

Cantor v Madion Sq. Garden Co.

2020 NY Slip Op 32618(U)

August 12, 2020

Supreme Court, New York County

Docket Number: 151656/2016

Judge: Arlene P. Bluth

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. ARLENE P. BLUTH PART IAS MOTION 14
Justice
INDEX NO. 151656/2016
ROBERT CANTOR, MOTION DATE 08/11/2020
Plaintiff, MOTION SEQ. NO. 001

- v -

THE MADISON SQUARE GARDEN COMPANY, MSG
ENTERTAINMENT HOLDINGS, LLC,MSG SPORTS &
ENTERTAINMENT, LLC,MSG NETWORKS, INC.,MSGN
HOLDINGS, L.P., NEW YORK RANGERS, LLC,NHL
ENTERPRISES, INC.

DECISION + ORDER ON
MOTION

Defendant.

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24,
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41

were read on this motion to/for JUDGMENT - SUMMARY.

The motion by defendants for summary judgment dismissing this case is granted.

Background

Plaintiff was at a Rangers game with his son at Madison Square Garden on March 3,
2013 when he was struck in the left hand by a deflected shot. Plaintiff testified that he had been
to numerous prior hockey games, possibly over a hundred (NYSCEF Doc. N. 26 at 37). He
claimed that he was using a friend's season tickets and had sat in these seats on many prior
occasions (id. at 38). Plaintiff noted these seats were in Section 115 and were between the sixth
and eighth rows (id.).

Plaintiff admitted he had seen pucks enter the stands while attending games prior to the
game at issue here (id. at 48). He noted that the plexiglass located in front of his seats extended
above their seats, so he felt "a sense of protection" (id.). Plaintiff described the accident as
follows: "I hear a loud slap. I look right, and I see a puck. And I thought I was shielding him this

way—excuse me, I thought I was shielding him by moving forward while looking at the puck. And the next thing I know, the puck, in slow motion, to me, came past my eyes. And like a miracle, my hand got in front of his [plaintiff’s son] face and saved his life” (*id.* at 70-71). He suspected that the play that led to the puck entering the stands took place near center ice and was from a slapshot that was deflected (*id.* at 72-73).

Defendants move for summary judgment dismissing the case on the ground that they met their limited duty of care owed to plaintiff by providing screening and protective shielding and by warning plaintiff in three different ways about the danger of pucks flying into the crowd. They claim that they need only exercise reasonable care and they did that here by providing screening in areas where the danger to fans is the greatest. Defendants insist that plaintiff was seated along the side of the rink rather than behind the goal (where pucks are most likely to enter the crowd). They also emphasize that there were verbal and written warnings announced on the scoreboard about ten minutes before the game started. And the back of the tickets also warns Rangers fans that pucks can enter the crowd. Defendants conclude that plaintiff assumed the risk of a puck entering the stands.

In opposition, plaintiff contends that material issues of fact exist and that defendants failed to establish that they took proper precautions to ensure the safety of spectators at MSG. He insists that spectators in protected seating areas, here plaintiff noted the plexiglass barrier a few feet in front of him, have a right to expect that they will be protected from pucks. Plaintiff argues that it would be unfair to place a burden on spectators that they could be hit with a puck even if they’re sitting close to a plexiglass barrier that extends above them. He also emphasizes that he did not hear the warning announcements or read the warning on the back of his tickets and never saw someone get struck with a puck.

In reply, defendants emphasize that the boards and plexiglass installed by MSG meet NHL guidelines and plaintiff was warned in three different ways about the danger of a puck entering the crowd.

Discussion

“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 demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires a denial of the motion, regardless of the sufficiency of the opposing papers. Once this showing has been made, however, the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action” (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324, 508 NYS2d 923 [1986]).

A landowner “is only under a duty to exercise ‘reasonable care under the circumstances’ to prevent injury to those who come to watch the games played on its field. The perils of the game of baseball, however, are not so imminent that due care on the part of the owner requires that the entire playing field be screened. Indeed, many spectators prefer to sit where their view of the game is unobstructed by fences or protective netting and the proprietor of a ball park has a legitimate interest in catering to these desires. Thus, the critical question becomes what amount of screening must be provided by an owner of a baseball field before it will be found to have discharged its duty of care to its spectators” (*Akins v Glens Falls City School Dist.*, 53 NY2d 325, 329-30, 441 NYS2d 644 [1981] [discussing the standard of care required for owners of a baseball stadium]).

“We hold that, in the exercise of reasonable care, the proprietor of a ball park need only provide screening for the area of the field behind home plate where the danger of being struck by a ball is the greatest. Moreover, such screening must be of sufficient extent to provide adequate protection for as many spectators as may reasonably be expected to desire such seating in the course of an ordinary game. In so holding, we merely recognize the practical realities of this sporting event. As mentioned earlier, many spectators attending such exhibitions desire to watch the contest taking place on the playing field without having their view obstructed or obscured by a fence or a protective net. In ministering to these desires, while at the same time providing adequate protection in the most dangerous area of the field for those spectators who wish to avail themselves of it, a proprietor fulfills its duty of reasonable care under such circumstances” (*id.* at 331).

The Court recognizes that baseball and hockey are different sports and the risks of a baseball and a puck flying into the stands are distinct. In baseball, action occurs in bursts while hockey has free flowing game play where a puck could be sent into the stands at any time. However, cases involving injuries sustained by pucks entering the stands have employed the standard elucidated in *Akins* (*e.g.*, *Stern v Madison Square Garden*, 226 AD2d 444, 445, 641 NYS2d 41 [2d Dept 1996] [dismissing personal injury action brought by infant plaintiff who was struck by a puck at a Rangers game and noting the protective plexiglass satisfied the duty of care]).

Here, plaintiff was sitting alongside the ice and in between the blue line and a face-off circle (NYSCEF Doc. Nos. 27, 28). There is plexiglass right in front of him that, according to plaintiff, extended above him while sitting in these seats. The Court finds that this level of protection satisfies defendants’ limited duty of care. This area of the ice is not one where shots

are directed; it's not behind the goal or in the corners (where errant shots are usually directed or deflected). Rather, it's an area where a puck rarely enters the stands and likely only in a situation as happened here (after a deflection).

From plaintiff's seat, the only way a shot could enter the stands and pose a danger to him would be a puck that looped over the plexiglass boards (NYSCEF Doc. No.29) since the plexiglass extends above a patron in this location. Plaintiff is correct that the plexiglass dips in this location but the logic for that is clear: to plaintiff's left (towards the goal) is where shots are more likely to head towards the stands. And, of course, there is also a protective netting behind the goal that provides further protection.

Defendants' responsibility was not to provide absolute protection for plaintiff. They could theoretically do that and put netting and plexiglass around the entire arena. However, as the Court of Appeals pointed out in *Akins*, it is unlikely that Rangers fans would prefer or choose to watch a game with their views obstructed.

Plaintiff's reliance on *Sawyer v State* (127 Misc 2d 295, 485 NYS2d 695 [Ct Cl 1985]) is inapposite because the plaintiff there was sitting behind the goal when she was hit in the mouth with a puck. And the case plaintiff attaches *Tokolyi v Madison Square Garden* (Sup Ct, NY County 2004 [not available on Westlaw]) is of no moment. In that case, plaintiff was sitting "in the seventh row behind the goal" (*id.* at 1).

The placement of plaintiff's seat is critical. Shots are directed at the goal, meaning that seating behind the goals requires a higher level of protection. And here, the place plaintiff was sitting was to the side of the goal and it had some protection unlike another case upon which plaintiff relies (*see Benjamin v State*, 115 Misc2d 71, 453 NYS2d 329 [Ct Cl, 1982] [noting that the area behind the teams' benches had "no protective fencing"]).

The Court recognizes that plaintiff's position is that there is an issue of fact because plaintiff was sitting in front of plexiglass and he was still hit by a puck. But this argument focuses on the outcome, not the standard by which this Court must review the protections provided. The question is not whether plaintiff was hit, it is whether the plexiglass' location, height and absence of other protective measures (such as netting) was reasonable. The Court finds that it was and defendants were not negligent as a matter of law.

The Court also finds that defendants satisfied its duty of care by warning plaintiff. Setting aside plaintiff's claims that he didn't hear the announcement, didn't read the warning on the scoreboard and didn't read the back of his ticket, the fact is that plaintiff had been to approximately over a 100 Rangers games over the years. That means plaintiff attended the equivalent of more than an entire season of games (the NHL season is only 82 games and teams play 41 games at home). And he sat in the same seats every time. With this vast experience, plaintiff was well aware that pucks enter the stands. This is not a case where a hockey neophyte is unaware of the possibility that a puck might enter the stands, especially when a player attempts to shoot (as happened here). "As was aptly summarized by Chief Judge Cardozo, the spectator at a sporting event, no less than the participant, accepts the dangers that inhere in it so far as they are obvious and necessary, just as a fencer accepts the risk of a thrust by his antagonist or a spectator at a ball game the chance of contact with the ball. The timorous may stay at home" (*Akins*, 53 NY2d at 329 [internal quotations and citation omitted]).

Summary

The circumstances of this case are indisputably heroic. Plaintiff brought his son to a hockey game and then stuck out his hand to prevent a puck from hitting his son. According to plaintiff, he suffered a serious injury in saving his son. But this Court is not tasked with

compensating plaintiff for saving his son. Rather, this Court must consider whether defendants acted reasonably in providing adequate protection to someone sitting in plaintiff's seat and the Court concludes that they have. The Court cannot view plaintiff's injury and work backwards. In other words, the inquiry is whether the plexiglass located at plaintiff's seat was reasonable, not that a deflected shot did, in fact, hit plaintiff.

The Court concludes that the plexiglass, which extended above plaintiff, was a reasonable protective measure to prevent pucks from entering the stands. The Court declines to find an issue of fact as to the height of the plexiglass. Otherwise, every time a puck enters the stands (as pucks inevitably do at NHL games) an injured fan will claim it should be higher and, eventually, the plexiglass will have to extend to the roof. There is no doubt that would prevent injuries but that does not make it reasonable. It has long been the law that spectators at sporting events assume the risk of a ball or puck entering the stands. And a negligence cause of action is not a tort of strict liability.

Accordingly, it is hereby

ORDERED that the motion by defendants for summary judgment is granted, and the Clerk is directed to enter judgment in favor of defendants, plus costs and disbursements after presentation of proper papers therefor.

8/12/2020
DATE


ARLENE F. BLUTH, J.S.C.

CHECK ONE:

<input checked="" type="checkbox"/>	CASE DISPOSED	
<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED
<input type="checkbox"/>	SETTLE ORDER	
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	

<input type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER
<input type="checkbox"/>	SUBMIT ORDER	
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: