STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF ANTRIM

SUSAN WISSENT and JOHN WISSENT,

Plaintiffs,

v

File No. 00-7709-NO
HON. PHILIP E. RODGERS, JR.

GO FORWARD, a Limited Partnership, d/b/a
SHANTY CREEK/SCHUSS MOUNTAIN RESORTS,

Defendant.
_____/

Randall S. Miller (P47679)
Attorney for Plaintiffs

Scott D. Feringa (P28977)
Attorney for Defendant

DECISION AND ORDER GRANTING
DEFENDANT'S MOTION FOR SUMMARY DISPOSITION

This is a personal injury action arising out of an incident that occurred at Schuss Mountain Ski Resort on March 15, 1999. Plaintiff Susan Wissent was skiing at Schuss Mountain when she collided with a rope that was being used to close off one side of a chairlift.[1] Plaintiff suffered injuries to her neck, mouth, jaw and teeth. On October 25, 2000, she filed this action alleging that Schuss Mountain failed to maintain a safe premises for skiers and failed to warn skiers of a dangerous condition.

The Defendant generally denied all of the material allegations of the Complaint and affirmatively asserted that the Plaintiff's claims are barred by the Ski Area Safety Act, MCL 408.321, et seq ("SASA"). On September 24, 2001, the Defendant filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(7). On November 15, 2001, the Court heard the arguments of counsel and took the matter under advisement. The Court now issues this written decision and order and, for the reasons stated herein, grants the Defendant's motion.

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[1]Although she had seen the rope on a prior run down this slope, she claims it was not visible and, accordingly, she skied into it.

STANDARD OF REVIEW

MCR 2.116(C)(7)

MCR 2.116(C)(7) sets forth the following grounds for summary disposition:

> The claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action.

In *Amburgey v Sauder*, 238 Mich App 228, 231; 605 NW2d 84 (2000), the Court of Appeals said:

> When a motion for summary disposition is premised on MCR 2.116(C)(7), the nonmovant's well-pleaded allegations must be accepted as true and construed in the nonmovant's favor and the motion should not be granted unless no factual development could provide a basis for recovery. *Stabley, supra* at 365; 579 NW2d 374; *Dewey v Tabor*, 226 Mich App 189, 192; 572 NW2d 715 (1997). '[T]he court must consider not only the pleadings, but also any affidavits, depositions, admissions, or documentary evidence that has been filed or submitted by the parties.' *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). If no facts are in dispute, whether the claim is statutorily barred is a question of law. *Dewey, supra* at 192; 572 NW2d 715.

SKI AREA SAFETY ACT

The Ski Area Safety Act, MCL 408.342; MSA 18.483(22), ("SASA") provides as follows:

> (1) While in a ski area, each skier shall do all of the following:
>
> > (a) Maintain reasonable control of his or her speed and course at all times.
> >
> > (b) Stay clear of snow-grooming vehicles and equipment in the ski area.
> >
> > (c) Heed all posted signs and warnings.
> >
> > (d) Ski only in ski areas which are marked as open for skiing on the trail board described in section 6a(e).
>
> (2) Each person who participates in the sport of skiing accepts the dangers that inhere in that sport insofar as the dangers are obvious and necessary. Those dangers include, but are not limited to, injuries which can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots;

> rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment.

The purposes of the SASA include safety, reduction in litigation and economic stabilization of an industry which substantially contributes to Michigan's economy. The SASA delineates ski operators' and skiers' duties and responsibilities, as well as the skiers' assumption of certain expressed dangers inherent to the sport of skiing. *Grieb v Alpine Valley Ski Area, Inc*, 155 Mich App 484; 400 NW2d 653 (1986), app den 428 Mich 864. The SASA grants immunity to a ski resort operator for injuries which arise from dangers which are inherent in the sport of skiing and are obvious and necessary. *McGoldrick v Holiday Amusements, Inc*, 242 Mich App 286; 618 NW2d 98 (2000) app dis 622 NW2d 790.

ISSUES

The issues presented are: (1) Whether the rope that the Plaintiff ran into was a danger inherent in the sport of skiing and, if so, (2) Whether that danger need be obvious or clearly marked.

I.

The SASA includes an express, non-exclusive list of "dangers" inherent in the sport of skiing. These dangers include, "**but are not limited to**, injuries which can result from variations in terrain; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; collisions with ski lift towers and their components, with other skiers, or with properly marked or plainly visible snow-making or snow-grooming equipment." MCL 408.342(2). [Emphasis added]. Admittedly, "rope" is not one of the expressly enumerated dangers. It may nonetheless be a danger inherent to the sport of skiing.

A full analysis of the statute, the current state of the law, and the appropriate analysis of these issues was recently set forth in *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736- 744; 613 NW2d 383 (2000), app den 624 NW2d 187, where the Court of Appeals said:

> The propriety of summary disposition under the SASA must be determined in conjunction with the rules of statutory construction. *Amburgey, supra* at 231; 605 NW2d 84. A fundamental rule of statutory construction is to ascertain the purpose and intent of the Legislature in enacting the provision. *Barr v Mt. Brighton, Inc*, 215 Mich App 512, 516; 546 NW2d 273 (1996). Statutory language should be construed reasonably and the purpose of the statute should be kept in mind. *Id*, citing *Grieb*

v Alpine Valley Ski Area, Inc, 155 Mich App 484, 486; 400 NW2d 653 (1986). The first criterion in determining intent is the specific language of the statute. *Barr, supra* at 516-517; 546 NW2d 273, citing *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted and courts must apply the statute as written. *Barr, supra* at 517; 546 NW2d 273, citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995).

The title of the SASA provides that the act was enacted, among other reasons, "to provide for the safety of skiers, spectators, and the public using ski areas," "to provide for certain presumptions relative to liability for an injury or damage sustained by skiers" and "to provide for liability for damages which result from a violation of this act." 1962 PA 199, amended by 1981 PA 86. Before the 1981 amendment, ski areas in Michigan were held to the "prudent man" negligence standard as stated in *Marietta v Cliffs Ridge, Inc*, 385 Mich 364, 369; 189 NW2d 208 (1971) (see Mikko, Skiing with the Ski Area Safety Act, 78 Mich BJ 438, 439 [May 1999]). Cf., *Marietta, supra*, at 374-375; 189 NW2d 208 (Dissent by Black, J.): "[T]he majority opinion . . . [is] nothing less than a fast start, by our newly assembled Court, toward the goal of liability without fault for damages caused by any fortuitous injury--fatal or otherwise--that is self-inflicted in the course of a voluntarily undertaken dangerous sport."

Soon thereafter, the Legislature (moved perhaps by Justice Black's violenti non fit injuria dissent), "intent [on] promoting safety, reducing litigation and stabilizing the economic conditions in the ski resort industry," *Grieb, supra* at 487; 400 NW2d 653, became concerned with making the skier, rather than the ski area operator, bear the burden of damages from injuries. *Schmitz v Cannonsburg Skiing Corp*, 170 Mich App 692, 695; 428 NW2d 742 (1988), quoting from the Senate Legislative Analysis, SB 49, April 17, 1981. This would "help reduce the number of lawsuits . . . [thereby] stabiliz[ing] the constantly increasing insurance costs for ski area operators, which have been passed on to skiing enthusiasts through price hikes for ski lift tickets, rental equipment, waxing services, etc." *Id.*

The resulting 1981 amendment included, inter alia: requirements that ski operators mark trails and hills for difficulty and closure, maintain overall diagrams of the area and post the duties imposed by the act on skiers, lift passengers, and operators, MCL§ 408.326a; MSA 18.483(6a); provisions regarding the conduct required of skiers on ski lifts and in ski areas, MCL 408.341; MSA 18.483(21) and MCL 408.342(1); MSA 18.483(22)(1) (e.g., the skier shall ski within the limits of the skier's ability, is the sole judge of the skier's ability, and not use a lift unless the skier can use it safely, shall maintain reasonable control of speed and heed all signs and warnings); a provision for acceptance of risks by skiers, MCL 408.342(2); MSA 18.483(22)(2), infra; and a provision for skiers' and operators' liability for damages, MCL 408.344; MSA 18.483(24) ("A skier or passenger who violates this act, or an

operator who violates this act shall be liable for that portion of the loss or damage resulting from that violation.").

Thus, the Legislature perceived a problem with respect to the inherent dangers of skiing and the need for promoting safety, coupled with the uncertain and potentially enormous ski area operator's liability. Rules were established which described the respective responsibilities of both ski operators and skiers in the area of safety, and the Legislature determined that all skiers assume the obvious and necessary dangers of skiing. *Grieb v Alpine Valley Ski Area, Inc*, 155 Mich App 484, 489; 400 NW2d 653 (1986).

In *Grieb*, the plaintiff had been struck from behind by another skier. The Court found that the statute "clearly and unambiguously provides that an injury resulting from a collision with another skier is an obvious and necessary danger assumed by skiers." *Id* at 486; 400 NW2d 653.

In *Schmitz v Cannonsburg Skiing Corp*, 170 Mich App 692, 696; 428 NW2d 742 (1988), a skier hit a tree. The Court found that that danger was enumerated in section 22 of the statute as one for which the skier accepted the risk of danger "as a matter of law." The Court interpreted this section of the statute as an assumption of the risk clause that renders the reasonableness of the skiers' or the ski operator's behavior irrelevant. *Id* at 696; 428 NW2d 742.

In *Barr v Mt. Brighton, Inc*, 215 Mich App 512, 516; 546 NW2d 273 (1996), a skier hit a tree within a cluster of trees that the defendant considered an out-of-bounds area but that was not fenced off or marked as closed as the plaintiff claimed was required by the SASA. The plaintiff argued that, because of that noncompliance, the defendant was not entitled to the protection of the act's assumption of the risk clause, MCL 408.342(2); MSA 18.483(22)(2). The Court found that the act does not condition application of the assumption of risk provision on compliance with other sections of the act; that, by the mere act of skiing, the plaintiff assumed the risk that he would be injured colliding with a tree, which is a danger enumerated by the statute; and that the defendant was not required to mark as "closed" an area that was never "open." *Barr, supra* at 519, 522; 546 NW2d 273.

In *McCormick v Go Forward Operating Ltd Partnership*, 235 Mich App 551; 599 NW2d 513 (1999), a skier was injured getting off the chairlift when she fell while trying to avoid another fallen skier. The plaintiff argued that the SASA was inapplicable because the plaintiff did not assume the risk of injuries caused by avoiding fallen skiers when leaving a ski lift, and that it was not obvious

and necessary for a skier, when alighting from a chairlift, to have to avoid a fallen skier. In affirming the trial court's grant of summary disposition to the defendant, the Court of Appeals found that "the language of the statute itself establishes that [the] plaintiff's injury comes within the immunity provisions [of MCL 408.342(2); MSA 18.483(22)(2)]." *Id* at 554; 599 NW2d 513. The Court explained:

> The statute says that collision with another skier comes within the dangers that are necessary and obvious. It does not exclude the ski lift exit area. Therefore, because plaintiff's injury arose from the collision with another skier, or the attempt to avoid such a collision, it comes within the immunity provision of the statute. That is, by statutory definition, any collision with another skier constitutes a necessary and obvious danger for which defendant is immune. *Id.*

In a footnote, the Court of Appeals added that, in contrast to the restriction of immunity for collisions with "properly marked" snow-making and snow-grooming equipment, there is no restriction on immunity for injuries arising from collisions with other skiers. *Id* at n 2.

Most recently, in *McGoldrick v Holiday Amusements, Inc*, 242 Mich App 286; 618 NW2d 98 (2000), app dis 622 NW2d 790, the Court found that the tension pole that supported part of a rope tow was a component of the ski lift tower. The Court held that the injuries sustained by a downhill skier when he collided with the tension pole arose from a danger inherent in the sport of skiing which was obvious and necessary. Thus, the operator of ski facility was entitled to immunity under the SASA.

In the instant case, the Plaintiff was injured when she collided with a rope that was part of a stake-and-rope system that was installed at the entrance to one of the chairlifts for the purpose of funneling skiers onto the lift. Once installed, the stake-and-rope system became an integral part of the ski lift. The language of the statute itself establishes that the Plaintiff's injury comes within the immunity provisions. The statute says that collisions with "ski lift towers and their components" constitute a danger that is obvious and necessary and that the skier accepts.

At the oral arguments, the Plaintiff admitted that if she had struck one of the stakes, the Defendant would be immune from liability. However, she contends that because she struck one of the ropes, which the Court must assume for the purposes of this motion was not clearly visible, the Defendant is not immune from liability. The cause of the Plaintiff's injuries was her collision with a rope which was part of the stake-and-rope system at the entrance to the chairlift. There are no

restrictions placed on the immunity for injuries arising from collisions with "ski lift towers and their components." Applying *Schmitz, supra*, and *Barr, supra*, where, as here, plaintiffs' injuries occurred as a result of one of the statutorily enumerated dangers, the reasonableness of the skier's or the operator's conduct is rendered irrelevant. No restrictions apply to collisions with ski lift towers and their components.[2] Thus, whether the rope with which the Plaintiff collided was white and not visible against the background of white snow is immaterial.

II.

Section 6a of the SASA provides, in pertinent part, as follows:

> Sec. 6a. Each ski area operator shall, with respect to operation of a ski area, do all of the following:
>
> * * *
>
> (d) Mark the top of or entrance to each ski run, slope, and trail which is closed to skiing, with an appropriate symbol indicating that the run, slope, or trail is closed, as prescribed by rules promulgated under section 20(3).

The Plaintiff argues that the Defendant was required by Section 6a(d) to mark the area where she was injured "closed" because, with the stake-and-rope system installed, the area was in effect closed to skiing. Admittedly, the area where the stake-and-rope system was installed was not marked "closed."

Turning once again to the rules of statutory construction in order to ascertain the purpose and intent of the Legislature in enacting this provision, the Court must look to the specific language of the statute. *Barr, supra* at 516-517; 546 NW2d 273, citing *House Speaker v State Administrative Bd*, 441 Mich 547, 567; 495 NW2d 539 (1993). If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted and courts must apply the statute as written. *Barr, supra* at 517; 546 NW2d 273, citing *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995).

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[2]By contrast, in order for there to be immunity for injuries arising from collisions with snow-making or snow-grooming equipment, the snow-making or snow-grooming equipment must be "properly marked or plainly visible." No such restrictions apply to collisions with ski lift towers and their components.

Section 6a clearly sets forth the duties and responsibilities of the operator of a ski area. Subsection (d) requires the operator to "mark the top of or entrance to each ski run, slope, and trail which is closed to skiing." The stake-and-rope system at issue in the instant case was located adjacent to the entrance to the ski lift at the bottom of the slope. It was not at "the top of" or at the "entrance to" a "ski run, slope, [or] trail." This statutory language is clear and unambiguous. It simply does not apply to the fact situation that is before the Court in this case.

CONCLUSION

For the reasons stated herein, the Defendant's Motion for Summary Disposition is granted and this case is dismissed with prejudice.

IT IS SO ORDERED.

This Decision and Order resolves the last pending claim and closes the case.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 11/29/01