Hockey assault not appropriate for summary judgment

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The Ontario Superior Court of Justice recently released its decision in *Cox et al v Ball et al*, 2025 ONSC 199, declining to grant summary judgment to a municipality and a pub arising out an assault by one hockey player on another during a local tournament. This decision highlights the difficulties sometimes faced in resolving intentional tort claims on a summary basis, notwithstanding the high bar that a plaintiff must meet in such a case.

Background

The plaintiff was participating in a hockey tournament held at an arena owned by the defendant Town of Fort Erie on May 8, 2016, when the other team's goalie intentionally hit him in the head with his stick, causing injuries. The tournament organizer, who was also in attendance, had considered stopping the game a few minutes earlier after a prior violent incident, but chose not to do so.

The plaintiff sued the assailant – who had been criminally convicted and noted in default – the tournament organizer, the municipality, and a pub operating out of the arena, where the assailant had allegedly consumed alcohol prior to the game. The claim against the tournament organizer and municipality was grounded in the *Occupiers' Liability Act*, while the pub was alleged to have negligently over-served the assailant and thereby contributed to the assault.

The remaining three defendants moved for summary judgment shortly before the trial was set to begin, arguing that the assailant's actions were not reasonably foreseeable and that, in any event, they had not breached the applicable standard of care.

The summary judgment decision

The court began by noting that "It is exceptional to hold one defendant liable for the intentional torts of another." It went on to note, however, that leagues and hosts had previously been found liable for assaults by athletes in certain cases, and that this would turn upon the defendants' degree of awareness of the risk posed by the assailant in the given circumstances.

Faced with mixed caselaw on the subject, the court began by rejecting the defendants' argument that the plaintiff could not possibly succeed without expert evidence on the applicable standard of care.

The court went on to find that summary judgment would not be appropriate in the circumstances, and that the "full forensic machinery of a trial" was instead necessary. The court pointed out that while a judge is typically entitled to assume that both sides have put their best foot forward and submitted all the evidence on which they intend to rely on a summary judgment, the presiding Judge knew that was not the case on this motion, as there were additional witnesses to the assault and preceding events who declined to submit affidavits for the motion but would be subpoenaed for trial.

With respect to the pub, there was conflicting evidence among eyewitnesses as to the assailant's level of intoxication when he left the establishment, and one witness had seemingly changed his evidence between his initial police interview and the affidavit submitted for the motion. Similarly, with respect to the municipality and the organizer, the court found that there was conflicting evidence as to the nature of the violent incident that almost prompted the premature end of the game, as well as an alleged prior interaction between the plaintiff and the assailant during a game on the previous day.

In both cases, the degree to which the defendants were aware of prior incidents or conduct was critical to the question of whether the assault was reasonably foreseeable or not. Accordingly, the court found that it could not make the requisite findings of fact to decide the issue, as required on a motion for summary judgment pursuant to the Supreme Court's decision in *Hryniak v Mauldin*, 2014 SCC 7.

Commentary

This decision illustrates the difficulties faced by the court in resolving intentional tort claims, particularly those arising out of sporting events. While the plaintiff faces a high bar in terms of proving that the incident was reasonably foreseeable and that the defendants breached the standard of care, the number of witnesses and nature of the evidence can make a summary judgment difficult to achieve in practice. Finally, it should be noted that the presiding Judge stated that this action may benefit from bifurcation as the "issues of liability are ripe for determination."

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