

Golfing and the Law – From Bad Shot to Lawsuit

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For many residents of British Columbia, the summer is all about enjoying the many golf courses this province has to offer. The BC courts have ruled on some golf-related cases, which may be of interest.

In 2007, Mr. Matharu was at the 10th tee box at Quilchena Golf & Country Club when an errant golf ball ricocheted off a tree and struck him in the eye. At issue before the B.C. Court of Appeal in *Matharu v. Nam* was whether Mr. Nam was negligent for hitting his ball in the direction of the 10th tee box and for failing to yell “fore” when he lost sight of his ball.

The court held that Mr. Nam was not negligent and that he acted as a reasonable golfer having due regard for others on the course. Mr. Nam was “aiming” towards his hole (18th) and it was not reasonably foreseeable that his ball would hit a tree and veer off towards the 10th tee box. Moreover, that the ball would deflect towards the 10th tee box with sufficient momentum to injure was an extremely remote possibility. As to yelling “fore”, the court held that Mr. Nam was not negligent in failing to warn others as he could not reasonably foresee that his ball would hit a tree and suddenly head in another direction.

In 2003, the Provincial Court in Victoria heard the case of *Liang v. Allen*. The defendant, Mr. Allen, was playing a round of golf at the Victoria Golf Course. While at the third hole, Mr. Allen’s tee shot took an “unexpected” hook and hit Ms. Liang, who was innocently on the sidewalk setting up her camera to take pictures of the scenery. The court refused to find the defendant golfer negligent. The judge stated:

There is no evidence to suggest that there was any intention to strike the Claimant or any one else that might have been on the sidewalk or highway. Whilst the shot was hooked to some extent *it was nevertheless, in my view, the type of shot that could happen to any golfer however experienced.*

The presiding judge seemed to sympathize with the defendant golfer and framed the legal question as “whether or not Mr. Allen took reasonable care to avoid the act of hooking the ball which caused the accident.” Interestingly, he concluded his judgment with, “No golfer wishes to hook a ball...I find that Todd Allen took reasonable care to strike his ball correctly but, as so often happens in golf, the shot did not go in precisely the desired and intended direction.”

As most golfers know, errant golf balls are an inherent risk to the game; but the case of *Forsyth v. Pender Harbour Golf Club Society* demonstrates that there are other dangers lurking on the links. This case deals with the rugged terrain that golfers navigate themselves through.

Ms. Forsyth, while playing at the Pender Harbour Golf Club, duffed her ball on to a steep slope off of the course. As she walked down the slope to retrieve to her ball, she slipped and broke her ankle. Ms. Forsyth subsequently sued the golf course.

Unfortunately for Ms. Forsyth, the court dismissed her claim against the golf course. The judge asked, "What steps, if any, should the Society have taken to ensure Ms. Forsyth's safety?" For her, the fact that the slope was steep was obvious and Ms. Forsyth must have understood the risks in going down the slope. The judge concluded that Ms. Forsyth must have assumed the risks when she went to locate her ball. Furthermore, the judge continued, "Ms. Forsyth had other alternatives. She could have left her ball in the rough and taken another shot."

So what can we learn from these cases? Is it that judges are also golfers and understand the perils of a bad day at the course? After all, we see an example of each level of the BC judicial system hesitant to find others liable for injuries sustained on the golf course. The lesson may simply be that golf is a deceptively dangerous game. Or perhaps, it is that golf is a game with deceptively dangerous players. One thing to note though is that all of the above cases occurred after an errant shot. At the end of the day, maybe the lesson is that some of us golfers (myself included) need to practice and what better time of year than now.