

Event Release Invalidated for Violating Public Policy

Articles November 19, 2021

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Degliomini v. ESM Productions, Inc. and City of Philadelphia, 253 A.3d 226 (Pa. June 22, 2021) (Pennsylvania Supreme Court held that pre-injury exculpatory release granting city immunity from duty to maintain city streets violated public policy, and was thus invalid).

BACKGROUND

This case arose as a result of injuries sustained by Appellant, Anthony Degliomini, during the May 2015 Philadelphia Phillies Charity Bike Ride. During the bike ride on a designated route through the streets of Philadelphia, Degliomini crashed into an unmarked sinkhole. As a result of the crash, he suffered severe spinal cord injuries and bone fractures.

Prior to the event, Degliomini executed an event release, which stated that he assumed “risks associated with participating in the event, including but not limited to falls; contact with other participants; the effects of the weather; the condition of the roads; and unsafe actions by other riders, drivers, or non-participants.”

Degliomini filed a negligence action against the City of Philadelphia and the event planner, ESM Productions. At trial, the City attempted to dismiss the claims against it by claiming governmental immunity pursuant to the Political Subdivision Tort Claims Act, 42 Pa. C.S. §§ 8541-8564 (Tort Claims Act). However, an exception in the Tort Claims Act allows a local agency to be liable where it is aware of “[a] dangerous condition of streets owned by the local agency.” § 8542(b)(6). At trial, Degliomini presented expert testimony which established that the sinkhole had existed for at least eight months prior to the charity event, and that the City was aware of its existence due to evidence of attempts to unsuccessfully patch the sinkhole. The trial court held that the exception to governmental immunity applied in this case because the City had notice of the dangerous condition of the street.

A jury awarded Degliomini over \$3 million in damages for his injuries, with 90% of the liability attributable to the City (the City’s actual liability was limited to \$500,000, based on the cap on damages against local agencies in the Tort Claims Act). On appeal, the Pennsylvania Commonwealth Court held that the exculpatory release signed by Degliomini did not violate public policy and was valid and enforceable to bar Degliomini’s claims against the City.

On appeal to the Pennsylvania Supreme Court, a 4-3 divided Court held in favor of Degliomini that the release was invalid because it violated public policy. The City was held not to be immune from liability, because the City had a duty of care to maintain public streets in reasonably safe condition.

DISCUSSION

In finding that the release did not exculpate the City from liability, the Court held: “There is a well-defined public interest in the maintenance and safe repair of dangerous conditions existing on government-owned streets, and the municipal owners are thus charged with a duty of public service to perform such maintenance and repairs as a matter of necessity to members of the public. This dominant public policy is derived from over one hundred years of common law.” The Court held that the City’s duty to exercise care and fix the sinkhole “materialized when the City had actual notice or could reasonably be charged with notice of the existence of the sinkhole.”

The Court distinguished its ruling from an exculpatory release or waiver that might be used by a private host, such as a ski resort. “A private host is not assigned to the same mandatory duty of public service as is the City.” The Court concluded that enforcing the release to immunize the City would jeopardize the health, safety, and welfare of the people by removing any incentive for the City to exercise minimal standards of care to maintain public streets in reasonably safe conditions.

PRACTICAL ADVICE

In most scenarios, the Tort Claims Act provides valuable immunity to local agencies and political subdivisions, including school districts. Specifically, Section 8541 of the Tort Claims Act provides: “no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.”

Further – and despite being disfavored under Pennsylvania law – exculpatory event releases and waivers, like the one executed by Degliomini prior to the charity bike ride, are recommended to be implemented by entities hosting such events to safeguard against liability for injuries.

However, the Tort Claims Act and the event release in this instance were held by the Court not to be enough to shield the City of Philadelphia from liability. The Pennsylvania Supreme Court was divided, but ultimately held that it would be contrary to public policy to immunize the City. A public entity should never neglect its mandatory duty to maintain its streets, sidewalks, and real estate in safe condition. If a public entity seeks to host an event similar to this charity bike ride on its property, every effort should be made to confirm that the grounds are safe for participants