

LEGAL DUTY REQUIRES CONTROL OF INJURY CAUSING CONDITION

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In general, negligence liability requires the defendant to have exercised some measure of control over the condition which gave rise to the injury that prompted the lawsuit. Total or exclusive control over the injury causing condition is not required. Some measure of control is sufficient. Further, to establish liability, each defendant must have been in a position to prevent the negligence which, in whole or part, caused the injury and failed to do so.

Assuming some measure of control, each defendant may be held jointly and severally liable for injuries caused, in whole or part, by multiple defendants. In other words, each responsible defendant can be held liable for some or all of the damages sustained by plaintiff. This ensures that injured plaintiffs will be "made whole" and recover all of their damages from one or more defendants found responsible for causing plaintiff's injuries. Accordingly, a responsible defendant, despite minimal involvement and control over the injury causing condition, might still be liable for the total amount of damages sustained by plaintiff.

In the vernacular, everybody's business is nobody's business. Similarly, in the context of negligence liability, if everyone is involved to some degree in the condition which ultimately gives rise to plaintiff's injuries, everyone will be potentially liable for resulting damages. On the other hand, to the extent an individual defendant can clearly establish a total lack of control over the condition which gave rise to plaintiff's injuries, a trial court is likely to dismiss such defendants from the lawsuit prior to trial on a motion for summary judgment.

Accordingly, in terms of controlling potential liability exposure for negligence in the event of a lawsuit, individuals and agencies should be able to clearly delineate, document and limit control and responsibility over the premises, operations, and various types of activities which are likely to cause injury. As illustrated by the case reports described below, each defendant was able to establish that their entity was not necessarily in a position to have prevented the negligence which caused plaintiffs' injuries.

In the "Over Thirty Baseball League" case, the defendant League was not in a position to control and maintain the ball field and bases at the time of plaintiff's injury. Similarly, in the "Central Park Boathouse" case, a facility rental agreement established the defendant city's lack of control over an allegedly defective bicycle which caused plaintiff's injuries.

CONTROL OF BALL FIELD?

In the case of *Cusumano v. United States Over Thirty Baseball League* (N.J. App. 8/13/2009), plaintiff Joseph Cusumano was severely injured while running the bases on a ball field which the defendant League had assigned for play on the day of the injury. While rounding first base in anticipation of an extra base hit to left field, plaintiff's foot slid on the unsecured "throw down" base and allegedly became twisted on a metal post. The metal post was used for a "fixed base system" purchased years earlier for this ball field by the League. Plaintiff sustained severe injuries requiring four surgeries and extensive physical therapy and psychiatric care.

The coach of the opposing team testified that he had brought "throw down" bases to the field for use in the game. The coach claimed he did not personally place the "throw down" bases in the field of play; he assumed other members of the team did this.

Prior to the game, the umpires discussed use of the throw down bags in their pre-game conference. The use of "throw down" bags in the League was common. At the beginning of a game in which the bases are throw-down bags, the managers had to notify the players of the rules involving throw-down bags.

Plaintiff alleged that his manager never informed him about the use of "throw down" bases. Moreover, plaintiff claimed that he "was not told prior to the game that there were iron spikes under first, second or third base" used in the fixed base system.

In his complaint, plaintiff argued that the defendant League negligently maintained the field and such negligence had caused his injuries. According to plaintiff, "the League was responsible for assigning the teams to that particular field and had knowledge that that field required special bases, as it had purchased them years earlier." The trial court disagreed.

In the opinion of the trial judge, "the League did not have a duty to ensure that its teams had the proper equipment for the field." As a result, the trial court granted the Leagues' motion for summary judgment effectively dismissing plaintiff's negligence claims. In reaching this conclusion, the trial judge found the League's role was "limited":

Critical to the analysis is the role of the League. It enrolled participants, scheduled games and provided baseballs. The League did supply the bases for a particular field, and the teams playing determined the type of bases used. The League did not control the fields or assume responsibility for the inning to inning operation of the games or facilities...

This court finds the teams, not the League, were responsible for setting up the field. The League had no presence at the games and was not in control of the field at the games. Rather, the field was in control of the teams that set it up... The league did not control the playability of the fields, which were set up by the teams that played the field.

On appeal, plaintiff asserted that the trial judge erred in granting summary judgment to defendant on the basis that the League owed no "duty to ensure that its teams had the proper equipment for the field."

In the opinion of the appeals court, 'the League had no duty to plaintiff regarding the condition of the field" because "[t]he relationship between the parties here is one of membership." In so doing, the appeals court found "[n]othing in the record suggests that anyone other than the teams involved was responsible for the condition of the field for a particular game":

The League did not provide written rules or procedures with regard to how the teams or players should set up a field. In fact, the umpires and team managers

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were the ones who discussed ground rules, and the teams themselves set up the field prior to the game, not the League.

The League president, defendant Delehant, did not attend the game when plaintiff injured himself and had never visited the field. The League itself does not own the varsity field nor does it own any other fields. The League does not supply any equipment, other than baseballs. "The equipment is up to the team." The home team has the responsibility to arrange use of the field.

Moreover, the appeals court held that "[t]he purchase of special bases for this field does not impose a duty on the League to ensure that for any particular game, these bases were used." As a result, the appeals court concluded that the trial judge did not err in granting summary judgment dismissing plaintiff's complaint against the League. The appeals court, therefore, affirmed the judgment in favor of the League.

RENTAL FACILITY AGREEMENT

In the case of *Schachnow v. Central Park Boathouse, LLC*, 2010 NY Slip Op 50403U (3/2/2010), plaintiff Cosette Schachnow was injured while riding a bicycle which she had rented from defendant Central Park Boathouse (CPB). On September 7, 2007, at approximately 4:00 pm, plaintiff had selected an "orange and rusty" bicycle from CPB's bicycle rental. She testified that it was an "orange Hampton Cruise bicycle." After riding the bicycle for less than an hour, she saw that the bicycle chain had become dislodged. The back wheel then swerved, and she was thrown onto a rock and injured.

Plaintiff alleged that the defendants, City of New York (City) and the NYC Department of Parks and Recreation (Parks), owed her a legal duty of care because they retained control of the bicycle rental facility pursuant to a license agreement between CPB and Parks. Accordingly, plaintiff contended that Parks was negligent for permitting CPB to rent her "an old, rusty, and defective bicycle."

Relying on the terms of the license agreement, the City and Parks denied ownership or control of the bicycle or any notice it was defective. Further, defendants contended that the accident did not result from a defect on the park path on which the plaintiff rode the bicycle. As a result, defendants denied owing plaintiff any legal duty relating to the bicycle. The City and Parks, therefore, requested the trial court to issue an order summarily dismissing plaintiff's claims against defendants without a trial.

FACTS OF THE CASE

In an agreement dated June 12, 2000 (agreement), the City of New York, acting through the NYC Department of Parks and Recreation, had granted Central Park Boathouse (CPB) a license to operate, among other things, a bicycle rental at the Loeb Memorial Boathouse, which was under the jurisdiction and control of Parks. The duration of the license was for 15 years or "for as long as each term and condition is strictly and properly complied with and so long as it is not terminated by the Parks Commissioner."

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Under the agreement, the Parks Commissioner retained the right to approve the hours of operation reasonably, and to receive from CPB for his or her prior approval schedules for the coming operating year, fees, and rates. In addition, the license agreement required CPB to promptly notify Parks in writing of any claim for injury, death, property damage or theft which may be asserted against CPB with respect to the premises. Further, it required CPB to "provide and replace if necessary, at its sole cost and expense and to the satisfaction of the Commissioner, all equipment necessary for the operation of the license, and put, keep, repair, preserve and maintain in good order all equipment found on the premises." In particular, the license agreement required CPB to "provide new (or like new) bicycles, free of defects, of the best grade quality, and suitable for the purpose intended."

Mark Feinstein, Assistant Director of the Revenue Division of Parks, testified that no one from Parks was assigned to the bicycle rental facility for its day to day operations, and that he had no knowledge of whether any of the determinations referred to in the license agreement had been made concerning the bicycle rental. Regarding day to day operations, CPB testified as follows:

(1) there was no general manager of the bicycle rental facility; (2) two or three CPB employees worked there on any given day; (3) the employees' duties included checking that the bicycles were in good working order; (4) the employees had tools to repair the bicycles; (5) although the employees were given an opportunity to be trained to repair or maintain the bicycles, none of them have had such training; (6) the employees inspected the bicycles as customers tried them out or upon taking them from storage; and (7) there was no specific policy governing repairs.

In her complaint, plaintiff maintained that the City and Parks had failed to demonstrate that they did not control CPB's conduct with respect to the renting out of the bicycle to plaintiff pursuant to the license agreement. Moreover, plaintiff contended that the City and Parks had not fulfilled their supervisory function as set forth in the agreement. In response, the City and Parks denied any duty to inspect the bicycles or that they had inspected them under the terms of the license agreement.

ANALYSIS

As noted by the court, the elements of a cause of action for negligence are: (1) a duty owed by the defendant to the plaintiff; (2) a breach thereof; and (3) injury proximately resulting therefrom. Absent a duty owed, the court acknowledged that "there is no negligence."

While "the agreement grants City and Parks certain supervisory rights and duties," the court found "none of them requires that they supply bicycles or bicycle parts, or repair the bicycles." On the contrary, under the expressed terms of the license agreement, the court found "CPB is solely responsible for the equipment on the premises":

That CPB is required to notify Parks of any claims of injury against it provides no basis for imposing such a duty [to inspect the bicycles], especially since the

requirement is restricted to claims "with respect to the premises." The rental bicycles are not part of the premises.

In the alternative, assuming "the bicycle was part of the premises," the court characterized the City and Parks, as "an out-of-possession landlord with a right of access," which did not have sufficient control over the bicycle "to render them liable for damages sustained due to the defect."

[An] out-of-possession landlord may have retained right to visit premises or even approve alterations, additions or improvements is insufficient to establish requisite degree of control necessary for imposition of liability. [The] right of access alone insufficient to impose liability.

Consequently, the court held that "the agreement provides no basis for finding that City and Parks had control over the premises sufficient to give rise to liability." In so doing, the court noted that Parks assistant director "Feinstein's testimony demonstrates that there was no degree of control exercised by City and Parks over the premises." As a result, in the absence of any degree of control exercised over the bicycles or the rental facility, the court found the City and Parks had established that they owed no legal duty to plaintiff under the circumstances of this case. Accordingly, the court granted summary judgment in favor of the City and Parks.

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