

Insight 208

from Horwitz Farrelly's Large & Complex Injury Group



WELCOME TO INSIGHT

Welcome to this week's edition of Insight, in which we report on the recent High Court ruling in the case of Harrison v Intuitive Business Consultants Limited T/a Bear Grylls Survival Race (1) Big Bang Promotions International Limited (2). The High Court considered the defendants' liability to the claimant who had suffered injury whilst participating in a Bear Grylls Survival Race.

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Grylls' health and safety laid bare

Harrison v Intuitive Business Consultants Limited T/a Bear Grylls Survival Race (1) Big Bang Promotions International Limited (2)

Background

In October 2016 the claimant was a participant in a Bear Grylls Survival Race which took place at Trent Park, North London. Whilst attempting to negotiate an elevated monkey ring obstacle known as "the jungle" she fell to the ground and suffered serious injuries to her right leg and shoulder.

The claimant claimed damages against the first defendant who was the overall organiser of the event and the second defendant who were responsible for the design of the course, its obstacles, the planning and management of the race, the provision of staff and the risk assessment of the obstacles.

The claimant alleged breach of s2 of the Occupiers Liability Act 1957 on the grounds the defendants had failed to take reasonable care for her safety.

The event

The Bear Grylls Survival Race is a themed obstacle and survival event comprising a mixture of obstacles and challenges combined with other

events, including music and entertainment. The obstacle races are designed for people of mixed ability, with the range being from novices to seasoned competitors.

There were between 2000 and 2,500 participants in the race.

The waiver form

In advance of the event the claimant signed a waiver form which stated:

"A risk of injury and / or death from activities involved in the Bear Grylls Survival Race is significant, including but not limited to the following ... strains ... fractures ... While particular rules, equipment, and personal discipline may reduce this risk the risk of injury does exist... I knowingly and freely assume all such risk, both known and unknown, even if arising from the negligence of others and assume full responsibility for my participation."





The Jungle

The Jungle was a rectangular structure approximately 4 metres in height with rings attached at differing heights. At either end of the Jungle was a platform. Between the platforms were six rows of rings containing eight or nine rings running from the start platform to the end platform.

The area below was grass covered in hay to provide a softer landing in the event of a fall from the rings.

To complete the obstacle contestants had to position themselves on the start platform either by sitting, standing or squatting then grab hold of the first ring and subsequently swing between rings until reaching the end platform.

Risk assessments

Risk Assessments carried out identified two specific control measures to prevent injury from falling from the rings:

- Two marshals to be located on the first deck to brief participants to reach for the first ring from a seated position.
- Straw to be re-distributed in between waves of runners.

The accident

The claimant climbed on to the platform and stood in a standing position. A marshal was next to her but was said not to have offered any guidance on how to set off from the platform.

The claimant stated she had taken hold of the first ring and at that point she fell. The claimant stated the ground upon which she fell was hard with no cushioning for the fall.

The claimant's case

The claimant alleged:

- The defendants should have given specific instructions to start the obstacle from a sitting position and use a heel-bar on the side of the platform.
- The defendants had failed to provide an adequate and safe landing surface.

The defendants' case

The defendants contended their duty to the claimant was to provide an obstacle course which was reasonably safe to use. There was no duty to provide training, supervision or instruction.

The defendants relied on the judgment of the CA in *Trustees of Portsmouth Youth Activities Commission v Poppleton*, (2008) where it was stated:

"There being inherent and obvious risk in the activity which Mr Poppleton was voluntarily undertaking, the law did not in my view require the appellants to prevent him from undertaking it, nor to train him or supervise him. If the law required training or supervision in this case, it would equally be required for a multitude of other common place leisure activities which nevertheless carry with them a degree of obvious inherent risk."

The court rejected this contention. The defendants had carried out a risk assessment requiring instructions be given to participants. As such, instructions should have been given. Similarly, the defendants owed a duty to provide a safe landing surface.

Having accepted the defendants owed a duty to the claimant, the court went on to consider the factual issues and in particular;

1. The precise circumstances of the accident.
2. Whether any instruction was given to the claimant by the marshal as to the method to be employed when leaving the platform.
3. If no instruction was given whether the absence of instruction was causative of the accident?
4. Whether there was a failure to level out the hay and, if so, whether this was in any way causative of the accident?

The precise circumstances of the fall

Taking into account the witness evidence the judge concluded the claimant had grabbed the first ring and was in the process of taking hold of the second ring when she fell to the ground.

Was instruction given?

There was conflicting evidence before the court. The claimant and her witnesses denied any instruction was given at all. The marshal present on the platform stated that general instructions were given to those participating and it was likely



the claimant would have heard this general instruction. It was accepted individual instruction to each participant was not given.

The court preferred the defendants' factual evidence.

The court concluded the general instruction was given albeit it was apparently neither heard nor acted upon by the claimant.

The absence of instruction

Although the court had found a general instruction had been given it went on to consider the position if it had found the instruction had not been given.

The court concluded that had instruction been absent it would not have been causative of the accident. The claimant had fallen from the second ring. There was no connection between the means of her departure from the platform in a standing position and the fall.

The landing surface

The defendants contended that the marshals re-distributed the hay as and when required. This was accepted by the court.

The judge concluded dismissing the claim, that "The reality is that the majority of participants fell off the monkey rings at some stage during the course of the obstacle; and they fell whether they started from a sitting or standing position."

He added

"Accidents of this type are an inherent risk of participation in activities such as obstacle races; and no amount of care and vigilance on the part of the organisers and planners of such events can eliminate the possibility of such risks materialising from time to time. The claimant elected to participate in the Bear Grylls Race and, whilst of course, she did not expect to suffer injury when doing so, nevertheless, it was a risk of which she was well aware when she registered for the event and signed the indemnity"

Conclusion

The case ultimately turned on the factual finding of the judge who for the most part preferred the defendants' evidence to that of the claimant. In particular, the claimant was unable to satisfy the court that:

- She fell from the first ring of the course.
- She received no instruction from the defendants on how to leave the platform as required by the risk assessment.
- The defendants had not re-distributed the hay on the ground as required by their risk assessment.
- She had not appreciated the risk of injury occurring when agreeing to participate in the event.

Commentary

The case does highlight that various leisure activities carry with them a risk of injury. Merely because the injury occurs does not mean the defendant will be found liable.

The waiver form signed by the claimant was widely drawn and ineffective to exclude liability for personal injury pursuant to s2(1) of the Unfair Contract Terms Act 1977. The waiver form was, however, evidence the claimant had some appreciation of the risk involved in participating in the event.

In view of the factual finding of the judge it is unlikely the decision will be appealed.



