

Archer Hits Wrong Target

Reported Case:	Galka v. Stankiewicz
Citation:	2010 ONSC 2808
The Court:	Ontario Superior Court of Justice
Judgment Rendered:	May 17, 2010
At Issue:	Whether archer was negligent in injury of friend.
Factual Summary:	<p>One autumn day, Galka and his friend Stankiewicz went out for a picnic lunch and a casual game of archery on a range managed by the City. As part of a bizarre scheme to find lost arrows, Stankiewicz shot an arrow over the top of the target while Galka stood downrange to watch where the arrow landed. Instead, Galka's left eye was pierced and the arrow lodged itself into his brain. Galka's resulting injuries included partial deafness and blindness, drastically reduced mobility, and profound psychiatric needs. Galka brought action against Stankiewicz alleging negligence.</p>
At Trial:	<p>Courts recognize a duty of care exists between participants in a sport where one player is positioned in an area where the other player may be directing a projectile. Stankiewicz initiated a plan that put Galka directly in harm's way. He agreed to fire an arrow in the general direction of where Galka was standing. By firing the arrow in these circumstances he created an unreasonable risk of harm.</p> <p>The Court rejected Stankiewicz's defence of <i>volenti non fit injuria</i> finding that the <i>volenti</i> defence applies only in situations where the plaintiff assumed both the physical and the legal risk involved in the activity. For the defence to apply, the Court stated it would have to find that the plaintiff willingly assumed the physical risks of the plan to recover the lost arrows and also waived all rights of recovery from the defendant should those risks result in injuries.</p> <p>Further, even if the Court had been persuaded that by agreeing to the scheme to find lost arrows Galka assumed the physical risks therein, that agreement cannot be viewed as constituting a waiver of his legal rights. Nothing about his conduct suggested he abandoned any expectation that the defendant would take due care for his safety.</p> <p>The Court concluded Stankiewicz was negligent in his use of the bow and arrow, and liability between Galka and Stankiewicz was apportioned on a 50/50 basis. (The Court also dismissed a claim against the city for negligent operation of the archery range.)</p>