

the importance of substance and form in the enforceability of waivers of liability

The arrival of the summer months means for many Canadians dusting off their sports gear and joining a league to enjoy the warmer weather. In joining, many players will be asked to sign a waiver of liability intended to protect the league and league organizers from liability in the event that a player is injured during competition. *Arndt v The Ruskin Slo Pitch Association*,¹ is a recent British Columbia Supreme Court decision that reminds sports leagues and general businesses alike of the impact that a properly drafted and presented waiver can have when an individual is injured in the course of a sponsored activity.

The dispute in *Arndt* arose after the plaintiff was injured during a softball game when she stepped into a hole while attempting to field a fly ball. The defendants applied for summary judgment seeking dismissal of the plaintiff's claim on the basis that she had signed a waiver of liability and thus should not be permitted by the court to hold the defendants responsible for her injuries.

The plaintiff argued in response that she should not be bound by the waiver, because the waiver information was hidden within a roster that each player was required to sign at the beginning of the season.² She complained that a clipboard with the waiver/roster document attached was passed around at the first practice and the plaintiff was neither given an explanation of the purpose of the document nor opportunity to read it. For those

¹ 2011 BCSC 1530 ("*Arndt*").

² *Ibid* at para 33.

reasons, the plaintiff claimed that the "act of signing the document was not the act of signing a waiver."³

Even if a party has not read a document, they are usually bound to its contents upon signing it. There are, however, exceptions to the general rule and one such exception was applicable on the evidence before the court. The court noted:

... there is no general requirement that a party tendering a document for signature take reasonable steps to apprise the party signing of onerous terms or to ensure that he reads and understands them. It is only where the circumstances are such that a reasonable person should have known that the party signing was not consenting to the terms in question, that such an obligation arises. For to stay silent in the face of such knowledge is, in effect, to misrepresent by omission.⁴

Although the plaintiff claimed she did not know she was signing a waiver, the relevant issue for the court was "whether a *reasonable person* would know that the plaintiff did not intend to agree to a liability release."⁵ In deciding that issue, the judge in *Arndt* held that the document appeared to the "reasonable observer" more like a "team roster" than a waiver and thus the defendants could not enforce the waiver against the plaintiff.

Interestingly, counsel for the parties agreed that the language in the waiver document would have otherwise covered the defendants and the injury.⁶ The problem was the "form of the document itself and the circumstances under which it was presented for signature [were] not such that a reasonable observer would understand its nature". The judge noted that "one

³ *Ibid.*

⁴ *Ibid* at para 26 citing *Karroll v Silver Star Mountain Resorts Ltd* (1988), 33 BCLR (2d) 160 (per McLachlin CJSC as she then was).

⁵ *Ibid* at para 38 [emphasis added].

⁶ *Ibid* at para 21.

would not normally expect a signature on a team roster to also be a waiver of liability."⁷

According to the court, in order to ensure that the waiver was fully enforceable against the plaintiff, the defendants needed to take "reasonable steps to have the nature of the document as a waiver rather than a team roster brought to the plaintiff's attention."⁸ Ultimately, a lesson to be learned from the decision is that "[i]f the defendants wanted to ensure that they were released from liability it would be a simple matter to have individual release forms prepared and signed by each player."⁹ As such, the form of a waiver's presentation can be just as important as its substance.

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[a cautionary note](#)

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⁷ *Ibid* at para 43.

⁸ *Ibid* at para 45.

⁹ *Ibid*.