

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

CAROL CONRAD,)	
)	
<i>Plaintiff</i>)	
)	
v.)	Civil No. 89-0063 P
)	
BEACH ACRES PARK, INC., d/b/a)	
BEACH ACRES CAMPGROUND)	
)	
<i>Defendant</i>)	

**RECOMMENDED DECISION ON THE DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

In this diversity action the plaintiff seeks damages for personal injuries sustained when she slipped and fell in the restroom at the campground operated by the defendant. Before the court is the defendant's motion for summary judgment. Both parties have submitted statements of material facts. Local Rule 19(b) and (c).

Pursuant to Fed. R. Civ. P. 56(c) the court shall render summary judgment if there remains "no genuine issue as to any material fact" and if "the moving party is entitled to a judgment as a matter of law." The only issue before the court is whether the defendant is immune from liability under 14 M.R.S.A. ' 159-A.

The essential facts can be summarized as follows. The plaintiff, her companion and his son were campers at the Beach Acres Campground on July 12, 1986 when the plaintiff allegedly fell upon entering the campground restroom facilities. Defendant's Statement of Material Facts to Which There Is No Issue to Be Tried ("Defendant's Statement of Material Facts"), p. 1; Deposition of Carol J. Conrad, pp. 8-10. The campsite was registered in the name of the plaintiff's companion and payment

was made for three campers. Exhibit attached to Affidavit of Roger Batchelder. The defendant leases the real estate on which the campground is situated from Roger and Arline Batchelder who are the principal officers and sole stockholders of the corporation. Defendant's Statement of Material Facts, p. 2; Affidavit of Gordon C. Ayers.

The defendant bases its summary judgment motion on the affirmative defense of limited liability for recreational activities provided for in 14 M.R.S.A. ' 159-A. Section 159-A(2) reads as follows:

2. Limited duty. An owner, lessee or occupant of premises shall owe no duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes.

Id. The plaintiff concedes that as a camper at the defendant's campground she was engaged in a recreational activity within the meaning of the statute¹ and that, therefore, the limited liability provisions of ' 159-A(2) are applicable. She argues, however, that this case falls within one of the limited liability exceptions, specifically that provided in 14 M.R.S.A. ' 159-A(4)(B) which states:

4. Limitations on Section. This section shall not limit the liability which would otherwise exist:

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the landowner by the State;

Id. The defendant, on the other hand, asserts that there is no evidence showing that the plaintiff *personally* paid for the campsite and claims that the "for consideration" exception is therefore unavailable to the plaintiff. The defendant relies on *Robbins v. Great Northern Paper Co.*, 557 A.2d

¹ The statute's definition of recreational activities includes camping. 14 M.R.S.A. ' 159-A(1)(B).

614 (Me. 1989), in which the Law Court indicated that the "immunity provision" of § 159-A is to be construed broadly and the "for consideration" exception narrowly.

The defendant's argument is frivolous. Nothing in the statute or in *Robbins* renders even plausible the defendant's claim that in order to avail herself of the "for consideration" exception the plaintiff has to show that she paid for the campsite herself. In *Robbins*, the Law Court held that the payment by the lessee of \$95 a year pursuant to a lease which entitled him to build and occupy a structure for recreational purposes and also provided that he had the right to access the structure by passing over other lands of the lessor (Great Northern Paper Company) did not constitute consideration within the meaning of § 159-A(4)(B) to travel over Great Northern's other land (where the accident occurred) because Great Northern charged no fee to the general public to use such land for recreational purposes. The court concluded that the \$95 paid by the lessee "represent[ed] a fee for his right to use the leased lot for certain purposes. It [did] not entitle him, however, to a greater right than that held by the general public to pursue recreational activities on lands other than this lot." *Robbins*, 557 A.2d at 617. The Law Court reasoned that such a determination was consistent with the purpose of the limited liability rule of the recreational use statute which it had previously determined was "to encourage owners and occupiers of land to make their land available to the public *without charge* for recreational activities." *Noel v. Town of Ogunquit*, 555 A.2d 1054, 1056 (Me. 1989) (citing *Stanley v. Tilcon Maine, Inc.*, 541 A.2d 951, 953 (Me. 1988)) (emphasis added). Thus, the Law Court concluded in *Robbins* that to hold Great Northern liable for the lessee's use of the same land for which it charged no fee to the general public "would undermine the very goal sought to be advanced by the Legislature." *Robbins*, 557 A.2d at 617.

In this case, the material before the court shows that on the evening of July 11, 1986 the plaintiff arrived at the campground with her companion and his son. Defendant's Statement of

Material Facts, p.1; Deposition of Carol J. Conrad, pp. 8-9. Other evidence indicates that when her companion registered for the campsite he paid for three people -- himself, his son and the plaintiff. First, the plaintiff states in her deposition that she arrived at the campground with her companion and his son and that her companion filled out the registration card and paid the fee. Deposition of Carol J. Conrad, pp. 8-9. In addition, the campground register card, completed by the plaintiff's companion, shows that there were three people (two adults and one child) in the party and that \$21 per night was the campground fee. Exhibit attached to the Affidavit of Roger Batchelder. Finally, the deposition of Marc Batchelder, the general manager of the campground, makes clear that the party of which the plaintiff was a member had to pay in order to enter the campground. Deposition of Marc Batchelder, p. 14 (attached to Plaintiff's Statement of Material Facts). Mr. Batchelder stated that campers have to "go through that gate and they don't get through the gate unless they pay. Very simple." *Id.* He further indicated that he had no reason to believe that the plaintiff was a trespasser or was not entitled to use the premises on July 12, 1986. *Id.* at pp. 14-15. He also testified that a campsite in 1986 was \$14 for two people for the night for just the basic tent site and that there would be an additional charge for each other person beyond the two who were staying there. *Id.* at p. 15.² I determine, therefore, that a reasonable jury could find that the campground received payment for each member of the party of which the plaintiff was a member.

The Law Court's decision in *Robbins* does not require a further showing in order to defeat the defendant's motion. The rationale for a narrow construction of the statute is to encourage the owner

² I note that the plaintiff's attachment to her statement of material facts of an uncertified excerpt of the deposition is not in strict compliance with Fed. R. Civ. P. 56(e) and Local Rule 16(g). These documents may be considered by the court, however, because they have not been challenged by the defendant. C. Wright, A. Miller & M. Kane, 10A *Federal Practice and Procedure* ' 2722 at p. 60 (1983). Moreover, the other materials cited above are sufficient to raise a genuine issue of material fact.

or occupier of land to make land available to the public *without charge*. The defendant's argument, therefore, that it is entitled to protection under the statute where there is evidence showing that it received payment³ for the plaintiff's right to enter and use the campground is unfathomable.⁴ Accordingly, I recommend that the defendant's motion for summary judgment be ***DENIED***.

NOTICE

A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. ' 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

Dated at Portland, Maine this 28th day of February, 1990.

David M. Cohen

³ I note that the defendant stops short of asserting that it did not actually receive payment for the plaintiff's right to use the campground.

⁴ The defendant also cites *Garreans v. City of Omaha*, 216 Neb. 487, 345 N.W.2d 309 (1984), and *Garfield v. United States*, 297 F. Supp. 891 (W.D. Wis. 1969), in support of its position. Neither of these cases, however, holds that the payment which the owner or occupier of land receives for a plaintiff's right to use the premises for recreational purposes must be personally paid by a plaintiff or come from his or her funds.

United States Magistrate