DISTRICT and NORTH SHORE HIGH SCHOOL Defendants in action #1 is stricken and the Third Party Complaint in action #1 and it is further

ORDERED that the plaintiffs in action #1 and Defendant North Shore appear for a discovery schedule conference as to plaintiffs damages on October 29, 2024 at 9:00 A.M.

Dated: October 16, 2024



GARY M. CARLTON  
SUPREME COURT JUSTICE

**ENTERED**

**Oct 17 2024**

NASSAU COUNTY  
COUNTY CLERK'S OFFICE