

ACPNS LEGAL CASE REPORTS SERIES

This series compiles short summaries of significant cases involving charitable, philanthropic, nonprofit and social enterprise organisations in Australia and overseas.



COOPER BHT COOPER V AUSTRALIAN KARTING ASSOCIATION LIMITED T/AS KARTING AUSTRALIA [2020] NSWSC 664

Supreme Court of New South Wales, Harrison AsJ, 28 May 2020

Application for approval of a settlement where liability was contested with defences under ss 13 & 19 *Civil Liability Act* (Qld).

Key words: Liability, New South Wales, Settlement, s 13 & 19 *Civil Liability Act* (Qld)

1. A 74-year-old male was photographing a go kart race at the Warwick Kart Club. He was standing behind a metal and wire gate. There was a collision between two karts. One kart careered off the track and struck the gate, which swung violently into him. He landed heavily on the track and struck his head and sustained a severe traumatic brain injury, and other injuries.
2. The defendants raised defences under sections 13 and 19 of the *Civil Liability Act* (Qld) being an “obvious risk” that would have been obvious to a reasonable person in the position of that person and “A person is not liable in negligence for harm suffered by another person as a result of the materialisation of an obvious risk of a dangerous recreational activity engaged in by the person suffering harm.”
3. The defendants also argued that:
 - their track had been laid out in the same way for nearly 30 years and there had never been another incident of this kind;
 - any risk of harm to an experienced attendee such as the plaintiff was so remote that it could be considered insignificant in the circumstances; and
 - they had taken reasonable precautions against the risk of harm by way of the erection of barriers and by the track design generally.
4. However, the defendants offered to settle the plaintiff’s claim for a confidential compromise amount. This required the consent of the court to form a view about whether the risk to the plaintiff of losing the sum that had been agreed was outweighed by the possibility of receiving more after a hearing.

5. The court's view was that the proposed settlement was beneficial to the plaintiff's interests and that it should be approved.

IMPLICATIONS



This case is an example of the defences now available to clubs that are engaged in inherently dangerous activities.

VIEW THE CASE



This case may be viewed at <http://www.austlii.edu.au/au/cases/nsw/NSWSC/2020/664.html>

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