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ARTICLE

Soccer Violence And The Occupiers' Liability Act

With the 2018 FIFA World Cup highlights capturing the world's attention, both good sportsmanship and fake injuries take centre stage. But what if a sporting game introduces a move not traditionally contemplated, such as a punch to the face or a head butt (remember Zinedine Zidane?) Do sporting participants — professional or recreational — expect to be physically assaulted? And what roles do organizers have to ensure a safe playing environment?

These questions were recently considered by the Ontario Court of Appeal in a decision which contains important points for organizers and occupiers of sporting events and sport complexes in risk management.

Background

Following an assault during a recreational soccer league game, a personal injury action was brought against an Ontario sports club, the Ontario Soccer Association ("OSA") which is a not-for-profit governing body for competitive soccer, the soccer coach, team manager and vice-president (collectively the "Soccer Defendants"), as well as the player who committed the assault.

A motions judge granted summary judgment in favour of the Soccer Defendants and the decision was recently upheld by the Ontario Court of Appeal in *Da Silva v. Gomes, 2018 ONCA 6010*. The plaintiffs' claim, in these circumstances, foundered on the absence of critical evidence including an inability to prove causation.

The game, which was governed by the FIFA *Laws of the Game* (which includes safety provisions) was brought to a halt following a scuffle resulting in an unprovoked assault in which a 16 year-old player, Mr. Gomes, punched and injured another 16 year-old player. Mr. Gomes was subsequently convicted of a criminal offence for the assault. The injured player and his family then pursued a civil claim against Mr. Gomes and the Soccer Defendants. Following examinations for discovery, the Soccer Defendants successfully brought a summary judgment motion dismissing the action against them on the basis that there was no genuine issue requiring a trial. Mr. Gomes, the at-fault soccer player, took no position on the motion and did not participate in the appeal.

Decision Factors

The motions judge dismissed the plaintiffs' claims against the Soccer Defendants brought under the *Occupiers' Liability Act*, R.S.O. 1990, C.O., as no evidence was led suggesting that the soccer field itself was unsafe or that it did not constitute a safe premise. The motions judge then had to consider whether the Soccer Defendants were negligent in failing to prevent the assault in the first place.

Evidence was led indicating that Mr. Gomes had been involved in previous soccer incidents involving inappropriate or obscene comments directed at referees during two games. However, the incidents were neither violent nor did they constitute "serious foul play" that could have alerted the OSA or the coaches of a potential threat or danger regarding Mr. Gomes' continued involvement in the sport. There was also evidence that Mr. Gomes had no known history of being physically aggressive or exhibiting violent behavior, either on or off the soccer field, and he had no history of fines or suspensions from the league. Mr. Gomes' own discovery evidence was that the assault was unprovoked, impulsive, and not premeditated. The motions judge determined that a reasonable sports coach would not have banned Mr. Gomes from playing based on his past behaviour. Further, the plaintiffs could not prove causation because the assault was a sudden and unexpected event. As such, it could not have been anticipated by the Soccer Defendants and there was nothing that could or ought to have been reasonably done that would have prevented an incident. As such, the plaintiffs failed in proving causation.

In opposing the appropriateness of a summary judgment motion, the plaintiffs argued that the court should be unable to make a determination of the standard of care required of a coach without an expert opinion. However, the plaintiffs themselves failed to file such a report and were characterized as not putting their "best foot forward" during a summary judgment motion. Further, the court made the adverse inference in the absence of expert opinion that the plaintiffs were unable to obtain such a report to support their negligence allegations. The plaintiffs also did not produce any written code of soccer player conduct, policy or behaviour guideline, or information regarding coaching standards that could have assisted with determining the appropriate standard of care. The absence of such information was considered by the Court as an evidentiary failure detrimental to the plaintiffs' opposition of the summary judgment motion.

The summary motion was thus granted.

On appeal, the Ontario Court of Appeal acknowledged that the motion judge had properly relied upon the existing case law demonstrating that supervising authorities are not legally responsible for "a sudden unexpected event in the midst of an acceptable, safe activity," and had made no palpable and overriding errors.

Takeaway

Owners, occupiers and organizers of sporting complexes and sporting events should be aware that despite the results of this recent decision, the door is still open for a finding of negligence against them if the right evidence is available and admissible. Players with a known history of aggression both "on and off the field" will be a factor considered by the courts in deciding cases. With that in mind, owners/organizers should consider having written policies in place for coach training related to player safety and attention must be paid to prior conduct. In addition, a system should be in place that enforces the rules of the game and enforces reasonable order in the arena. If the latter aspect is not satisfied, it could be open to a court to determine that the field, ice rink, soccer pitch or the like did not constitute safe premises under Ontario's *Occupiers' Liability Act* and the responsible defendants could be found liable for an assault that occurs during a sporting event.

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