

***Szarowicz v. Birenbaum*, No. A156312 (1st Cir. Dec. 4, 2020)**

Although body checking is an inherent risk of ice hockey (even in recreational, no-check leagues), intentional and violent collisions with other players for no other purpose than to cause serious injury is not protected conduct under the primary assumption of risk doctrine.

**FACTS/PROCEDURE**

In January 2017, Plaintiff Szarowicz and Defendant Birenbaum were playing on opposing teams in final round of the San Francisco Adult Hockey League’s (SFAHL) championship series. Although SFAHL is a recreational, no-check league, all players understand that body checking another player, i.e., using physical force to dispossess someone of the puck, is unavoidable. During their match, Defendant crosschecked two players three different times. The first time was against one of Plaintiff’s teammates and the subsequent two times were against Plaintiff. The last incident is what gave rise to Plaintiff’s suit. In the last few minutes of the game, Plaintiff was following the puck, which was moving toward the edge of the rink. As he was about strike it, Defendant took six full speed strides towards Plaintiff and collided with him, propelling him into the air. Plaintiff was briefly knocked unconscious by the collision and sustained serious injuries, including six broken ribs, a dislocated shoulder with three fractured bones, a fractured sternum, a fractured scapula, and a collapsed lung.

Plaintiff brought suit against Defendant for battery and negligence and sought both compensatory and punitive damages. Defendant moved for summary judgment or, in the alternative, summary adjudication under the primary assumption of risk (PAR) doctrine. He argued that “checking is an inherent risk in the sport of no-check ice hockey and thus he did not owe [Plaintiff] a duty to protect him from injuries resulting from a check.” The trial court agreed with Defendant and granted his motion for summary judgement, which Plaintiff appealed.

**HOLDING/DISCUSSION**

The Court of Appeal for the First District reversed. “[T]he primary assumption of risk doctrine...precludes liability for injuries arising from risks inherent in a given sport or recreational activity.” Participants in sports are liable for causing another person’s injuries only when they “‘intentionally injure[] another player or engage[] in conduct that is so reckless as to be totally outside the range of ordinary activity involved in the sport.’” Defendant argued he was exempt from liability under the PAR doctrine because body checking is an inherent risk of ice hockey, even in no-check hockey. He produced an expert witness who testified that defendant’s conduct was “not totally outside the normal range of the sport.” Defendant also produced the SFAHL regulations, which state, “The SFAHL is a non-check league, but ice hockey is a contact sport.” In his opposition, Plaintiff also produced an expert witness and testimony from many of his teammates disagreeing with Defendant’s expert. They alleged that Defendant’s “play ‘would be considered a dangerous and illegal hit even by NHL standards.’” Moreover, imposing liability in this instance would not chill vigorous participation in the sport because people would not willingly consent to such forceful and violent bodily contact. Plaintiff also used video footage of the accident to show Defendant intended to harm Plaintiff. Plaintiff pointed to “the speed [Defendant] attained, his failure to make any attempt to slow down or avoid [Plaintiff], his trajectory, and the facts that his stick was up because he was not reaching for the puck and that he remained standing after the collision because he ha[d] braced for the impact.” The court ultimately held that, “a reasonable trier of fact could find that a violent, full speed, open ice check on an oblivious opponent with no attempt to play the puck is ‘totally outside the range of the ordinary activity involved in no-check hockey.’”