IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
CIVIL TRIAL DIVISION

PERRY and MARY MARGARET PETRONGOLA, h/w	:	
v.	:	SEPTEMBER TERM, 1999
COMCAST-SPECTACOR, L.P., SPECTRUM ARENA LIMITED PARTNERSHIP, PAHL, L.P., and THE PHILADELPHIA PHANTOMS HOCKEY CLUB	:	NO. 3258

Myrna Field, J. March 14, 2001

OPINION OF THE COURT

Plaintiffs, Perry and Mary Margaret Petrongola, husband and wife, have filed an appeal from this court's order of January 10, 2001, granting summary judgment in favor of all the defendants. Since the order disposed of this matter, it was a final order and appealable. For the reasons below, summary judgment was properly granted and should be affirmed.

This negligence action arises from an injury sustained by plaintiff Perry Petrongola while attending a Philadelphia Phantoms Hockey game. The following facts are undisputed. Plaintiff was a Philadelphia Phantoms season ticket holder. His seat at the Corestates Spectrum, owned by defendant Comcast-Spectacor, L.P., Section F, Row 4, Seat 13, is immediately adjacent to the tunnel which leads from the ice to the players' locker room. Consequently, it is also immediately adjacent to a gap in the plexiglass shield which surrounds the ice. On October 10, 1997, plaintiff was seated in his regular seat when he was struck in the face by a puck which left

the ice. Immediate emergency medical care was rendered by medical personal on defendants' staff.

Motions for summary judgment are governed by Rule 1035.2 of the Pennsylvania Rules of Civil Procedure. The rule provides:

> Rule 1035.2. Motion
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> After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law
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> (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or
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> (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, 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 or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. 1035.2. In reviewing a motion for summary judgment, the record and any inferences therefrom must be viewed in the light most favorable to the nonmoving party and the moving party has the burden of proving that there are no genuine issues of material fact. Bigansky v. Thomas Jefferson Univ. Hospital, 442 Pa. Super. 69, 658 A.2d 423 (1995), appeal denied 542 Pa. 655, 668 A.2d 1119 (1995). If there are genuine issues of material fact, then summary judgment may not be entered. Where, as here, a defendant is the moving party, summary

judgment should be entered if it is clear that plaintiff is unable to satisfy an element of his cause of action. Godlewski v. Pars Manufacturing Co., 408 Pa. Super. 425, 597 A.2d 106 (1991).

To establish a defendant's negligence, a plaintiff must establish four elements: 1)the defendant owed a duty of care to the plaintiff; 2) the duty was breached; 3) factual causation; and 4) damages. Following Rule 1035.2, we accept for the purposes of this motion that plaintiff was injured and suffered damages. However, the determination of "duty" is a question of law for the court.

In their motion for summary judgment, defendants assert the "no-duty" rule, which states that a spectator at a professional sporting event assumes the risk of injuries which are inherent to the sport. This rule was articulated by the Pennsylvania Supreme Court in Jones v. Three Rivers Management Corp., 483 Pa. 75, 394 A. 546 (1978). The Court explained that the standard of reasonable care does not impose a duty to protect spectators from risks which are common, frequent and expected. Therefore, a baseball spectator, sitting in his seat, has assumed the risk of being hit by a fly ball. Following Jones, the "no-duty" rule was applied to hockey games in Pestalozzi v. Philadelphia Flyers Ltd, 394 Pa. Super. 420, 576 A.2d 72 (1990). The Court stated "We do not find...any reason for this Court to differentiate flying hockey pucks from batted baseballs with regard to the risks assumed by spectators of the two sports. To the contrary, we find the risks involved similar." 394 Pa. Super, at 424-25, 576 A.2d, at 74. Where, as here, the spectator is struck by the puck while sitting in his seat during the course of the game, the risk is common, frequent and expected.

Plaintiff's argument that the gap in the plexiglass shield near his seat was a superseding act of negligence which overrides the "no-duty" rule is without merit. In Pestalozzi, a similar

argument was advanced and rejected. There, the plaintiff was behind a piece of plexiglass, and the puck arched over the top. The court held that since the record revealed that the plaintiff had previously attended a professional hockey game, he was deemed to be familiar with the risks of the game, including the risk that a spectator being struck by an errant puck, *even while sitting behind plexiglass*, is common and reasonably foreseeable. Id. Since plaintiff's own pleadings reveal that he was a regular attendee at the Phantoms' games, this court properly found that he assumed the risk of being hit by a puck.

For all of the above reasons, defendants' summary judgment motion was properly granted. Judgment as entered on January 23, 2001, should be affirmed.

By the Court:

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Myrna Field, J.