

Diamond v. Schweitzer, et al.
110 Cal.App.5th 866
Court of Appeal, Fifth District, California

FACTS/PROCEDURAL HISTORY

The plaintiff suffered injuries from a punch inflicted by a third party during an altercation in the restricted pit area at Bakersfield Speedway. The Plaintiff alleges that the defendants were negligent in failing to provide reasonable security, adequately responding to the altercation, and undertaking reasonable rescue efforts. Defendants moved for summary judgment, asserting plaintiff's negligence claims were barred by the release and waiver of liability form he signed to gain admission to the pit area. The trial court granted the motion, concluding the release's language was clear, unequivocal, broad in scope, and included the negligent conduct alleged in this case. The court interpreted the release as including risks arising from or related to racing activities. It concluded the assault was a risk and, thus, was the type of event anticipated and covered by the release.

On appeal, the plaintiff contends the release is unenforceable because the injury-producing act of negligence was not reasonably related to the purpose for which he signed the release, which he describes as observing the race up close from the restricted pit area while it was occurring.

The Court of Appeals concluded that the requirements for an enforceable release had been met and that the defendants had adequately raised a complete defense based on the signed release of liability to all theories of negligence alleged in the complaint.

DISCUSSION

The court of appeals decided that the trial court correctly granted summary judgment to the defendant. "For a release of liability to be held enforceable against a plaintiff:

- [1] it must be clear, unambiguous, and explicit in expressing the intent of the parties.
- [2] the act of negligence that results in injury to the releas[or] must be reasonably related to the object or purpose for which the release is given; and
- [3] the release cannot contravene public policy.

The court paid close attention to the second provision of the Release that stated plaintiff "hereby releases, waives, discharges, and covenants not to sue [a long list of persons referred to collectively as] 'Releasees,' from all liability to the undersigned ... for any and all loss or damage, and any claim or demands therefor on account of injury to the person ... of the undersigned arising out of or related to the event(s), whether caused by the negligence of the releasees or otherwise." After considering the dictionary definition of the terms "arising out of," "related to," "the events," and their application in the context of the release, the court found the release provisions to be unambiguous in the context of the case.

Next, the court considered whether the plaintiff's injury had a logical or causal connection to the races held at the Bakersfield Speedway. Based on the undisputed facts of this case, the court found as a matter of law that the plaintiff's injury was "related to" the races. In particular, the facts established that the "but for" test for a causal connection is satisfied. But for the races, plaintiff and Kyle Flippo would not have been in the speedway's pit area on that date and, as a result, the altercations in the pit area that resulted in the plaintiff being punched would not have occurred. A *direct* causal link to the racing activity is not required by the release's "related to" language. Thus, the indirect link between the races and the incident supplied the requisite connection.

Finally, the court of appeals stated that exculpatory agreements in recreational sports do not implicate the public interest and are, therefore, not void as against public policy. The court refers to *Tunkl's* public interest analysis, which focuses upon the overall transaction, with special emphasis upon the importance of the underlying service or program, and the relative bargaining relationship of the parties, in order to determine whether an agreement releasing future liability for *ordinary* negligence is unenforceable. The court emphasizes that an automobile race does not compare to the practical necessity of banks, hospitals, childcare services, or common carriers: essential services upon which nearly all individuals rely. That entertainment and leisure are important to human flourishing, but it does not elevate automobile racing, or entertainment more generally, to the level of practical necessity required under *Tunkl*. The court of appeals concluded that the release did not involve a transaction that affected the public interest.