

Norman Cohen v. Sterling Mets, L.P.
Supreme Court, Queens County Index No. 3971/05
July 24, 2007

Injury during t-shirt toss held to be customary part of sporting event and, as such, assumed risk warranting dismissal of case

Sterling Mets, L.P. (“Sterling”) obtained summary judgment in a unique negligence action involving a vendor at Shea Stadium (the “Stadium”) who was injured during the t-shirt launch.

In *Norman Cohen v. Sterling Mets, L.P.*, the plaintiff alleged that during the course of his employment as a concession vendor at the Stadium, he sustained various personal injuries when he was struck by a spectator who sought a t-shirt that had been “launched” into the stands in between innings. There was no dispute that the t-shirt launch was a promotional activity that occurred between innings and that it is a common feature at many sporting events. Prior to the t-shirt launch, Sterling provided announcements that the t-shirt launch was about to begin and provided security personnel during the event.

In dismissing the plaintiff’s negligence action against Sterling, the Supreme Court, Queens County held that Sterling established that it was entitled to summary judgment because it did not breach a duty of care to the plaintiff based upon the doctrine of assumption of the risk (which has extensive application in cases involving spectators and participants) of an open obvious condition. As a seasoned vendor who had worked at the Stadium and other venues for years, the plaintiff unquestionably appreciated the risks that were associated with working in unprotected parts of the Stadium. The Court also noted that spectators’ alleged frenzied and dangerous reaction to the t-shirt souvenirs was no different than their effort to obtain a souvenir baseball.

The Court further held that a spectator *at a sporting event* is deemed to have consented to those risks commonly appreciated which are inherent in and arise out of the event---those risks include the risk of injury presented because bats, balls or t-shirts may enter the stands. The Court held that the plaintiff’s arguments that the t-shirt toss was conducted in between innings and is a promotional activity that is not a part of the game were “without merit.” The Court compared the t-shirt toss to the tossing of a baseball to fans, or other promotional activities in between innings. In other words, the Court held that it is a customary part of the experience of attending a sporting event such as a baseball game. The Court also rejected the plaintiff’s arguments that the assumption of the risk was not a defense because he failed to demonstrate that he was under an economic or other compulsion to work during the t-shirt launch, notwithstanding his concerns about the purported dangerous condition.

Carla Varriale and Jarett L. Warner represented Sterling Mets, L.P.