



# COMMERCIAL REAL ESTATE INSIGHT & NEWS

The Bowditch & Dewey Real Estate Blog

## Court of Appeals Clarifies Liability Exemption for Owners of Recreational Land

BY CHRISTOPHER MERCURIO • FEBRUARY 5, 2016

A go-cart operator recently attempted to avoid a collision course with a plaintiff-customer by invoking the State's recreational use liability exemption and (almost) succeeded. Seekonk Grand Prix Corp. ("SGP"), the operator of a facility that boasts—among other things—go-carts, bumper boats and mini golf, was recently sued by a parent injured by a wayward go-cart while watching her children partake in the "grand prix." Without reaching the merits of the plaintiff's negligence argument, the Superior Court granted summary judgment to SGP citing a liability exemption for landowners who offer their land for public recreational use without charging a fee for access. The Court of Appeals recently reversed, remanding the case back to the Superior Court for trial.

The Massachusetts Recreational Use Statute is designed to encourage landowners to offer access to their land to the public by shielding such landowners from liability for injuries sustained by visitors. The Statute provides that those who allow the public access to their land for a recreational purpose without charging a fee for access "shall not be liable for personal injuries... sustained by such members of the public... in the absence of willful, wanton, or reckless conduct" by the landowner. In other words, the Statute protects such landowners from liability for an injury as long as the injury was not caused by intentional or reckless conduct of the landowner.

SGP argued that the liability exemption applied in this case because SGP does not charge for access to its facility (only for the use of its attractions inside). It would follow that a parent who passively watched her children partake in an activity for which they paid a fee would be considered a recreational user of the land.

Unpersuaded by SGP's argument, the Court found the difference between paying a fee for entrance and paying a fee to use the facilities once inside to be an arbitrary distinction. The Court further noted that—whether the plaintiff participated in the go-carting or not—she "was using the facility for the recreation of her children, and she paid for that use by purchasing tickets."

This case demonstrates the limits of the liability exemption contained in the Recreational Use Statute. Landowners that

allow access to their land for public recreational use should not expect to be shielded from liability for injuries sustained thereon.