Municipality Slides Away From Liability

January 23, 2017

In Martin et al v. the City of Barrie et al, 2016 ONSC 7830, the Ontario Superior Court found that the defendants were not liable for injuries suffered by the plaintiff when she went down a City-made snow slide during a winter festival and struck her tailbone on a chunk of ice that had become dislodged.

On February 5, 2011, the plaintiff, Ms. Martin, along with her husband and two children attended the Winterfest and Festival of Ice (the “Festival”) which was hosted annually by the City of Barrie ("City"). The Festival attracts 20,000 to 25,000 guests over the course of two days, and among other activities, guests were welcomed to go down a snow slide specifically crafted for the purposes of the Festival. The slide had three chutes of varying height and slope. Guests would go down the slide feet first, without the aid of a toboggan or sled.

Ms. Martin had accompanied her children to the top of the slide, and after they went down (safely), she had told a City attendant that she did not want to take a turn. However, a City attendant advised Ms. Martin that she could not go back down the steps she had come up, and that the only way down was to take the slide. Despite some objection, Ms. Martin ultimately went down the slide. Fearing that she would strike the safety fence at the end, she dug her heels into the slide, bringing her to an abrupt stop. While doing so, Ms. Martin felt excruciating pain, and looking back, saw a chunk of ice. She allegedly heard someone say "I have to fill this in again", and then saw someone kick snow into the divot where the chunk of ice had been. However, Ms. Martin could not identify whether this statement was made by a City employee.

At trial, it was alleged that the defendants had breached the standard of care proscribed under s. 3 of the Occupiers' Liability Act, 1990, by failing to: (1) have an appropriate inspection program in place, (2) failing to monitor and maintain the slide, and (3) failing to adequately train staff to identify hazards. The defendants argued that there had been no prior injuries reported from the slide, and that by allowing her children to use the slide, Ms. Martin had deemed the snow slide to be safe for her and her children. It was also argued that staff were positioned at the top and bottom of the slide, and it was acknowledged that the staff had undergone brief “but sufficient” training.

The Court had credibility concerns with Ms. Martin's evidence, in particular noting that her evidence that she was ‘forced' to proceed down the slide was simply an attempt to shift the blame to the City. The Court pointed out that this was contrary to her evidence on discovery, and, therefore, rejected the notion that Ms. Martin was ordered to go down the slide, finding that she had elected to go down the slide on her own free will.

In conducting an analysis on the appropriate standard of care in the circumstances, the Court noted that "sliding down a snow slide is as Canadian an activity as one can imagine". Furthermore, the Court acknowledged that such an activity – as Canadian as it is – comes with some inherent risk known to the participant. The Court also recognized that there is a positive duty on the party operating a snow slide to do so in a manner that is reasonably safe in the circumstance. The Court went on to accept that City employees were attentively monitoring the slide and took immediate action when a hazard was identified. Although the Court agreed that there were other maintenance procedures the City could have done to ensure safety, they were not necessary to meet the standard of care. In finding that the defendants did not breach the standard of care, the Court reiterated that "the standard is not one of perfection, rather it is reasonableness".

The decision reinforces the understanding that the analysis of occupier claims are entirely fact specific and the standard of care ought to be applied in a flexible manner to appreciate the uniqueness of the surrounding circumstances. In the circumstances of this case, the fact that City staff attended to the issue once they became aware satisfied the Court that a reactionary maintenance program was sufficient to meet the standard of care. Although more thorough inspections may have uncovered the potential hazard, such a process was not necessary in the circumstances. The Court reiterated that an occupier need not remove every possible danger in order to render the premises reasonable safe for its entrants.

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