

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF VENTURA
VENTURA**

MINUTE ORDER

DATE: 05/09/2016

TIME: 08:20:00 AM

DEPT: 43

JUDICIAL OFFICER PRESIDING: Kevin DeNoce

CLERK: Tiffany Froedge

REPORTER/ERM: Melina Homan

CASE NO: **56-2014-00453766-CU-PO-VTA**

CASE TITLE: **Thomas vs. Recreation Resource Management**

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Motion for Summary Judgment as to Plaintiff Jeffrey Alan Thomas

MOVING PARTY: Recreation Resource Management Inc

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment as to Plaintiff Jeffrey Alan Thomas
Complaint for Personal Injury and Damages, 02/09/2016

APPEARANCES

Vicken Sonentz Papazian, counsel for Plaintiff

Sean E. Smith appearing for Tedd Lee, counsel for Defendant

At 8:57 a.m., court convenes in this matter with all parties present as previously indicated.

Counsel have received and read the court's written tentative ruling.

Plaintiff will submit on the Court's tentative ruling.

Matter submitted to the Court with argument.

The Court finds/orders:

The Court's tentative is adopted as the Court's ruling.

The court's ruling is as follows:

Deny the motion. Plaintiff has established a triable issue of material fact as to whether the doctrine of primary assumption of the risk applies to the facts of this case.

For purposes of this motion only:

Undisputed material facts nos. 1, 2, 3, 4, 5, and 8 are undisputed and established.

Undisputed material facts nos. 6 and 7 establish that Plaintiff alleges that while he was on the pontoon boat, the seat on which he was sitting broke, causing him to fall backwards on the floor of the boat.

Plaintiff has submitted evidence controverting whether Plaintiff was "fishing" at the time of the incident.

Discussion:

Plaintiff alleges that while he sat in the rented pontoon boat, the seat on which he was sitting broke, causing him to fall backwards on the floor of the boat. Def RRM argues that Plaintiff was fishing when the incident occurred, Plaintiff argues he was not fishing. There is a triable issue of fact as to whether Plaintiff was fishing at the time of the incident. When the incident occurred, Plaintiff had a worm in his right hand, and his fishing pole was leaning against his right leg. His father was not on the boat. He was on the dock, going to his truck to get some things.

RRM has not established that Plaintiff was injured while participating in the activity of fishing. Plaintiff was putting a worm on his hook when he sat back on the broken chair and sustained injury. When he leaned back on the seat, the seat snapped off, causing Plaintiff to fall back and sideward onto the deck of the boat. Sitting on a boat does not involve an inherent risk of injury because the risk a broken seat creates can be eliminated if the seat is repaired or replaced. Sitting in a chair or seat is not integral to fishing. Def RRM has provided no authority holding that a broken seat on a rental fishing boat is an inherent risk of the sport of fishing. Using a fishing pole would be integral to fishing and the risk of using a normally functioning fishing pole carries inherent risks which are can be waived. However, the use of a defective chair (if that is the case) is not an inherent risk of fishing and therefore the assumption of the risk doctrine is inapplicable.

Defendant RRM's reliance on *Knight v. Jewett* (1992) 3 Cal.4th 296 is misplaced because it cannot be said that Plaintiff assumed any risk associated with a potentially defective chair. Further, in *Knight v. Jewett*, the Supreme Court stated that defendants generally do have a duty to use care not to increase the risks to a participant over and above those inherent in the sport. (*Knight v. Jewett*, supra, 3 Cal.4th at 315-316.) Here, even though defendants generally have no legal duty to eliminate or protect Plaintiff against the risks inherent in the fishing, they may not increase the risks above that which is inherent in the sport. Providing a defective/broken pole or defective/broken chair would increase the risks beyond those inherent in the sport of fishing particularly where the defect is not readily apparent to users. Plaintiff was sitting in the defendant's RRM's boat when the seat snapped off, causing Plaintiff to fall back and sideward onto the deck of the boat. Even assuming Plaintiff was fishing at the time of the incident, a broken chair would improperly increase the risk of that activity such that there can be no assumption of that risk.

Notice to be given by Mr. Smith.