

Claim Case Study

Baseball Diamond Maintenance

Facts

A woman was enjoying her son's baseball game at a municipally owned and operated baseball field. She was sitting behind the backstop in her lawn chair when a wild pitch was thrown and the catcher missed it. The ball struck the ground behind the catcher and scooted through a hole in the backstop fencing. The woman had turned her head to chat with a fellow spectator when she was hit by the ball. The blow shattered the woman's occipital bone in her face. She required surgery to repair the bone as well as the insertion of a metal plate.

The woman in this claim had been to many baseball diamonds before to watch her son play, but never to this particular field. She sat in her own chair behind the home plate. It was her favorite place to sit so that she could watch her son pitch. She was approximately 3 feet away from the backstop fence. She had no idea that there was a hole in the fence.

After the incident she suffered from headaches and migraines, trouble breathing through her nose, and pain in cold temperatures. With this sensitivity to the cold, she could no longer enjoy her favorite winter outdoor activities with her children. The woman sought \$500,000 in general damages, \$500,000 in special damages, and \$50,000 for each of her children.

Issue

Who was liable for the woman's injuries and damages? The Municipality? The baseball club? The woman?

Legislation

The woman claims that both the Municipality and the baseball club that held the event were negligent in failing to properly maintain the baseball diamond and in creating a hazard for which they failed to warn. This duty of care

owed to a person on a municipality's premises is found in the *Occupiers' Liability Act* (OLA), RSO 1990. The OLA, section 3(1) requires that occupiers "...take such care as in all circumstances of the case is reasonable to see that persons entering on the premises...are reasonably safe while on the premises".

Findings

Inspection & Maintenance

The baseball diamond was a regular field with standard distances of outfield and pitcher's mound to home plate. It included a fence/ backstop behind the home plate that extended along the first base line. The fence was about 15 – 20 feet high.

The field was considered playable around the end of April. At that time the Municipality would get ready for service and look at any deficiencies in the granular surface, pitcher's mound, home plate and also the fencing.

The Municipality routinely did a pre-season inspection of all the fields. However, the inspection of this diamond had not been completed at the time of the incident. The parks supervisor agreed that they were working on baseball diamond inspections when the incident took place, and that the hole in the fence should have been repaired. He added that ultimately, the City permits the field on the basis that they are fit for their intended purpose. Unfortunately, no records were kept on the baseball diamond inspections that were carried out. The 'in season' work, such as grass cutting, was done on a bi-weekly basis. Again, no record of this work was recorded. There were also no formal records of maintenance and repairs that have been done. If the parks department did an inspection and felt that the field was unplayable, they could not close it completely because the baseball diamond was not fenced in. They could, however, make a call to the baseball club asking them not to use it.

The parks department had no instructions or rules regarding where spectators should sit. There were no rules regarding sitting behind the backstop. There was a sign on the backstop fence that stated: "Please be advised that this field is maintained and permitted by the city...it is for the use of permitted users..." indicating that the City was responsible for the baseball diamond.

The Municipality's Defence

The Municipality stated that the baseball diamond was reasonably safe for its intended use and that it complied with its obligations under the OLA. The woman was aware of the risks in attending the sporting event and the common law doctrine of *Volenti non fit injuria* (to a willing person, no injury is done) applied. The Municipality also brought a cross claim against the baseball club for contribution and indemnity. It sought indemnification pursuant to the terms of the written contract it had with the club.

The Contract with the Baseball Club

The baseball club had a contract with the Municipality to use the baseball diamond for their games. The contract included a section on conditions of use. The section indicated that no games were to be played if the area was considered unplayable by the parks department. The contract also stipulated under the conditions and regulations section of the contract, that the Municipality was not responsible for liability claims against the club, recommends that all groups using the area have proper insurance, and included an agreement to indemnify and hold harmless the Municipality from any claims as a result of using the baseball diamond.

The Umpires

The baseball club arranged for and hired their own umpires for their games. They were responsible for inspecting the field prior to play. The umpires looked for obvious hazards by doing a cursory general walk around to see if there are any irregularities in the field such as ruts, divots or potholes. It was assumed that part of their inspection would be to look for holes in the fencing as fence integrity would be an important part of keeping the ball in play. The hole in the backstop would have to be obvious to be considered an irregularity. There were no records of the inspections carried out by umpires. The umpires were aware of the crowd, but didn't make it a practice of telling them where to

sit unless there was an issue of cat calling behind the plate. The umpires were responsible for the players on the field, not the spectators.

The Baseball Club's Defence

The baseball club maintained that it did not breach any statutory duty of care, and if the woman was hurt, she must have some of the responsibility and be held partially negligent. As with the City, they contend that she was aware of the inherent danger of the activity and failed to take reasonable care for her own safety. The baseball club also filed a cross claim against the Municipality for indemnity on all amounts awarded against them. They claimed that the Municipality caused or contributed to the plaintiff's alleged damages.

Voluntary Assumption of Risk

A court will sometimes find contributory negligence on the part of the plaintiff. Most of the cases that deal with baseball diamond spectator injuries deal with people sitting outside of the protected area. In those circumstances, the municipalities have generally not been held liable. Courts will always try to look at similar fields to see if the protected area was wide enough and reasonable. However, that was not the case here. The woman was not sitting outside of the fenced area. Under the OLA, it is generally accepted that spectators accept the ordinary risks of attending an event, but may succeed against an occupier where injury results from the failure to exercise reasonable care for the safety of the visitors. This duty extends to risks caused both by the condition of the premises and the activities carried on within.

Conclusion of Findings

The woman claimed that the Municipality was responsible for maintaining the baseball diamond. They thus had a duty to ensure that they maintained it to a reasonable standard making sure that persons using it would be reasonably safe. Given that the Municipality had commenced rentals, yet no formal inspection on the field had been done, and the fact that there were no records of inspections and maintenance reports, their inspection and maintenance practices would not likely be considered reasonable.

Although there appears to be an indemnification and a hold harmless clause under the contract with the baseball club, clauses like this tend to be interpreted narrowly in scope. A court would likely find that the indemnification only applies to activities and not the physical maintenance.

As for the woman's degree of negligence, a court may not anticipate that an individual should closely examine fencing prior to sitting behind it.

Outcome of the Claim

The claim was settled four years after the incident for just under \$150,000. The City and the baseball club shared the liability with the City paying 60% and the club paying 40% of the damages.

Lessons Learned

Inspection and maintenance are crucial in safeguarding against injuries on the field. Organizations and clubs must also review and understand their contracts with municipalities and where the responsibility for player and spectator safety lies.