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HIGHLIGHTS

- * A Justice of the Supreme Court of Prince Edward Island has dismissed claims against P.E.I. Provincial Exhibition Inc., doing business as "Old Home Week" and the Charlottetown Civic Centre Management Inc. for personal injuries sustained by a volunteer while she was operating a gate during some cattle penning competition in the Civic Centre. The Court concluded that liability for her injuries rested with an independent contractor which organized the cattle penning event and a competitor riding a horse which crashed into a gate causing the Plaintiff's injuries. The Court considered the obligations of the Civic Centre under the Prince Edward Island Occupiers' Liability Act and whether or not "Old Home Week" could be characterized as an employer of the contestant. (Mallett v. Richard (c.o.b. Red Dirt Cattle Penning), [CALN/2019-032](#), [2018] P.E.I.J. No. 75, Prince Edward Island Supreme Court)

NEW CASE LAW

Mallett v. Richard (c.o.b. Red Dirt Cattle Penning);

Prince Edward Island Supreme Court,

T.A. MacPherson J.,

December 14, 2018.

[CALN/2019-032](#)

Full Text: [\[2018\] P.E.I.J. No. 75](#) | [2018 PESC 50](#)

Liability for Physical Injuries Sustained During Agricultural Exhibitions.

Rebecca Mallett ("Mallett") sued Danny Richard, doing business as Red Dirt Cattle Penning ("Red Dirt Cattle"), Shane Bernard ("Bernard"), The Government of Prince Edward Island, The City of Charlottetown, P.E.I. Provincial Exhibition Inc., doing business as Old Home Week

("Old Home Week") and the Charlottetown Civic Centre Management Inc. (the "Civic Centre") for physical injuries sustained when Mallett was injured when a horse and its rider, Bernard, slammed into a gate which was sprung open and struck Mallett during a cattle penning competition at the Civic Centre during Old Home Week.

The cattle penning competition was organized by Red Dirt Cattle. The event was held in the arena area of the Civic Centre. On August 12, 2012, Mallett was acting as a volunteer for the cattle penning event. Her job was to operate the gate between the chute holding area for the horses and the arena. Her duties involved opening, closing and pinning the hinged gate after each cattle penning run, to allow horses who had finished penning to exit the arena and to then allow the horses penning in the next event to enter.

On the night in question, at the end of the penning event while scores were being tabulated, the participants were invited to engage in a match race activity which involved 2 horses and riders to race at full gallop. During one of these match races, while Mallett was standing outside of the arena area, Bernard's horse slammed into a gate which sprung open and struck Mallett.

Old Home Week and the Civic Centre brought motions for summary judgment. Mallett's claims against the City of Charlottetown and the Government of Prince Edward Island had been previously dismissed or discontinued. Neither Red Dirt Cattle or Bernard participated in the application.

Decision: MacPherson, J summarily dismissed the actions against Old Home Week and the Civic Centre [at para. 98].

MacPherson, J observed [at para. 47] that the claims against Old Home Week and the Civic Centre were based on occupier's liability, vicarious liability and general negligence. Section 3 of the Occupiers' Liability Act, [R.S.P.E.I. 1988, Cap. O-2](#) provides:

"(1) An occupier of premises owes a duty to take such care as in all the circumstances of the case is reasonable to see that persons entering on the premises, and the property brought on the premises by those persons, are reasonably safe while on the premises."

After considering the authorities provided by Old Home Week, MacPherson, J observed, at para. 55:

[55]. although occupier's liability legislation imposes an affirmative duty on occupiers to make their premises reasonably safe for people entering therein, by taking reasonable care to protect them from foreseeable harm, the duty is not absolute. Perfection is not the required standard. Further, occupiers are not insurers, liable for any damages suffered by people who are upon their premises. Ultimately, an occupier's responsibility is to take reasonable care in all of the circumstances of the case.

MacPherson, J observed [at para. 61] that the Civic Centre and Old Home Week argued that they should be relieved from liability because they each took reasonable care in all of the circumstances to ensure that Mallett was reasonably safe while on the premises participating in Old Home Week.

MacPherson, J concluded [at para. 69] that in all of the circumstances the duty owed by the Civic Centre as occupier and landlord of the premises was minimal:

[69]. Civic Centre entered into a lease agreement with OHW wherein it essentially turned the premises over to OHW for the term of the agreement. Civic Centre's control was limited to locking and unlocking the premises at the beginning and end of the event days and providing cleaning and general maintenance services as required.

MacPherson, J concluded [at para. 71] that:

[71] . there is no reasonable basis, in all of the circumstances, to impose a duty on Civic Centre to oversee and supervise the running of the cattle penning event, or the match races which were run in conjunction with the event.

With respect to Old Home Week, MacPherson, J found that the evidence established Richard and Red Dirt Cattle were put in place by Old Home Week to run the cattle penning event and that Red Dirt Cattle was doing so as an independent contractor [at para. 72].

MacPherson, J also concluded [at para. 80] that Red Dirt Cattle had not been hired by Old Home Week and that it was not operating under its supervision or direction.

MacPherson, J concluded, at para. 87 that the evidence was insufficient to establish an employee or agent connection and that Red Dirt Cattle was an independent contractor in all of the circumstances.

CREDITS

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