



# Claim Case Studies & Legislation: Zaky v. Sky Zone Indoor Trampoline Park

## Facts

This case highlights the importance of adequately bringing the contents of a waiver to the attention of the signee.

The Plaintiff, Zaky, attended the Defendant Sky Zone's indoor trampoline park. He was directed by an employee of the park to sign an electronic waiver at a computer kiosk. The title of the waiver was "Assumption of Risks, Release of Liability, Waiver of Claims and Indemnity Agreement". After the title, the following wording was included: "By signing this document, you will waive certain legal rights, including the right to sue." and then "PLEASE READ CAREFULLY!".

It has been established that an electronically signed waiver can be equally enforceable as a paper waiver. Pursuant to the *Electronic Commerce Act*, a contract, which includes waivers, can be formed by "touching or clicking an appropriate icon or other place on a computer screen" and a contract "is not invalid or unenforceable by reasons only of being in electronic form".

The waiver specifically listed "flipping" as an activity that could cause serious injury. The hold harmless clause in

favour of Sky Zone explicitly covered claims for negligence and breach of the *Occupiers' Liability Act*.<sup>1</sup>

While on a trampoline, the Plaintiff landed hard on his head when he attempted a back flip. The Plaintiff suffered serious injuries that included a vertebra fracture that required surgery. The Plaintiff brought a claim against Sky Zone alleging that Sky Zone did not take reasonable steps to bring the terms of the waiver to the Plaintiff's attention.

Sky Zone brought a motion for summary judgment to dismiss the action on the basis that the waiver was a complete defence to the Plaintiff's claim.

A motion for summary judgment to dismiss an action will succeed where it can be determined that there is no genuine issue requiring a trial. This means that the Judge has enough information to make a decision based on the evidence filed. Courts are encouraged to dispose of claims in the least expensive, quickest manner possible. To accomplish this, cases should not go to trial unless it is absolutely necessary.

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Zaky v. 2285771 Ontario Inc., 2020 ONSC 4380

Pursuant to the *Occupiers' Liability Act*, the Defendant was required to take reasonable steps to bring the contents of the waiver to the attention of the person signing it.

The Plaintiff's position was that he was rushed through signing the waiver because an employee advised him he had to be quick otherwise he would have to wait an hour for the next session. The waiver also did not use highlighting, bolding or check boxes. Accordingly, the Plaintiff asserted that he did not knowingly give up his legal rights.

The Judge's opinion was that the issue of whether or not Sky Zone took reasonable steps to bring the terms of the waiver to the attention of the Plaintiff, could not be decided on summary judgment. The Judge, therefore, dismissed the motion.

## Takeaways

This matter could have been more expeditiously and inexpensively decided on summary motion if the Defendant had a proper, thorough procedure for administering their waiver.

Had the waiver contained bolding and highlighting of the warnings it contained and check boxes beside the most restrictive sections, the Judge may have been able to deal with this matter on summary motion instead of ordering a trial.