

KEEPING CURRENT

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Litigant Misses the Cut in Lawsuit After Being Hit in the Head by a Golf Ball

By Stephen Thiele and Michael Lauricella

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Spectating a live sporting event is typically an enjoyable experience. Whether in the arena watching a hockey game or on the course taking in a round of golf, there is a general entertainment value that comes with watching professional athletes perform from just a few rows up. It's not all fun and games though, as there are dangers inherent within the live sporting experience, including getting struck by a puck that is shot over the glass or hit by an overdrawn tee shot that is hooked into the gallery. Granted these sorts of scenarios occur infrequently, they do happen and fans have been injured, which has given rise to spectator litigation. Spectator litigation is quite rare, not only due to the infrequency with which injury is suffered, but also because these sorts of claims fall under the general principles of negligence, which adds a legal hurdle to the equation.

Parties and Facts

On March 28, 2016, Mr. Colm Campbell attended the County Sligo Golf Club at Rosses Point to spectate the West of Ireland Championship for amateur golfers. Unfortunately for Mr. Campbell,

his day took a turn for the worse after being struck on the head by a golf ball and being knocked unconscious. In a tale that most golfers know all too well, amateur golfer Kevin Le Blanc hit a wayward approach shot on the 11th hole and wound up in the green side rough. Following this, in an unsuccessful effort to get up and down, Mr. Le Blanc hit an errant golf shot which flew the green and struck Mr. Campbell on the left side of his head. At the time, Mr. Campbell was spectating the action from between the 11th green and the 12th tee blocks. In light of this incident, Mr. Campbell commenced an action in Ireland against Mr. Le Blanc, the County Sligo Golf Club and the Golfing Union of Ireland as the organizers of the event.

Mr. Campbell's suit against these three defendants, however, was unsuccessful.

The Claims

Mr. Campbell had claimed against the Golf Club and the Golfing Union that there was an alleged failure (1) to take reasonable care for the safety of spectators; and (2) to give any warnings

to those attending the competition that they ought not be located at the place where Mr. Campbell suffered his injury. Additionally, (3) Mr. Campbell claimed against Mr. Le Blanc that the amateur failed to warn spectators of dangers of which he ought to have been aware. Specifically, he contended that Mr. Le Blanc had a fundamental obligation to have yelled “fore” because he hit an “errant shot”.

As a result of being hit by the wayward golf ball, Mr. Campbell claimed that he was in “constant pain” and that his life had “totally changed”. In defending the action, the defendants denied liability and alternatively that if they were liable for Mr. Campbell’s injuries, Mr. Campbell was contributorily negligent because at the time of being struck he was conversing with other spectators and not looking at Mr. Le Blanc while the shot was being taken.

Decision

Justice Bronagh O’Hanlon of the Ireland High Court was unable to find in favour of Mr. Campbell in any respect.

In dismissing the action, Her Honour highlighted that Mr. Campbell was attending an amateur competition, although played at an elite level, and that Mr. Campbell was a “recreational user” who was “responsible to a huge extent, as matters played out for his own safety”.

While Mr. Campbell argued that Mr. Le Blanc ought to have taken better care before striking the ball, Justice O’Hanlon explained that it would have been “completely impractical and unreasonable”, as Mr. Campbell suggested, for Mr. Le Blanc to have walked up, clarified his line of vision and walked back before hitting the ball given tournament rules that required him to play his shot within 40 seconds.

In addressing the claims made against Mr. Le Blanc, Her Honour was impressed with the amateur golfer’s evidence. She stated that he was “most impressive, understated but very honest and very credible” and that he was a “highly experienced elite amateur golfer who knew his game”.

Justice O’Hanlon found that Mr. Le Blanc was cognizant of the people that were standing to the left of the green and that he possessed the wherewithal to have yelled “fore” if his ball was heading toward them. He was, however, unaware that people such as Mr. Campbell were standing so close to the green. Further, the court considered that although Mr. Le Blanc had only 40 seconds to hit the shot, he was “very careful” in the circumstances. He “took a look at the yardage book, got the intended line and hit the ball along the intended line” which both he and his caddy were happy with.

Conversely, in considering evidence led by Mr. Campbell himself, Justice O’Hanlon made particular note of the fact that Mr. Campbell was not paying attention when the incident occurred; “he was not looking at play ... he was talking to his friends”.

With respect to Mr. Campbell’s claim that tournament officials had failed to take reasonable care to protect spectators, Justice O’Hanlon stated that “the situation on the ground of this championship competition was that to a great extent they were self-regulating and self-policing spectators. All spectators were deemed to have been knowledgeable of the game of golf and would be reasonably expected to take care of their own safety accordingly”.

Based on these findings, Her Honour concluded that the preponderance of the evidence supported the contention of the defendants that no case



had actually been made out against them.

Mr. Campbell now faces a substantial legal bill upon an order for costs being made against him in this action. Her Honour, however, in offering Mr. Campbell a breakfast ball, granted a stay on the order for 28 days in the event of an appeal.

This case is important because it demonstrates that spectators at sporting events must ensure that they take care to avoid being injured. A spectator should obey any restrictions that might be imposed upon them, including where they can sit or stand and ensure that they are paying attention at all times to the action taking place on either, for example, the hockey rink, baseball diamond or golf course. While it is easy to sympathize with Mr. Campbell for his injury, it is also easy to sympathize with Justice O'Hanlon's decision. Neither athletes nor tournament organizers should constantly be concerned about potential claims for liability in sports where everyone knows that there is an inherent potential danger of injury. This is not a case where the amateur golfer deliberately struck his ball at Mr. Campbell or others. In cases like this, it is also important to note that a ticket to a sporting event might contain an exclusion of liability clause and acknowledgement that the spectator is attending the event at their own risk.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact the Chair of our dispute resolution group, **Stephen Thiele**, at 416.865.6651 or via email at sthiele@grllp.com.

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