

**NOT FOR PUBLICATION  
WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS**

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**JAMES CORINO,**  
Plaintiff

v.

**KYLE DUFFY, BRYAN CHOVANEC, and  
THOMAS SCHWEIZER, SKYVIEW GOLF  
COURSE, LLC, and SEROLF PROPERTIES,  
LLC,**  
Defendants

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: SUPERIOR COURT OF NEW JERSEY  
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: ESSEX COUNTY  
: DOCKET NO.: ESX-L-1111-12  
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**OPINION**

Decided: November 22, 2013

By: Thomas R. Vena, J.S.C.

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Oral argument was held before this court on November 22, 2013. The following attorneys and litigants appeared:

Daniel Hoberman, Esq.  
Hoberman & Brewster, LLC  
Attorney for Plaintiff

Jay A. Weissman, Esq.  
Law Offices of Debra Hart  
Attorney for Defendant Bryan Chovanec

Janet L. Pisansky, Esq.  
Burke & Potenza, PC  
Attorney for Defendant Thomas Schweizer

## **STATEMENT OF FACTS**

The two summary judgment motions presently before the court stem from a personal injury lawsuit wherein Plaintiff claims he was seriously injured while playing golf at Skyview Golf Club in Sparta. Plaintiff in this case is Mr. James Corino. Defendants in this case are Mr. Thomas Schweizer, Mr. Bryan Chovanec, and Mr. Kyle Duffy. Mr. Chovanec and Mr. Schweizer have each filed separate motions for summary judgment. The issue to be determined is whether, based on the evidence presented, a reasonable trier of fact could conclude that Defendants acted recklessly by permitting a member of their threesome to take a provisional shot, and that Defendants had a duty to warn Plaintiff of their partner's errant provisional shot.

On August 23, 2011, Defendants were playing golf together at Skyview Golf Club. That same day, Plaintiff was also engaged in a round of golf at Skyview with his brother, Carl. At the time of the incident, Mr. Corino and his brother were preparing to take their third shots from the middle of the 15th fairway. The Defendants' threesome was stationed at the 16th tee. At Skyview, the 15th and 16th fairways are parallel to one another, but run in opposite directions. Thus, after a player completes the 15th hole hitting his ball northward, he must essentially reverse directions and tee off southward to begin the 16th. The layout of the 15th and 16th fairways at Skyview makes players standing on the 15th fairway susceptible to errant shots "sliced" from the 16th tee. This is precisely the scenario in which Mr. Corino was seriously injured.

According to Mr. Corino, he and his brother allowed Defendants to hit their tee shots from the 16th tee before they resumed their own play on the 15th fairway. Mr. Corino and other witnesses stated that Mr. Duffy and each of his partners already hit one tee shot and Mr. Duffy was the last of the threesome to hit. After seeing Defendants' threesome complete three shots,

Mr. Corino prepared to hit his own ball on the 15th fairway. Unbeknownst to Mr. Corino, however, Mr. Duffy took a provisional second shot from the 16th tee. Mr. Duffy sliced his ball over the sparse tree barrier separating the 15th and 16th fairways, and the golf ball struck Mr. Corino in his right eye. Mr. Corino claims that he did not hear anyone yell “fore” or provide any other warning prior to the ball striking him. The errant shot broke the sunglasses Mr. Corino was wearing at the time, and the broken shards of glass severely lacerated his eye.

As a result of the injury, Mr. Corino underwent several medical procedures to repair and restore vision in his eye. He subsequently filed a lawsuit against the Defendants, asserting that the members of the threesome, Mr. Chovanec, Mr. Schweizer, and Mr. Duffy, behaved recklessly and violated the Rules of Golf by permitting Mr. Duffy to return and take a second tee shot (commonly known as a “provisional shot” or a “mulligan”) and by failing to call “fore” or otherwise warn of Mr. Duffy’s errant shot as it approached the 15th fairway.

## **DISCUSSION**

### **A. Brill Standard for Summary Judgment**

Motions for summary judgment are governed by R. 4:46-2, which requires a court to grant summary judgment upon a moving party’s showing “that there is no genuine issue as to any material fact challenged and that the moving party is entitled to judgment as a matter of law.” In Brill v. Guardian Life Insurance, the New Jersey Supreme Court propounded the standard for granting summary judgment under R. 4:46-2, holding that the judge must consider “whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.” 142 N.J. 520, 540 (1995). The burden is placed on the movant to exclude any reasonable doubt as to the existence of any genuine issue of

material fact, and all inferences of doubt are drawn against the moving party in favor of the opponent. Heller v. Hartz Mountain Industries, 270 N.J. Super. 143, 149 (Law Div. 1993).

## **B. Duty of Care in Recreational Sports**

In Crawn v. Campo, the New Jersey Supreme Court held that the duty of care applicable to participants in any form of recreational sports is to avoid the infliction of an injury caused by reckless or intentional conduct. 136 N.J. 494, 498-99 (1994).

The majority of jurisdictions that have considered the issue of a person's duty to exercise care to avoid injury when engaged in a sports activity have concluded that to constitute a tort, conduct must exceed the level of ordinary negligence. Most courts have determined that the appropriate duty players owe to one another is not to engage in conduct that is reckless or intentional.

Id. at 499. Therefore, a plaintiff is unable to recover on a cause of action based on ordinary negligence. The policy rationale for the heightened standard is to promote vigorous participation in athletic activities without undue concern for litigation stemming from such participation. Id. at 501.

Golf is a sport generally played without the supervision of a referee or umpire. Therefore, the game relies on the integrity of the individual players to demonstrate safety and consideration for others. Players are expected to abide by particular rules and exhibit certain etiquette while on the golf course. According to the Rules of Golf published by the United States Golf Association, “[a]ll players should conduct themselves in a disciplined manner, demonstrating courtesy and sportsmanship at all times, irrespective of how competitive they may be.” United States Golf Ass’n, The Rules of Golf, Section I – Etiquette; Behavior on the Course. Additionally, the United States Golf Association specifically enumerates the following relevant safety provisions:

1. Players should ensure that no one is standing close by or in a position to be hit by the club, the ball, or any stones, pebbles, twigs, or the like.
2. Players should not play until the players in front are out of range.
3. If a player plays a ball in a direction where there is a danger of hitting someone, he should immediately shout a warning. The traditional word of warning in such a situation is “fore.”

Ibid.

Schick v. Ferolito is considered to be New Jersey’s seminal case regarding liability of players to each other on a golf course. In Schick, a plaintiff golfer suffered an eye injury after being struck by an unannounced provisional ball hit by a member of his foursome. 167 N.J. 7, 10 (2001). At the time of the incident, the plaintiff was standing out in front of the defendant in the middle of the fairway, a location that the Court recognized as the “line of fire.” Id. at 21. Formally declaring “recklessness” as the appropriate standard for determining tort liability in the sport of golf, the New Jersey Supreme Court asserted that “an actor acts recklessly when he or she intentionally commits an act of unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow, and which thus is usually accompanied by a conscious indifference to the consequences.” Id. at 19. Applying this standard to the facts of the case, the Schick Court ultimately determined that a reasonable jury could find that the defendant’s decision to take an unannounced provisional shot “while perceiving plaintiff to be in the ‘line of fire’” constituted reckless conduct. Id. at 21. As such, the lower court improperly granted summary judgment in favor of the defendant, and the case was remanded for trial. Id. at 22.

While the facts of the present case are similar to Schick in some regards, the most important difference is that neither of the two Defendants seeking summary judgment in the

present case hit the errant shot that injured Plaintiff. Although Plaintiff correctly asserts in his Opposition that summary judgment should not be granted where an action requires a determination of state of mind or intent, it is not the state of mind or intent of either Mr. Chovanec or Mr. Schweizer that requires assessment here. As the Schick Court opined, it is the state of mind of the *actor* that is paramount to a finding of recklessness. See Schick, 167 N.J. at 19-20. In the matter presently before this court, it is undisputed that Mr. Duffy hit the ball that struck and injured Mr. Corino. Thus, the actor in this case is Mr. Duffy, and any assessment of his co-defendants' respective mental states is irrelevant.

Plaintiff also argues that recklessness is properly determined only by examining the “totality of the circumstances,” as the New Jersey Supreme Court explained in Schick. Id. at 21. Plaintiff alleges that the decision to allow Mr. Duffy to take a “mulligan” was made by all three Defendants, and therefore, Mr. Chovanec and Mr. Schweizer must share in liability for any reckless behavior that contributed to Mr. Corino's injuries. However, Plaintiff has failed to cite any legal authority to support the contention that the reckless conduct of one player is attributable to all members of his party. Even if Mr. Chovanec and Mr. Schweizer agreed to allow Mr. Duffy to take a second tee shot, it is the state of mind and conduct of the *actor* that is essential to a finding of recklessness.

### **C. Companion Players Owe No Duty to Warn**

Plaintiff's expert report cites the aforementioned Rules of Golf and the applicable safety and etiquette provisions, one of which expressly states that a player should call “fore” if he sees that his shot may strike and injure another party. However, the provision does not bind the player's partners by the same duty. Consequently, Plaintiff has failed to provide any evidence to demonstrate that Mr. Chovanec and Mr. Schweizer were obligated to yell “fore” or otherwise

warn Mr. Corino of Mr. Duffy's errant shot. That duty, according to the Rules, belonged solely to the acting player, Mr. Duffy.

When such a duty *is* owed, it is questionable whether a player's failure to call "fore" on an errant shot rises to the level of "recklessness" described by the New Jersey Supreme Court in Schick. That determination is more appropriately reserved for the trier of fact, as it was in Schick. However, it is not necessary for this court to address that matter at this time. The evidence in this case undisputedly shows that it was Mr. Duffy's shot that struck and injured Mr. Corino, and thus, neither Mr. Chovanec nor Mr. Schweizer owed a duty to call "fore." As neither movant was the actor in this case, the court need not engage in an inquiry of whether a player's failure to warn his fellow golfers of an approaching errant shot constitutes recklessness.

### **CONCLUSION**

Defendants' summary judgment motions are granted. Even when construing the facts and evidence in a light most favorable to Plaintiff, Plaintiff has failed to establish that Mr. Schweizer and Mr. Chovanec engaged in reckless conduct or breached any duty owed to Mr. Corino and other golfers at Skyview Golf Club.