

Superior Court Dismisses Nuisance Case Over Use of Town Ballfields

Manuel Branco v. Town of Walpole, Norfolk Superior Court, C.A. No. 2017-00909 (May 2018)

The plaintiffs live across the street from two baseball diamonds and one softball diamond owned and operated by the Town of Walpole. Claiming that foul balls batted from the ballfields enter their property on a “regular and continuing basis,” and that players and spectators also routinely enter their property to retrieve the errant balls, the plaintiffs filed suit against the Town for private nuisance, negligence and trespass. The plaintiffs likewise moved for the entry of a preliminary injunction, seeking to enjoin the Town from operating its fields in such a manner as to allow baseballs and persons to enter and cause damage to their property. Following an evidentiary hearing at which the Superior Court heard testimony from five witnesses, including the Director of the Walpole Recreation Department and the Superintendent of the Walpole DPW Parks Division, the Court denied the motion for a preliminary injunction on the grounds that plaintiffs failed to satisfy the three-part test for injunctive relief set forth in *Packaging Inds. Group, Inc. v. Cheney*, 380 Mass. 609, 616-17 (2006).

The Town next moved to dismiss plaintiffs’ Complaint under Rule 12(b)(6), citing the immunity protections available in Section 10(b) and Section 10(j) of the Mass. Tort Claims Act. In opposition to the motion, plaintiffs argued that their claims were based on more than the mere layout and configuration of the ballfields; they were also based on the Town’s negligent maintenance of the protective netting and fencing surrounding the ballfields. Such a claim, counsel insisted, was not barred by the discretionary function exception of Section 10(b), and was expressly excluded from Section 10(j) protection by virtue of the exception in Section 10(j)(3) for claims based on the “negligent maintenance of public property.”

As counsel for the Town, PDP responded that, even if the ballfields’ protective netting and fencing were in need of repair (which they were not), plaintiffs failed to make written presentment of a negligent maintenance theory; therefore, such a claim was now barred. The Court (Krupp, J., presiding) agreed and granted defendant’s Motion to Dismiss. Ruling first that Section 10(b) barred any claim based on the layout of the ballfields and/or design of the protective netting and fencing, and that Section 10(j) barred any claim based on the actions of players and others trying to retrieve balls from their property, the Court then acknowledged, as a “theoretical matter,” that plaintiffs could “possibly” bring a claim based on the Town’s negligent failure to maintain the protective netting and fencing it had chosen to install. However, plaintiffs’ presentment letter “says nothing about any holes in, or other failure to maintain, the fencing or netting.” Instead, it focuses entirely on the “discretionary function” aspects of plaintiffs’ claim. Because no negligent maintenance theory was timely presented, plaintiffs could not, ruled the Court, raise one for the first time in opposition to a Motion to Dismiss.