IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SHABNAM S. LOSCH and HARRY L. LOSCH,	:	
Plaintiffs	:	
	:	
v.	:	**No. 05-00,907**
	:	**CIVIL ACTION**
LITTLE LEAGUE BASEBALL, INC.	:	
Defendant	:	**SUMMARY JUDGMENT**

OPINION AND ORDER

Before this Honorable Court, is the Defendant's July 6, 2006 Motion for Summary Judgment. In its Motion, the Defendant cites two distinct grounds under which it believes it is entitled to summary judgment. First, the Defendant contends that, because it had no duty to protect the Plaintiffs, it is not responsible for Plaintiff Shabnam Losch's injuries and, in the alternative, even if it did have a duty to protect the Plaintiffs, it did not breach said duty. Second, the Defendant contends that, because it is a non-profit entity, it enjoys statutory immunity from the instant action. For the following reasons, the Court agrees with the Defendant's first cited grounds in support of its Motion[1] and, accordingly, GRANTS its Motion for Summary Judgment.

I. Background

The facts giving rise to the instant matter are unremarkable. On August 17, 2003, the Plaintiffs attended a Little League Baseball World Series game at Lamade Stadium. Lamade Stadium is owned and operated by the Defendant Little League Baseball, Incorporated. On that date, Plaintiff Harry L. Losch, who at the time was in a back brace, asked an usher if there were

[1] Because the Court is basing its grant of summary judgment based on the Defendant's first proffered basis (i.e. applicability of the "no duty" rule), an analysis of the Defendant's second proffered basis (i.e. statutory immunity), is unnecessary.

particular seats available for him and his family that would accommodate his current disability. The usher directed the Plaintiffs to the first row of seats on the first base line; at Lamade Stadium, the first row is reserved for handicapped patrons. At some time during the course of the game, Plaintiff Shabnam S. Losch was injured when she was struck in the eye by a foul ball.

On May 17, 2005, the Plaintiffs filed the current action against the Defendant. The Plaintiffs' suit seeks damages for the Plaintiff Shabnam Losch's injuries sustained as a result of being stuck in the eye by an errant ball in August 2003. In response, the Defendant claims that, pursuant to Pennsylvania's longstanding "no duty rule" regarding injuries sustained by patrons attending baseball games, the Plaintiffs are not entitled to recover any damages. Moreover, the Defendant asserts that, because it enjoys non-profit status, Pennsylvania law provides the Defendant statutory immunity from the Plaintiffs' action.

II. Discussion

Summary judgment is appropriate, after the close of the relevant pleadings, "where there is no genuine issue of material fact that is a necessary element of the cause of action, or if an adverse party, who will bear the burden of proof at trial, has failed to produce evidence of facts essential to the cause of action." Pa.R.C.P. No. 1035.2. In reviewing the motion for summary judgment, the Court must review the record in a light most favorable to the non-moving party and all doubts as to the existence of a genuine issue of material fact must be resolved against the moving party. *Fine v. Checcio*, 582 Pa. 253, 264, 870 A.2d 850, 857 (Pa. 2005) citing *Jones v. SEPTA*, 565 Pa. 211, 772 A.2d 435 (Pa. 2001). Finally, the court may grant summary judgment only where the right to such a judgment is clear and free from doubt. *Fine*, at 264, 857 citing *Marks v. Tasman*, 527 Pa. 132, 589 A.2d 205 (Pa. 1991).

In a basic negligence action, the plaintiff must establish that the defendant owed the plaintiff a duty, which the defendant breached, and that said breach was the cause of the plaintiff's injuries. Instantly, the Plaintiff[2] claims that, the Defendant undertook a duty to protect her from being stuck by errant balls when an usher led her to seats in the handicapped section of the baseball stadium. Further, the Plaintiff claims that because she was ultimately struck and injured by an errant ball, the Defendant breached its duty to protect her and, is consequently liable for her injuries. In response, the Defendant denies it owed a duty to the Plaintiff and cites *Schentzel v. Philadelphia National League Club*, 173 Pa.Super. 179, 96 A.2d 181 (Pa. Super. Ct. 1953), and its progeny, in support of that position.

In *Schentzel*, the plaintiff and her husband, when they purchased tickets to a baseball game, requested seats behind a screen; however, upon arriving at their seats and learning that they were in an unscreened portion, they opted to remain as opposed to navigating the large crowd between them and the ticket window in order to exchange their tickets. Shortly after arriving at their seats, the plaintiff, like the Plaintiff in the instant matter, was struck and injured by an errant ball. *Id.* After summarizing the amusement operator standard in Pennsylvania and the decisions of various state supreme court decisions regarding the specific standard applicable to baseball stadium amusement operators, the Superior Court of Pennsylvania, in reversing judgment in favor of the plaintiff, held that, by attending a baseball game, a plaintiff knowingly accepted and assumed the reasonable risks inherent in the game and was therefore barred from recovering for her injuries sustained from an inherent risk of attending such a game (e.g. being struck by an errant ball). *Id.* at 191, 187.

[2] Although both Harry and Shabnam Losch brought the instant action, because it was only Shabnam Losch's injury that gave rise to the action, the Court, from hereinafter, when referring to "Plaintiff," will utilize the singular form of the party identifier in reference to Shabnam Losch.

Fifteen years later, in *Iervolino v. Pittsburgh Athletic Co., Inc.*, 212 Pa. Super. 330, 243 A.2d 490 (Pa. Super. Ct. 1968), the Superior Court of Pennsylvania adhered to its reasoning in *Schentzel*. *Iervolino*, like *Schentzel*, involved similar facts to the case at bar: the plaintiff, while seated in an unscreened portion of a baseball stadium, was struck and injured by an errant ball. In response to the trial judge's instruction - "was it negligence for the defendant to invite a patron to a sports event and view a baseball game from a position where she was exposed to a hard projectile traveling 94 ½ feet in a split second" - the jury returned a verdict in favor of the plaintiff. *Iervolino*, 212 Pa. Super. at 331, 243 A.2d at 491. The Superior Court found that, pursuant to the "no duty" standard espoused in *Schentzel*, the trial court should not have turned the case over to the jury; accordingly, the Superior Court directed that judgment should be entered in favor of the defendant. In further support of this decision, the Court noted that, "the plaintiff had failed to prove by a fair preponderance of the evidence that the defendant failed to exercise reasonable care in the erection or maintenance of its baseball park commensurate with the risk involved. *Id.*

In 1978, the Supreme Court of Pennsylvania, in *Jones v. Three Rivers Management Corp.*, 483 Pa. 75, 394 A.2d 546 (Pa. 1978), finally addressed the application of the "no duty" rule as applied to baseball stadium operators. Although, the plaintiff's injury in *Jones*, like the plaintiff's in the aforementioned cases, was caused by an errant ball, the plaintiff in *Jones* sustained her injury while in a walkway not, like the plaintiffs in the aforementioned cases, while seated and observing the game. In reinstating judgment for in favor of the plaintiff[3], the Court explained that, because a ballpark patron voluntarily exposes themselves to the kinds of risks

[3] Judgment was reinstated in favor of the plaintiff because the injury at issue was not caused by a "common, frequent, and expected" risk of attending a baseball game (i.e. being hit, prior to the game, with a batted ball, while traversing a walkway and not in the stands); i.e. the court limited the application of the "no duty" rule to situations where the risks at issue are "common, frequent, and expected."

inherent in the game, said patron must establish more than a mere injury resulting from an errant ball in order to recover for said injuries; however, this standard is not to be mistaken for a pure assumption of the risk analysis because the "issue is not one of the plaintiff's subjective consent to assume the risks of defendant's negligent conditions, but rather whether the defendant was negligent in failing to protect the plaintiff from certain risks." *Id.* at 81-6, 549-51. In *Carrender v. Fitterer* 503 Pa. 178, 469 A.2d 120 (Pa. 1983), the Supreme Court of Pennsylvania explained the shift from the "assumption of the risk" analysis applied in *Schentzel and Iervolino to* the "no duty" analysis formulated in *Jones*: "[b]y voluntarily proceeding to encounter a known or obvious danger, the invitee is deemed to have agreed to accept the risk and to undertake to look out for himself . . . . Thus, to say that the invitee assumed the risk of injury from a known and avoidable danger is simply another way of expressing the lack of any duty on the part of the possessor to protect the invitee against such dangers. *Romeo v. Pittsburgh Assocs.*, 2001 PA Super 343, P8, 787 A.2d 1027, 1030 (Pa. Super. Ct. 2001) citing *Carrender*, 503 Pa. at 188, 469 A.2d at 125.

More recently, in *Romeo v. Pittsburgh Assocs.*, 2001 PA Super 343, 787 A.2d 1027 (Pa.Super.Ct. 2001), the Superior Court of Pennsylvania was again faced with a matter involving a spectator injured by an errant ball while attending a baseball game. In affirming the trial court's dismissal of the plaintiff's complaint, the Court explained that, "Pennsylvania Courts have formulated the "no-duty" rule which provides that operators of a baseball stadium . . . have no duty to protect or to warn spectators from "common, frequent, and expected" risks inherent in the activity. (citation omitted). Individuals attending these types of activities are deemed to anticipate such obvious risks and therefore to assume them." *Id.* at P8, 1030. Furthermore, the Court rejected the appellant's contention that, because the defendant had installed protective

screening in some areas of the stadium and not all, that the "no duty" rule did not apply: "[w]hen appellee placed a protective screen behind home plate, it did not assume a duty to provide netting to protect all spectators from foul balls. Such a conclusion would lead to the absurd result of screens encircling the entire field." *Id.* at P16, 1032.

Finally, in *Pakett v. Phillies*, L.P., 871 A.2d 304 (Pa. Commw. Ct. 2005), the Commonwealth Court of Pennsylvania upheld the trial court's granting of the defendant's motion for summary judgment after finding that the "no duty" barred the plaintiff's action and that the plaintiff's assertions that the defendant failed to adequately erect and maintain a screening device were unsupported. The plaintiff in *Pakett* was seated behind home plate, towards the third base side, when an errant ball struck and injured his right eye after his attempt to catch said ball was unsuccessful. *Id.* at 305-7. The plaintiff, relying on *Jones*, claimed that the "no duty" rule did not apply in this situation because the risk at hand was not an inherent risk of the game of baseball and that the defendant deviated, in some relevant way, from the established custom in ballparks regarding backstops and screening – the court rejected both of the plaintiff's contentions. *Id.* at 307-8. Being struck by an errant foul ball, the court explained, has long been recognized as an inherent risk of attending a baseball game; therefore, the "no duty" rule applies. *Id.* at 308-9. Additionally, the plaintiff produced no evidence that the defendant had deviated, in some relevant way, from the established custom in ballparks regarding backstops and screening – a general assertion of inadequacy, the court stated, was insufficient to support such a contention. *Id.* at 309-10.

Based on the preceding summaries, it is clear to this Court that the "no duty" applies in the case *sub judice*. The Plaintiff, like the plaintiffs in *Schentzel, Iervolino, Romeo,* and *Pakett* was struck by an errant ball, while seated in an unscreened portion of a baseball stadium, while

viewing a baseball game. The Defendant did not undertake a duty above and beyond the duty owed to all patrons when its usher led the Plaintiff to handicap seating; instead, the usher's assistance was merely a courtesy to the Plaintiff. In addition, the Plaintiff's location in the handicapped section has no affect on the applicability of the "no duty" rule; the "no duty" rule applies to all patrons.

It is equally clear to this Court that the Plaintiff has failed to adequately plead an exception to the "no duty" rule (i.e. that the Defendant deviated, in some relevant way, from the established custom in ballparks regarding backstops and screening). Although the Plaintiff did provide a report complied by Dr. Leonard K. Luceko who, *inter alia*, is a sports risk management and safety expert, said report is nothing more did not establish that the Defendant deviated, in some relevant way, from the established custom in ballparks regarding backstops and screening but instead explained how the accident giving rise to this matter could have been prevented. Dr. Luceko's report is not sufficient to establish that the Defendant's conduct falls under an exception to the "no duty" rule.

III. Conclusion

The Court finds that the "no duty" applies to the instant matter and that Plaintiff has failed to provide evidence that an exception to the applicability of the rule applies. The Plaintiff's failure to prove the existence of a duty is fatal to its instant action.

Additionally, the Defendant claims that it is immune from the instant action pursuant to 42 Pa.C.S. § 8332.1; however, the Plaintiff makes a compelling argument that one of the exceptions to that provision (i.e. the real estate exception) applies to negate the Defendant's claim of immunity; however, because the Court has already determined that the Defendant is

entitled to summary judgment relief based on the "no duty" rule, it finds it unnecessary to review the defendant's claim of statutory immunity as grounds for summary judgment relief.

ORDER

AND NOW, this _____ day of September, 2006, the Court hereby GRANTS the Defendant's Motion for Summary Judgment. Accordingly, the Plaintiffs' Complaint is DISMISSED.

By the Court,

_____
Nancy L. Butts, Judge

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