

IN THE CIRCUIT COURT OF COOK COUNTY,
COUNTY DEPARTMENT, LAW DIVISION

JOHN FLAHERTY,)
)
Plaintiff,)
)
v.)
)
Cause No.
KEVIN PILLAR, TORONTO BLUE)
JAYS, a/k/a ROGERS BLUE JAYS)
BASEBALL PARTNERSHIP and)
OFFICE OF THE COMMISSIONER)
OF BASEBALL (d/b/a) MAJOR)
LEAGUE BASEBALL)
)
Defendants.)

COMPLAINT

NOW COMES the Plaintiff, JOHN FLAHERTY (hereinafter "Flaherty"), by his counsel, JONATHAN P. REMIJAS and TERRY RUBINO of Rubino, Ruman, Crosmer & Polen, and complaining against the Defendants KEVIN PILLAR (hereinafter "Pillar"), THE TORONTO BLUE JAYS, a/k/a ROGERS BLUE JAYS BASEBALL PARTNERSHIP (hereinafter "Blue Jays") and the OFFICE OF THE COMMISSIONER OF BASEBALL (d/b/a Major League Baseball) (hereinafter "MLB"), and states as follows:

COUNT I

NOW COMES the Plaintiff, JOHN FLAHERTY (hereinafter "Flaherty"), by his counsel, JONATHAN P. REMIJAS and TERRY RUBINO of Rubino, Ruman, Crosmer & Polen, and complaining against the Defendant KEVIN PILLAR (hereinafter "Pillar"), and states as follows:

1. This is not a case about a foul ball striking an unaware spectator; this is a case about a heavy baseball bat carelessly flung, tossed, thrown or released into the baseball stands by an unregulated professional baseball player who has a history of losing control of his bat, causing it to spin out of control towards a seated spectator who was unable to move to the left or right to avoid the projectile, and striking the fan in the head causing serious injury.

2. That Plaintiff, Flaherty, is an adult individual, residing in LaPorte County, Indiana.

3. That on Saturday, June 25, 2016, Flaherty was invited to attend a major league baseball game at then U.S. Cellular Field in Chicago, Illinois between the Toronto Blue Jays and the Chicago White Sox, and he did not know where the seat was located until he arrived at the game and found his seat.

4. That the ticket held by Flaherty issued for his attendance was located at Box 140, Row 7, Seat , just a few rows behind the Chicago White Sox home team dugout.

5. That at all times relevant, Flaherty was lawfully sitting in the seat he was assigned as an invitee to the baseball game in when this incident occurred.

6. That Defendant Pillar is and was at the time of this incident a major league baseball player employed by defendant Toronto Blue Jays a/k/a Rogers Blue Jays Baseball Partnership (hereinafter "Blue Jays").

7. That at all times material hereto, the Defendants Pillar and the Blue Jays carried on substantial business activities within Cook County in the State of Illinois.

8. That at all times material hereto, the Defendant Pillar was acting within the nature and scope of his employment by the Blue Jays, and was further acting with the knowledge and permission of said employer.

9. That at all times material hereto, Defendants Pillar and the Blue Jays stood in such a relationship with each other so as to make the Blue Jays liable for the acts and/or omissions of their employee Pillar.

10. That during the course of the baseball game, in the top of the eighth inning on Saturday, June 25, 2016, Pillar came to bat for the Toronto Blue Jays versus Chicago White Sox, and during this at-bat, Pillar swung and released his bat, flinging the bat into the crowd where it struck Plaintiff Flaherty in the head.

11. That prior to the at-bat by Pillar noted in paragraph 10, the Defendants Pillar and Blue Jays were aware that Pillar had thrown or lost his bat on occasions (in practice and during game time at-bats) resulting in an unsafe hazard to nearby persons, including spectators at Major League games.

12. That Defendants Toronto Blue Jays (and the MLB) knew or should have been aware, that releasing, throwing tossing or flinging a baseball bat into the crowd while a batter is hitting is not an expected occurrence and is within the exclusive control of the professionally trained ballplayers of MLB.

13. That Defendant Pillar has released, flung or tossed his bat into the crowd on several occasions during Major League Baseball games including on June 21, 2015, June 25, 2016, and twice in succession during the same at-bat on April 4, 2017.

14. That on June 25, 2016, Defendant Pillar was using a baseball bat that had no identifiable knob at its base, despite knowing or being aware that the purpose of the knob on a baseball bat is to increase the ability of the batter to maintain control of the bat when swinging and to help prevent the bat from leaving the batter's grip.

15. That the Blue Jays, by and through its agents and employees, were aware that Pillar utilized such a knobless bat, yet allowed him to utilize same during practices and MLB games.

16. That the lack of a knob at the base of the bat made that bat, as used by Defendant Pillar and sanctioned by the Defendant Blue Jays, posed a greater hazard to spectators and players at the game than the normal protection afforded to spectators and players by other standard bats.

17. That neither Defendant Pillar nor the Blue Jays did anything to warn Flaherty of the lack of control Pillar exercised in keeping a proper grip on his baseball bat during his at-bats.

18. That Plaintiff Flaherty was unaware and could not be expected to know or foresee that an entire bat would fly into the stands from the batter's box

where Defendant Pillar was batting and end up striking him in the skull seven rows up from the Chicago White Sox dugout.

19. That Plaintiff Flaherty was seated and unable to avoid the baseball bat thrown by Pillar into the stands.

20. That the Defendants Pillar and the Blue Jays knew or should have known of this danger faced by spectators, but failed to provide an adequate warning of those actual dangers and compounded that failure by failing to protect their spectators from foreseeable risks.

21. At the time and place aforesaid, the Defendant Pillar was then and there guilty of one or more of the following negligent acts or omissions:

- a. failed to maintain control of his baseball bat;
- b. failed to utilize safe equipment;
- c. failed to utilize a baseball bat that was fit for its particular purpose;
- d. lost his grip on his baseball bat which allowed his bat to enter the stands;
- e. flung his baseball bat into the stands;
- f. failed to utilizes proper equipment to prevent his baseball bat from flying into the stands at a high rate of speed; and
- g. failed to warn spectators of his high propensity for losing his grip on his baseball bat during his swing.

22. That as a proximate result of the negligent, carelessness and reckless conduct of the Defendant Pillar, the Plaintiff Flaherty sustained injuries to his body including a skull laceration and ongoing head trauma.

WHEREFORE, Plaintiff JOHN FLAHERTY, by and through his counsel, JONATHAN P. REMIJAS and TERRY RUBINO of Rubino, Ruman, Crosmer & Polen, demands judgment against Defendant KEVIN PILLAR, in an amount in excess of the jurisdictional limits of the Law Division of the Cook County Circuit Court, plus costs.

COUNT II

NOW COMES the Plaintiff, JOHN FLAHERTY (hereinafter "Flaherty"), by his counsel, JONATHAN P. REMIJAS and TERRY RUBINO of Rubino, Ruman, Crosmer & Polen, and complaining against the Defendants TORONTO BLUE JAYS a/k/a ROGERS BLUE JAYS BASEBALL PARTNERSHIP (hereinafter "Blue Jays"), and states as follows:

1-20. Plaintiff Flaherty realleges paragraphs 1-20 of Count I of this Complaint as paragraphs 1-20 of Count II of this Complaint, as if fully set forth herein.

21. At the time and place aforesaid, the Defendant Toronto Blue Jays, by and through its agents and/or employees, were then and there guilty of one or more of the following negligent acts or omissions:

- a. failed to maintain control of his baseball bat;
- b. failed to utilize safe equipment;

- c. failed to utilize a baseball bat that was fit for its particular purpose;
- d. failed to lose his grip on his baseball bat which allowed his bat to enter the stands;
- e. failed to not fling his baseball bat into the stands;
- f. failed to utilize proper equipment to prevent his baseball bat from flying into the stands at a high rate of speed;
- g. failed to warn spectators of Defendant Pillar's high propensity for losing his grip on his baseball bat during his swing;
- h. failed to properly train and supervise its employees in safe practices; and
- i. failed to stop its employees' unsafe and hazardous practices despite due notice and an adequate opportunity to do so.

22. That as a proximate result of the negligent, carelessness and reckless conduct of the Defendant Toronto Blue Jays, the Plaintiff Flaherty sustained injuries to his body including a skull laceration and ongoing head trauma.

WHEREFORE, Plaintiff JOHN FLAHERTY, by and through his counsel, JONATHAN P. REMIJAS and TERRY RUBINO of Rubino, Ruman, Crosmer & Polen, demands judgment against Defendants TORONTO BLUE JAYS a/k/a ROGERS BLUE JAYS BASEBALL PARTNERSHIP, in an amount in excess of the jurisdictional limits of the Law Division of the Cook County Circuit Court, plus costs.

COUNT III

1-20. NOW COMES the Plaintiff, JOHN FLAHERTY (hereinafter "Flaherty"), by his counsel, JONATHAN P. REMIJAS and TERRY RUBINO of Rubino, Ruman, Crosmer & Polen, and complaining against the Defendant OFFICE OF THE COMMISSIONER OF BASEBALL (d/b/a MAJOR LEAGUE BASEBALL) (hereinafter "MLB"), and states as follows:

1-20. Plaintiff Flaherty realleges paragraphs 1-20 of Count I of this Complaint as paragraphs 1-20 of Count III of this Complaint, as if fully set forth herein.

21. That on and before June 25, 2016, Defendant Office of the Commissioner of Baseball (d/b/a Major League Baseball (hereinafter "MLB") owed patrons like Plaintiff Flaherty a duty of reasonable care to protect them from the known risk of serious injury or death posed by bats being flung, tossed, thrown or released into the stands during a baseball game.

22. On or before June 25, 2016, Defendant MLB voluntarily understood a duty to protect patrons like Plaintiff John Flaherty from the known risk of serious injury or death posed by baseballs being hit and bats being flung or thrown into the stands.

23. That on or before June 25, 2016, Defendant MLB was aware that spectators have suffered serious injuries (i.e., skull lacerations and fractures, severe concussions) or been killed by baseballs and thrown bats entering the stands at a high rate of speed in foul territory at U.S. Cellular Field and other MLB team fields.

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24. The most dangerous areas at the ballpark are the exposed areas along the first and third baselines in foul territory. In these hot zones (often referred to as the “slaughter pen”), there is no netting and the spectator is exposed to these high risk areas. On June 25, 2016, Plaintiff Flaherty, was seated in a hot zone behind the Chicago White Sox dugout when he was struck by the thrown bat.

25. That before June 25, 2016, Defendant MLB executives, including the Commissioner and players, have acknowledged this danger posed to patrons. Some players refuse to allow their loved ones to sit close to the field unless they are directly behind the netting. The players, through their union, have even demanded that the netting be extended.

26. But even after the spectator netting was erected, spectators like Plaintiff Flaherty have continued to be seriously injured by baseball bats being flung, tossed, thrown or released into the stands at high rates of speed, including several occasions before the June 25, 2016, incident at U. S. Cellular Field involving Plaintiff John Flaherty. In fact, Defendants have increased the risk of injury to patrons not only by failing to extend the netting further, but also by including distractions during the game, increasing the pace of the game, and encouraging the use of mobile devices during the game.

27. Defendant MLB oversees the member-franchises like Defendant Toronto Blue Jays, and prior to June 25, 2016 Defendant MLB had the power to mandate that those teams take steps to increase spectator safety, including extending the netting or taking other precautions (e.g., requiring the batter to use a

knobless bat, chocking up on the bat, changing the size or weight of the bat, sanctioning a professional player who continues to carelessly throw his bat into the crowd)based on propensities of their employee Pillar for the protection of spectators like Plaintiff John Flaherty.

28. On or before June 25, 2016, Defendant MLB, through its employees and/or agents, negligently:

- a. failed to mandate spectator netting of a height, type, and in a manner that would prevent patrons like Plaintiff Flaherty from being injured;
- b. failed to assess, or re-assess, MLB member teams' spectator netting to determine if it was of a height, type, and in a manner that would prevent patrons like Flaherty from being injured in light of multiple incidents of injuries to patrons caused by baseball bats being flung, tossed, thrown or released into the stands;
- c. failed to properly warn patrons like Plaintiff Flaherty of the risk of serious injury or death posed by baseball bats being flung, tossed, thrown or released into the stands;
- d. failed to properly warn Plaintiff Flaherty of the risk of serious injury or death posed by baseball bats being flung, tossed, thrown or released being hit into the stands;
- e. failed to take steps, including a mandate to all MLB teams to extent netting to the far end of the dugouts, to protect spectators like Plaintiff

Flaherty from the risk of serious injury or death posed by baseball bats being flung, tossed, thrown or released into the stands;

- f. failed to take steps to protect Plaintiff Flaherty from the risk of serious injury or death posed by baseball bats being flung, tossed, thrown or released into the stands;
- g. failed to require that knobless bats not be used by its players; and
- h. failed to stop players from using knobless bats despite due notice and an adequate opportunity to do so.

29. That MLB has no rule to prevent baseball players from carelessly, recklessly or negligently flinging, tossing, throwing or releasing a bat into the spectator areas of ballparks.

30. That absent a rule by MLB that regulates a batter's conduct for safety of spectators, the professional baseball hitter swings with impunity and is exonerated from flinging, tossing, throwing or releasing his bat into the stands at the risk of grievous injury to patrons and spectators.

31. That public policy dictates that the Defendant MLB institute rules or regulations on professional baseball players to reduce incidents concerning recklessly, carelessly or negligently flinging, tossing throwing or releasing a baseball bat during the player's at bat based on a player's dangerous conduct.¹ Otherwise, all baseball players at any level (including Little League) will be without

¹ A major league baseball professional controls his swing; controls his bat; selects his equipment (including a knobless bat) and has professional coaches to help or assist that player's hitting.

concern for throwing a heavy piece of lumber, helicoptering the bat into a crowd of unprotected spectators.

32. As a direct and proximate result of one or more of the above-alleged acts or omissions of Defendant MLB, Plaintiff Flaherty suffered injuries of a personal, pecuniary, and permanent nature.

WHEREFORE, Plaintiff JOHN FLAHERTY, by and through his counsel, JONATHAN P. REMIJAS and TERRY RUBINO of Rubino, Ruman, Crosmer & Polen, demands judgment against defendant OFFICE OF THE COMMISSIONER OF BASEBALL (d/b/a MAJOR LEAGUE BASEBALL) in an amount in excess of the jurisdictional limits of the Law Division of the Cook County Circuit Court, plus costs.

BY: /s/ Jonathan P. Remijas
Counsel for Plaintiff

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