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Cubs fare better in appellate court than the playoffs

It was glorious while it lasted. This season, the Chicago Cubs successfully battled their way into the postseason by defeating the Pittsburgh Pirates in the National League wild-card game. Thereafter, they dispatched the unbeatable St. Louis Cardinals. But alas, the New York Mets proved too much for the home team. There is always next year.

Historically, the Cubs have not fared well in October baseball. But if it's any consolation, they tend to do quite well in the Illinois Appellate Court.

For the disappointed fan in all of us, this month's column will keep the season alive by recounting the Cubs' great appellate victories.

The oldest Cubs victory can be found in *Shlensky v. Wrigley*, 95 Ill. App. 2d 173 (1st Dist. 1968) where the Cubbies beat one of their stockholders. "Plaintiff is a minority stockholder of defendant corporation, Chicago National League Ball Club [Inc.], a Delaware corporation with its principal place of business in Chicago, Illinois. Defendant corporation owns and operates the major league professional baseball team known as the Chicago Cubs." *Shlensky*, 95 Ill. App. 2d at 175.

The plaintiff, William Shlensky, sued alleging negligence and mismanagement of the team, requesting "damages and an order that defendants cause the installation of lights in Wrigley Field and the scheduling of night baseball games." Id. at 174.

The appellate court affirmed the dismissal of the plaintiff's amended complaint for failing to state a cause of action. "Plaintiff in the instant case argues that the directors are acting for reasons unrelated to the financial interest and welfare of the Cubs. However, we are not satisfied that the motives assigned to Philip K. Wrigley, and through him to the other directors, are contrary to the best interests of the corporation and the stockholders." *Shlensky*, 95 Ill. App. 2d at 180.

In addition, the appellate court concluded "that plaintiff's amended complaint was also defective in failing to allege damage to the corporation ... There is no allegation that the night games played by the other [19] teams enhanced their financial position or that the profits, if any, of those teams were directly related to the number of night games scheduled." Id. at 181.

The Cubs beat a former season-ticket holder in *Soderholm v. Chicago National League Baseball Club, Inc.*, 225 Ill. App. 3d 119 (1st Dist. 1992). "Plaintiff, Eric Soderholm, filed a complaint for specific performance and sought a temporary restraining order and preliminary injunction to require defendant, the Chicago National League Ball Club, Inc. ("the Cubs") to sell him 18 Cubs season tickets for the 1991 season." *Soderholm*, 225 Ill. App. 3d at 120.

The circuit court dismissed the case. "The sole issue on appeal is whether the purchase of Cubs season tickets from 1985 through 1990 gave plaintiff an option to purchase season tickets for 1991 season." Id. at 120.

THE PROCEDURAL THICKET

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The appellate court affirmed. First, it concluded there was no option contract. "Based upon the evidence presented and the persuasive authority from other jurisdictions, we hold that no option contract existed and plaintiff had no right of first refusal to season tickets. As such, we cannot conclude that the trial court's denial of injunctive relief and dismissal of plaintiff's complaint was against the manifest weight of the evidence." *Soderholm*, 225 Ill. App. 3d at 120.

The appellate court also concluded there was no lease. "It is clear that a Cubs season ticket consists of a series of revocable licenses, rather than a lease. The record does not suggest that defendant intended to grant a season ticket holder a leasehold estate, or exclusive possession of the specific seat. Each individual ticket permits the holder to enter the ball park on the date and at the time stated on the ticket for the specific purpose of attending the identified game and sitting in the specified seat, subject to all terms, conditions and policies established by the Chicago Cubs." *Soderholm*, 225 Ill. App. 3d at 124-25.

The Cubs shut out a former employee in *Krum v. Chicago National League Ball Club, Inc.*, 365 Ill. App. 3d 785 (1st Dist. 2006). The plaintiff, Sandy Krum, an assistant athletic trainer for the Cubs, "filed the instant lawsuit [alleging retaliatory discharge] as a result of the Cubs' decision not to renew his one-year employment contract." *Krum*, 365 Ill. App. 3d at 787.

The circuit court dismissed the claim, and the dismissal was affirmed on appeal.

"Here, because Krum's employment was subject to a contract of fixed duration, he was not an at-will employee. Krum is unable to cite to a single case where Illinois courts have permitted a plaintiff to bring a retaliatory discharge claim on the basis of a fixed term employment contract." *Krum*, 365 Ill. App. 3d at 789.

"Because we find that Krum cannot satisfy the first element of his claim for retaliatory discharge, we need not reach Krum's contention that the circuit court erred in finding that the Whistleblower Act pre-empted Krum's claim for retaliatory discharge." Id. at 790.

The Cubs also defeated claims from an injured spectator struck by a foul ball. In *Jasper v. Chicago National League Baseball Club Inc.*, 309 Ill. App. 3d 124 (1st Dist. 1999), the circuit court dismissed the plaintiff's complaint and the order was affirmed on appeal. The plaintiff, James Jasper, challenged the constitutionality of the Baseball Facility Liability Act and lost.

The act provides immunity to owners and operators of a baseball facility from negligence liability in certain situations. See 745 ILCS 38/10.

"The Baseball Act encourages baseball team owners to build and maintain parks for the sport of baseball by shifting the expense of injury caused by foul balls to spectators unless the injury is caused by the owner's willful and wanton conduct. The Baseball Act encourages use of parks for a recreational activity in a way that is not arbitrary, capricious or unreasonable." *Jasper*, 309 Ill. App. 3d at 127.

So there you have it. The Cubs stand up quite well to the curveballs of litigation. Let that be your solace until next spring.