

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

MARY ANN KOVACS, Administratrix of the Estate of SANDOR KOVACS, JR., a/k/a SEAN KOVACS, Plaintiff	:	NO. 02-00,666
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	:	
vs.	:	
	:	CIVIL ACTION - LAW
	:	
RAFAL LISTOPAD, SPORTS CAR CLUB OF AMERICA, INC. and SIMPSON PERFORMANCE PRODUCTS, INC., Defendants	:	Motions for Summary Judgment

**OPINION AND ORDER**

Before the Court are Motions for Summary Judgment filed by Defendants Sports Car Club of America (“SCCA”) and Simpson Performance Products (“Simpson”), both on January 18, 2005. Argument on the motions was heard April 25, 2005.

Plaintiff’s decedent, Sean Kovacs, was killed in a vehicle accident that occurred during a Club Rally race sponsored by SCCA on May 6, 2000. Mr. Kovacs and Defendant Rafal Listopad participated together in the event, Listopad as the driver of the vehicle and Kovacs as the co-driver/navigator. Kovacs was killed when the vehicle failed to negotiate a turn, left the roadway and crashed into a tree. The negligence claim brought against Listopad was dismissed by this Court on January 26, 2005, after the Court granted Listopad’s motion for summary judgment based on the doctrine of assumption of the risk. In its motion for summary judgment, SCCA also relies on that doctrine and, in addition, contends the claim is barred due to a release signed by Kovacs. Simpson seeks summary judgment on the grounds that Plaintiff cannot establish a prima facie case of negligence, breach of warranty or strict liability, and also raises the defense of assumption of the risk.

With respect to SCCA’s reliance on the doctrine of assumption of the risk, the Court finds such reliance misplaced. Assumption of the risk does not apply unless the injury suffered resulted from a risk “inherent in the activity”. Crews v. Seven Springs Mountain Resort, 2005 Pa. Super. LEXIS 899 (April 18, 2005). An “inherent risk” is one that cannot be removed

without altering the fundamental nature of the activity. Id.<sup>1</sup> In the instant case, Plaintiff has alleged, inter alia, that SCCA was negligent in its inspection and marking of the course, and offers the opinion of an expert witness in support of that claim. The Court finds that proper inspection and marking of a course would not alter the fundamental nature of rally racing and, thus, injury resulting from negligence in that respect would not be a risk inherent in the sport. Accordingly, assumption of the risk does not bar this particular claim.

With respect to the release, the Court finds summary judgment is inappropriate inasmuch as an issue of fact remains: whether the particular release upon which Defendant relies here was indeed for the particular race in question.<sup>2</sup> The Court rejects, however, Plaintiff's argument that even if it is proven that the release was for the May 2000 race, it is ineffective because it references a pro rally or a road rally but not a club rally. Inasmuch as the evidence indicates a pro rally is the highest (most dangerous) level of rally event and a road rally is the lowest (least dangerous) level, with rally crosses and club rallies falling in between, reference to pro rally and road rally is sufficient to apply the release to a rally cross or club rally.

In its motion for summary judgment, Simpson (the manufacturer of the helmet worn by Kovacs during the club rally) argues that Plaintiff has failed to produce evidence sufficient to take its claims to a jury. All three of the claims brought against Simpson are based on allegations the helmet was "defective, unreasonably dangerous and unsafe for its intended use". The only evidence offered in support of this allegation, however, is an expert opinion that "[i]f Simpson had not falsely represented that the helmet purchased by Mr. Kovacs was Snell certified, then the SCCA would not have allowed Mr. Kovacs to participate in the ClubRally, and therefore, Mr. Kovacs would not have been killed."<sup>3</sup> Putting aside the issue of whether the helmet was or was not "Snell certified", a point on which the parties do not agree, the Court finds a complete lack of legal causation, a necessary element of Plaintiff's claims. There is no

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<sup>1</sup> In Crews, the Superior Court found that the ski resort's alleged failure to prevent underage drinking by other skiers, which led to the plaintiff's being struck by an intoxicated patron, was not a risk inherent in the activity of skiing.

<sup>2</sup> The release is not dated and thus Defendant must rely on testimony of the event organizer, that based on the names thereon, she concludes the release is in fact for the event in question.

<sup>3</sup> Report of Russell Darnell, Ph.D., attached as Exhibit 13 to Simpson's Motion for Summary Judgment.

evidence to indicate, even if the Court accepts as true that the helmet was not Snell certified, that it could not have been so certified due to sub-standard construction and thus the lack of certification, as well as any representation with respect thereto, has no bearing on the cause of the injury. One might just as well argue that AAA Fire Systems is liable for Kovacs injuries because they certified Kovacs' dry chemical fire extinguisher as having been serviced that year when in fact it had not,<sup>4</sup> because Kovacs would not have been allowed to enter the event if his extinguisher had not been certified. See SCCA Rule 10.1.Q.3.c. Without a causal connection, Plaintiff's claim against Simpson cannot prevail. Summary judgment is thus appropriate.<sup>5</sup>

**ORDER**

AND NOW, this 19<sup>th</sup> day of May 2005, for the foregoing reasons, Defendant Simpson Performance Products' Motion for Summary Judgment is hereby GRANTED and Judgment is entered in favor of Defendant Simpson Performance Products and against Plaintiff. Defendant SCCA's Motion for Summary Judgment is hereby DENIED.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Michael G. Gallacher, Esq., 436 Jefferson Ave., Scranton, PA 18510  
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Gary Weber, Esq.  
Hon. Dudley Anderson

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<sup>4</sup> This statement of "fact" is entirely fictional, for illustration only.

<sup>5</sup> In light of this disposition, the Court does not reach the issue of assumption of the risk with respect to Simpson.