

The Bar at Bat: Law and America's Pastime

Chief Judge Ann Bailey Smith

*Take me out to the ballgame,
Take me out with the crowd;
Buy me some peanuts and Cracker Jack,
I don't care if I never get back.
Let me root, root, root for the home team,
If they don't win it's a shame.
For it's one, two, three strikes, you're out,
at the old ball game.*

This is a familiar song to most of us which is typically sung during the seventh inning stretch of a major league baseball game. By the time this article is published in *Bar Briefs* we will be inching closer to the World Series and the end of baseball for 2025. But baseball isn't all fun and games; there are some interesting legal issues that have been raised in the context of America's favorite pastime.

Some of us may recall the controversy regarding ownership of a baseball that set a homerun record. On October 7, 2001, the San Francisco Giants played the Los Angeles Dodgers at San Francisco's Pacific Ball Park. Two nights earlier, Barry Bonds, who played left field for the Giants, hit his 71st home run of the season to beat Mark McGwire's record of 70 home runs in a season, which he attained in 1998. Two days later, Bonds scores his 73rd home run, hitting the ball into the right-field stands. And this is where the legal controversy began.

Alex Popov was in the standing-room only section near right field with his out-stretched glove when he caught the homerun ball in the webbing. There can be no doubt that this is what occurred as it was captured in video footage by an on-the-scene cameraman. But then Popov was knocked to the ground by a mob of spectators who were hoping to get their hands on this souvenir. The ball came loose from the glove and ended up in the possession of another spectator, Patrick Hayashi. The videotape also showed that Hayashi was not a part of the mob who attacked Popov but was just the last person to get his hands on the home run ball.

Popov filed a lawsuit against Hayashi claiming conversion and trespass to chattel. In order to prevail in a court of law, Popov had to establish that he had actual possession of the baseball or the right to its possession. Possession requires both the intent to control the property and at least some degree of actual control of it. Popov asserted in his lawsuit that once the ball touched his glove it became his, and that although Hayashi came to have it legally, he had the duty to return the ball to its rightful owner.

The California Superior Court defined conversion as the wrongful exercise of dominion over the personal property of another which requires actual interference. The act constituting conversion must be intentionally done, but there is no requirement that the defendant realize that the property belongs to another. The court found there was no trespass to chattel as there was no damage to the baseball. As stated in

its decision, "The parties have agreed to a starting point for the legal analysis. Prior to the time the ball was hit, it was possessed and owned by Major League Baseball. At the time it was hit it became intentionally abandoned property. The first person who came in possession of the ball became its new owner." The court determined that Popov did not obtain full possession of the baseball, but that his opportunity to do so was thwarted by the unlawful activity of those who attacked him in an effort to take the ball from him. The court thus found that Popov had a pre-possessionary interest in the property which supports a cause of action for conversion.

The court then examined the interests of Hayashi who it determined was not a wrongdoer and who ultimately had possession of the ball. The court concluded that the principle of equitable division should be applied as both men intended to possess the ball at the time they each had physical contact with it and neither can present a superior argument against the other. "The court therefore declares that both plaintiff and defendant have an equal and undivided interest in the ball. Plaintiff's cause of action for conversion is sustained only as to his equal and undivided interest. In order to effectuate this ruling, the ball must be sold and the proceeds divided equally between the parties."

The ball was eventually sold at a New York auction to Todd McFarlane, a Canadian comic-book creator, who collects

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record-breaking baseballs. He paid \$450,000 for this baseball, while he paid \$3.2 million for Mark McGwire's record-breaking home run baseball. Popov and Hayashi were disappointed in the auction price, hoping for a sale of over \$1 million. Their split of the money went mostly to attorneys' fees.

Another type of legal action centering around the game of baseball is when a spectator gets injured during a game. Sometimes the lawsuit is brought against the player, and sometimes the defendant is the ballpark owner or operator. An example of the latter is *Benejam v. Detroit Tigers, Inc.*, 635 N.W. 2d 219 (Mich. Ct. App. 2001). Alyssia Benejam, a young girl, attended a Detroit Tigers baseball game with a friend and the friend's family. They were seated close to the field along the third base line. The stadium, in order to protect spectators, had netting behind home plate, which extended partway down the first and third base lines. Alyssia was seated behind the netting. In spite of that fact, she was injured when part of a batter's bat broke and a fragment of it flew around the net and crushed her fingers. All were in agreement that the netting was not defective in any way.

Alyssia's parents brought suit on their daughter's behalf claiming that the netting did not extend far enough and that warnings about the possibility of projectiles leaving the field were insufficient. They also sued the maker of the bat, Hillerich & Bradshy, but that claim settled. The jury was asked to decide whether the stadium owner had exercised ordinary care in providing reasonably safe premises for Alyssia. The jury returned with a verdict for the plaintiffs and awarded \$917,000 in noneconomic damages, \$56,000 in lost earning capacity and \$35,000 for past and future medical expenses.

The jury verdict was reversed on appeal, with the appellate

court siding with the Tigers that the limited-duty rule absolved them of liability. The limited duty rule provides that an operator's obligation under the law is satisfied when sufficient screening is provided in the most dangerous areas with a sufficient amount of seating for those spectators who want to sit behind netting. The appellate court agreed that the stadium complied with this. The appellate court took into consideration that some baseball fans do not want an obstructed view of the field by sitting behind netting. Additionally, the court stated that "the everyday reality of attending a baseball game includes subjecting oneself to the risk that a ball or bat might leave the field and cause injury."

As to the claim of insufficient duty to warn, the appellate court found that argument to be inconsistent with the limited-duty rule in that spectators know of the dangers of attending a baseball game and the dangers are open and obvious, so the defendant had no obligation to warn about them. In other words, spectators assume at least some risks when attending baseball games.

We have probably all attended a sporting event where an unruly or obnoxious fan sitting nearby has somewhat spoiled our experience at the game. Sometimes these fans are escorted out of the game or even arrested for their antics. In 2001, Jeffery Swiecicki attended a game between the Cleveland Indians and the Toronto Blue Jays at Jacobs Field in Cleveland. The rule in place at Jacobs Field regarding fan behavior reads:

Persons using obscene or abusive language, or engaging in any other antisocial conduct offensive to those around them, will be asked by Cleveland Indians personnel to cease this conduct. If the offensive conduct persists, those involved will be subject to ejection from the ballpark.

Swiecicki cheered and heckled through most of the game, including taunting players on both teams. Officer Jose Delgado was working as a security guard at the game when Swiecicki's behavior caught his attention. He saw Swiecicki with a beer in his hand as he was heckling the players, so Delgado told him to cut it out. Swiecicki ignored Officer Delgado, so the security guard approached him and told him he can do this the easy way or the hard way. Delgado grabbed his arm and escorted him out, but the fan jerked his arm away. The two ended up on the ground, and Swiecicki was placed under arrest for aggravated disorderly conduct and resisting arrest. He was found guilty, and he appealed.

The appellate agreed with Swiecicki that the evidence against him was insufficient to support his convictions. The court held that his words could hardly be found to be offensive to ordinary sensibilities and that some fans may have even agreed with his comments about the players. Additionally, the appellate court concluded that the proof had not shown that he was lawfully arrested, thus the resisting arrest conviction could not be upheld.

These are just a few examples of the crossover between the game of baseball and the court of justice. To read more in depth about these cases and others, you might want to check out the *Little White Book of Baseball Law* by John H. Minan and Kevin Cole.

Chief Judge Ann Bailey Smith (Judge Smith) presides in Division 13 of Jefferson Circuit Court. ■



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