Jamieson v. Whistler Mountain Resort Limited Partnership

DAMAGES — Bars to damage claims — Release — Plaintiff suffering spinal cord injury while mountain biking at bike park owned and operated by defendant — On summary trial application, court finding waiver and release of liability signed by plaintiff barring his action for failure to warn — Court also dismissing plaintiff's claim that defendant's failure to warn about specific mechanism of injury and risk of spinal cord injury constituted breach of Business Practices and Consumer Protection Act.

In 2009 the plaintiff, then a second year medical student, went mountain biking in a bike park owned and operated by the defendant. He signed a waiver releasing the defendant from liability. The release was four pages. On the upper third of the last page, in a box about 2 inches in height, outlined in red and highlighted in yellow, the plaintiff agreed: "1. TO WAIVE ANY AND ALL CLAIMS I have or may in the future have against the RELEASEES AND TO RELEASE THE RELEASEES from any and all liability for any loss, damage, expense or injury, including death, that I may suffer or that my next of kin may suffer, as a result of my participation in Mountain Biking, DUE TO ANY CAUSE WHATSOEVER, INCLUDING NEGLIGENCE, BREACH OF CONTRACT, OR BREACH OF ANY STATUTORY OR OTHER DUTY OF CARE, INCLUDING ANY DUTY OF CARE OWED UNDER THE OCCUPIERS LIABILITY ACT, ON THE PART OF THE RELEASEES, AND FURTHER INCLUDING THE FAILURE ON THE PART OF THE RELEASEES TO SAFEGUARD OR PROTECT ME FROM THE RISKS, DANGERS AND HAZARDS OF MOUNTAIN BIKING REFERRED TO ABOVE". There were also signs in the park, including at the entrance and exit points, bearing the words "STOP – READ THIS!" at the top, and statements underneath that use of the bike park involved the risk of injury and a capitalized statement that the defendant's liability for any injury or loss was excluded by the terms and conditions on the patron's ticket and release. The tire of the plaintiff's bike got caught in some terrain at the top of a vertical drop causing him to be thrown over the handlebars. He suffered a spinal cord injury and was now confined to a

wheelchair. The plaintiff sued the defendant, claiming that it failed to warn him of the risks involved in using the bike park. He claimed the release was invalid because it failed to warn patrons of a known mechanism of injury (being thrown over the handlebars), a possible injury (spinal cord injury), and the frequency of such injuries. He also claimed that the defendant engaged in deceptive and/or unconscionable acts and practices, contrary to the Business Practices and Consumer Protection Act ["BPCPA"], which vitiated the release. The defendant applied for summary trial and dismissal of the plaintiff's claim on the basis of the release. HELD, application allowed; action dismissed. The matter was suitable for resolution by way of summary trial. Where a party has signed a written agreement, it is immaterial to the question of his liability under it that he did not read it and did not know its contents. None of the three exceptions to that rule applied here. The plaintiff's argument that the release was invalid by reason of its failure to identify the specific mechanism of injury and the injury itself was misconceived. That principle might apply in a products liability case, but where a person signs a contract containing an exclusion of liability clause, identification of specific risks is not generally required. In addition, the plaintiff was highly educated and had extensive experience in ski racing, heli-skiing and years of downhill skiing, all of which involved signing a document excluding liability. Further, the plaintiff had acted as first responder to incidents at the bike park, performing spinal precautions on injured riders himself, and that undermined his assertion that he had no idea a spinal cord injury was possible. With regard to the release itself, any reasonable person who could read English would understand that the risks of using the park were very serious and that by signing the release, the person was waiving the right to sue the defendant. The defendant also took reasonable steps to warn the plaintiff of the risks through the signage it erected, the contents of which were consistent with the content of the release. It was inconceivable that any adult with basic reading skills, especially a person with a degree in English literature such as the plaintiff, could reasonably believe he retained the right to sue the

defendant if they were injured using the park, even if the defendant were negligent. With respect to the BPCPA claim, the plaintiff said the defendant engaged in unconscionable or deceptive acts or practices by deliberately no disclosing relevant documents or information about the rate and severity of injuries at the park, but the court had found the plaintiff's allegation of non-disclosure to be unsubstantiated, and the release comprehensive. The defendant met its burden of proving its actions were not unconscionable. On a balance of probabilities the plaintiff knowingly and voluntarily signed the release in order to use the park, and that eliminated his claim under s. 8 of the BPCPA.

Jamieson v. Whistler Mountain Resort Limited Partnership, S.C., Sharma J., Doc. 2017 BCSC 1001, Vancouver S115407, June 16, 2017, 41pp. [CLE No. 64530] • J. Scott Stanley, P. Bosco and K. Gurlay, for plaintiff; Robert B. Kennedy, Q.C., for defendant Whistler.

Principal case authorities: *Blomberg v. Blackcomb Skiing Enterprises Ltd., [1992] B.C.J. No. 196 (S.C.) — considered. Braun v. Whistler Mountain Resort Ltd., [2017] C.D.C. 63134 (CLE), 2016 BCSC 2259 — considered. Delaney v. Cascade River Holidays Ltd. (1981), 34 B.C.L.R. 62 (C.A.) — considered. Dixon v. British Columbia Snowmobile Federation, 2003 BCCA 174, [2003] C.D.C. 26166 (CLE) (B.C.C.A.) — considered. Karroll v. Silver Star Mountain Resorts Ltd. (1988), 33 B.C.L.R. (2d) 160 (S.C.) — applied. Loychuk v. Cougar Mountain Adventures Ltd., [2012] C.D.C. 49974 (CLE), 2012 BCCA 122 — applied. MacMillan v. Kaiser Equipment Ltd., [2004] Civ. L.D. 439; [2004] C.D.C. 29579 (CLE); 2004 BCCA 270 — considered. Schuster v. Blackcomb Skiing Enterprises Ltd. Partnership (1994), 100 B.C.L.R. (2d) 298, [1995] 3 W.W.R. 443 (S.C.) — considered.*

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