

Levine v USA Cycling, Inc.

2018 NY Slip Op 33177(U)

December 4, 2018

Supreme Court, Kings County

Docket Number: 515257/15

Judge: Bernard J. Graham

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS: Part 36**

STEVEN LEVINE,

Plaintiff(s),

-against-

USA CYCLING, INC. & KISSENA CYCLING
CLUB, INC.,

Defendant(s).

Index No: 515257/15
Motion Calendar No.
Motion Sequence No.

DECISION / ORDER

Present:

Hon. Judge Bernard J. Graham
Supreme Court Justice

Recitation, as required by CPLR 2219(a), of the papers considered on the review of this motion to: dismiss the plaintiff's complaint pursuant to CPLR § 3212.

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	___ 1-2 ___
Order to Show cause and Affidavits Annexed.....	_____
Answering Affidavits	___ 3 ___
Replying Affidavits.....	___ 4 ___
Exhibits.....	_____
Other:	_____

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KINGS COUNTY CLERK
FILED

Upon the foregoing cited papers, the Decision/Order on this motion is as follows:

Defendant, USA Cycling, Inc. ("USA Cycling") has moved, pursuant to CPLR §3212, for an Order awarding summary judgment to the defendant and a dismissal of the plaintiff's, Steven Levine, ("Mr. Levine") complaint upon the grounds that the defendant was not negligent, and thus not liable for plaintiff's injuries as they owed no duty to the plaintiff. The plaintiff opposes the relief sought by the defendant, USA Cycling, and maintains that the latter was negligent in that they had a greater involvement than just sanctioning the race in which the plaintiff was injured, and they failed to properly supervise, maintain and control the race in which the plaintiff who was not a participant in the race was seriously injured.

Background:

In the underlying matter, the plaintiff seeks to recover for personal injuries allegedly sustained while cycling in Prospect Park, Brooklyn, New York on June 14, 2014. At the same time the plaintiff was cycling as a recreational activity, a cycling event was taking place in the same area of Prospect Park. The plaintiff was cycling the same route as those participating in the event when he collided with another cyclist who was a participant in the bike race.

As a result of injuries sustained by the plaintiff, which included a fractured and displaced clavicle that required surgical intervention, an action was commenced on behalf of the plaintiff by the filing of a summons and complaint on or about December 21, 2015. Issue was joined by the service of a verified answer by USA Cycling on or about March 15, 2016. The plaintiff served a response to defendant's Demand for a Verified Bill of Particulars dated March 24, 2016. Depositions of the plaintiff, as well as Todd Sowl, the chief financial officer of USA Cycling, were conducted on September 27, 2016.

In October 2016, the plaintiff moved to amend their complaint to add Kissena Cycling Club Inc., ("Kissena Cycling Club") as an additional defendant. Kissena Cycling Club did not appear nor answer the complaint, but a default judgment had not been sought against said party.

In April 2017, plaintiff commenced a separate action against Kissena Cycling Club under index # 507066/2017. Plaintiff then filed a Note of Issue in the underlying action on July 25, 2017.

Defendant's contention (USA Cycling, Inc.):

The defendant, in moving for summary judgment and a dismissal of the plaintiff's complaint, maintains that the relief sought herein should be granted because in the absence of a

duty to the plaintiff there cannot be a breach and without a breach they cannot be liable for negligence.

The defendant maintains that USA Cycling merely sanctioned the event that was run by Kissena Cycling Club. They issued a permit to allow Kissena Cycling Club to use the name of USA Cycling during the event.

Defendant asserts that there is no evidence to support an argument as to the existence of a principal-agent relationship between USA Cycling and Kissena Cycling Club nor was there any evidence of control by USA Cycling or consent by USA Cycling to act on its behalf. In addition, there is no written agreement between the two entities.

In support of defendant's motion, is the affidavit of Todd Sowl in which he stated that USA Cycling did not coordinate the Prospect Park event; did not control or employ any of the people organizing or managing or working the race; did not select the location of the race nor supervise the race. They did not have any employees or representatives at the race. In addition, they are not the parent company of Kissena Cycling Club nor is Kissena Cycling Club a subsidiary of USA Cycling.

Mr. Sowl testified at his deposition that while USA Cycling sanctions events in the United States they do not run cycling events. Mr. Sowl stated that while there are benefits to a third party such as Kissena Cycling Club for having an event sanctioned by USA Cycling which includes that a cyclist participating in the event can use the results for upgrading their national results and rankings and the third-party event organizers can independently obtain liability insurance for their event through USA Cycling, he nevertheless maintained that they have no involvement in the operation of the race or the design of the course.

Plaintiff's contention:

In opposing the motion of USA Cycling for summary judgment, plaintiff maintains that USA Cycling was sufficiently involved with the cycling event that caused plaintiff's injuries that would result in their owing a duty to the plaintiff. Plaintiff contends that USA Cycling was negligent in their failure to properly operate, supervise, maintain, manage and control the bicycle race.

The plaintiff asserts that USA Cycling by its chief operating officer, Mr. Sowl, in both his deposition and his supporting affidavit stated that his organization sanctioned the cycling event in Prospect Park. They collect some fees to compensate for sanctioning the event and provide insurance for the event.

The plaintiff maintains that the defendant did more than just sanction the race as they issued safety guidelines, rule books, post event forms, permits, an event checklist and insurance information to the Kissena Cycling Club, and even received a copy of the incident report.

The plaintiff asserts that negligence cases by their very nature do not lend themselves to summary dismissal since the issue of negligence is a question for jury determination. The plaintiff maintains that the proof submitted by USA Cycling does not satisfy their initial burden of establishing the absence of a material issue of fact.

Discussion:

This Court has considered the submissions of counsel for the respective parties, the arguments presented herein, as well as the applicable law, in making a determination with respect to the motion by defendant, USA Cycling, for summary judgment and a dismissal of plaintiff's action.

At issue in this matter, is whether defendant USA Cycling owed a duty to the plaintiff and by virtue thereof is liable to the plaintiff for the injuries sustained during the bike tour.

The moving party in a motion for summary judgment bears the initial burden of demonstrating a prima facie entitlement to judgment as a matter of law by submitting sufficient evidence to demonstrate the absence of any material issue of fact (Drago v. King, 283 AD2d 603, 725 NYS2d 859 [2nd Dept. 2001]).

In support of USA Cycling's motion for summary judgment, the defendant offers the deposition testimony of Todd Sowl, as well as Charles Issendorf, the event director of Kissena Sports Project Inc. d/b/a Kissena Cycling Club, who was deposed on June 14, 2018 in the related action, as well as case law which examined whether a party under similar circumstances would have been found to be negligent and thus liable to an injured party.

To establish a prima facie case of negligence, a plaintiff must demonstrate (a) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom (Akins v. Glen Falls City School Dist., 53 NY2d 325, 333 [1981]). In the absence of a duty, there is no breach and without a breach there is no liability (see Light v. Antdeminico, 259 AD2d 737; Petito v. Verrzazano Contr. Co., 283 AD2d 472, 724 NYS2d 463 [2nd Dept. 2001]).

In determining whether USA Cycling had a duty to the plaintiff, this Court examined the role of USA Cycling and specifically its involvement in this race, as well as that of the Kissena Cycling Club. The Court further considered the deposition testimony of Todd Sowl as well as Charles Issendorf.

USA Cycling is the national governing body for cycling in the United States. They oversee the discipline of road, mountain bike, Cyc-cross, BMS and track cycling. Mr. Sowl testified that except for a few national championships, they do not actually run events. While

they sanction events, the events are generally owned and operated by a third party (such as the Kissena Cycling Club). In sanctioning the race at Prospect Park, USA Cycling recognized the event as an official event and the results when considering national rankings. However, while they sanction events they do not sponsor them. The chief referee at the event is an independent contractor who works for the event organizer and not USA Cycling. Mr. Sowl further testified that USA Cycling does not share in any portion of the fees that are generated by the local events.

This lack of control over the event by USA Cycling and by contrast the control exhibited by the Kissena Cycling Club is further demonstrated through the deposition testimony of Charles Issendorf. Mr. Issendorf as the race director for Kissena Cycling Club has been organizing races for fourteen years. Mr. Issendorf characterized his club as more of a social club where its members race together. There are generally thirty races conducted between the months of March and September with the venues being in both Prospect Park and Floyd Bennett Field which is also situated in Brooklyn, New York. Mr. Issendorf testified that he obtains the permit for the subject race directly from the representatives of Prospect Park. Mr. Issendorf is instructed to have certain safety measures implemented at all races. He sets up the course by putting out the safety measures which includes the safety signs that are needed for the race. He also organizes the race marshals, and the pace and follow motorcycles to ensure that there is a motorcycle in both the front and back of each group.¹ Mr. Issendorf further testified that Prospect Park has rules in terms of the placement of safety cones and signs that are needed, as well as the race marshals. Kissena Cycling club provides what could be characterized as “lawn signs” and Mr. Issendorf personally places these signs in the grass along the bike route. There are also traffic safety cones throughout the course that contain a sign which bear the words “caution, bicycle

¹ There are three categories of groups that participate in the race. They are divided into (1) novice, (2) intermediate and (3) more expert levels which race separately on the course.

race”, that are placed there by Mr. Issendorf. The signs are generally situated one hundred meters apart and they are placed at crosswalks, entrances to the park, as well as at high traffic areas where there is a concentration of people. As to the course, the two lanes to the right of a double white line is where the participants are allowed to race. To the left of the double white line is the location of the pedestrian or the recreation lane. There are written instructions on the website of the club which states that at all times the participants are not allowed to enter the pedestrian or recreation lane. The race organizers also make use of a portable PA system at the race in which the chief referee warns the riders to stay to the right of the white right lane, and if they were to cross into the recreation lane it would result in their disqualification.

This Court finds that while USA Cycling sanctioned the race of June 14, 2014, the plaintiff has not sufficiently refuted the assertion and proof offered by USA Cycling that the latter did not organize, direct, control, supervise or select the venue nor did they have any employees or agents at the cycling event, and thus, had no duty to the plaintiff. Courts have addressed situations that are akin to the case at bar. The Court in Chittick v. USA Cycling Inc., 54 AD3d 625, 863 NYS2d 679 [1st Dept. 2008]), in finding that an award of summary judgment and a dismissal of the action against USA Cycling was warranted, in which spectators were injured during a bicycle race when struck by the rear pace vehicle, determined that USA Cycling had no duty to prevent any negligence involved therein. The Court in Chittick determined that USA Cycling merely sanctioned the race by lending its name to the race. The fact that USA Cycling provided the rule book to the organizer of the race did not impose a duty upon them to enforce any of the rules thereon. There was also no inference drawn as to the existence of a principal-agency relationship between USA Cycling and the race organizer.

The Court in Megna v. Newsday, Inc., 245 AD2d 494, 666 NYS2d 718 [2nd Dept. 1997], in granting summary judgment to the defendant, determined that the defendant merely sponsored the race in which the injured plaintiff had participated. It was determined that the defendant owed no duty of care to the plaintiff as the defendant was not in any way involved in the design, layout, maintenance or control of the race course, and was not in a position to assume such control (see also Mongello v. Davos Ski Resort, 224 AD2d 502, 630 NYS2d 166 [2nd Dept. 1966]; Johnson v. Cherry Grove Island Management Inc., 175 AD2d 827, 573 NYS2d 187 [2nd Dept. 1991]).

This Court finds that the plaintiff has not established a prima facie case that the defendant USA Cycling had a duty to the plaintiff, and not having a duty was not negligent, and thus, not liable to the plaintiff. This Court finds that USA Cycling was not responsible for the layout and design of the race course, and all of the safety precautions that were in place on the day of the race were supervised by the employees and volunteers of Kissena Cycling Club. USA Cycling had no involvement in the positioning of the plaintiff, who was a recreational cyclist, and the riders in the race. The fact that USA Cycling sanctioned the race, provided safety guidelines on its website and assisted the local race organizers in obtaining insurance does not result in a finding that they are liable for an incident that occurred in a local race that is fully operated and managed by a local racing club.

Conclusion:

The motion by defendant, USA Cycling, Inc. for summary judgment and a dismissal of plaintiff's complaint is granted.

This shall constitute the decision and order of this Court.

Dated: December 4, 2018
Brooklyn, New York

ENTER


Hon. Bernard J. Graham, Justice
Supreme Court, Kings County

HON. BERNARD J. GRAHAM

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