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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

JEROME ROSE,

Plaintiff and Appellant,

v.

SANTA CLARA CONVENTION
CENTER, et. al.,

Defendants and Respondents.

H037109

(Santa Clara County

Super. Ct. No. 1-09-CV159222)

In this action for premises liability, plaintiff Jerome Rose seeks review of an order granting summary judgment to the Santa Clara Chamber of Commerce and three entities occupying the site of a hotel, an office building, and a conference center. Plaintiff contends that these four defendants, respondents on appeal, had a nondelegable duty to protect him from a dangerous condition in the parking garage at the site. We disagree and therefore must affirm the judgment.

Background

In accordance with a redevelopment project approved in 1973, the City of Santa Clara (City) took ownership of a large area of land, which was divided into four parcels. Parcel 1 was leased by the Redevelopment Agency of the City of Santa Clara ("Redevelopment Agency" or "Agency") to a partnership for use by respondent Hyatt Regency Santa Clara (the Hyatt), and Parcel 2 was leased to respondent Carramerica

Techmart LLC (Techmart) for use as an office building. Parcel 3 was reserved for a conference center under a management agreement with respondent Chamber of Commerce, and Parcel 4 was designated as a common area for a parking garage and other specified improvements.

After attending an event at the conference center, known as the Santa Clara Convention Center ("Convention Center"), on December 17, 2007, plaintiff went into the garage to retrieve his car. Between the Convention Center exit and the garage there was an unmarked "step differential." Plaintiff apparently did not see the change in pavement level and fell, injuring himself.

Plaintiff filed his complaint for premises liability on December 11, 2009, naming the Convention Center, the Hyatt, Techmart, and the Santa Clara Chamber of Commerce as defendants, among others.¹ Respondents moved for summary judgment or, alternatively, summary adjudication,² on the ground that none of them owned, maintained, managed, or operated the parking structure.

At the hearing on the motion the parties debated the question of who controlled the parking garage. Respondents noted that the owner of the entire site, including the parking garage, was not any of the defendants, but the City itself. Under the Hyatt and Techmart leases, the Redevelopment Agency and respondents had the joint obligation only to *arrange* for the maintenance of the parking structure, which was to be carried out by an "assessment maintenance district" funded by tenant assessments. As for the Chamber of Commerce, it had obligations under its "Conference and Convention Center

¹ Plaintiff also named as defendants "Doe Parking Garage Contractors" and "AIPAC," the organization that used the "facilities" to host the event plaintiff attended. Those defendants were not the subject of the challenged order and are not involved in this appeal. The City of Santa Clara was not named as a defendant.

² It is not clear why respondents requested summary adjudication as an alternative, since the complaint contained only one cause of action.

Management Agreement" ("Management Agreement") with the City, but that agreement did not confer any duties with respect to the parking garage.

In opposition, plaintiff maintained that the Redevelopment Agency and the defendants each had a joint, *nondelegable* responsibility for maintaining the common area, and that the use of a third party such as a maintenance assessment district was only one of several options for carrying out that responsibility. The superior court, however, agreed with respondents, ruling that because they did not "own, possess, or control" the parking garage where plaintiff fell, respondents had no duty to plaintiff, either to warn or to mark the "step differential," as plaintiff had claimed in his complaint. Judgment on the order was filed on June 1, 2011, followed by plaintiff's timely appeal.

Discussion

1. Standard of Review

The parties are familiar with the applicable principles of summary judgment review. Summary judgment is properly granted "if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

A defendant who moves for summary judgment bears the initial burden to show that the action has no merit--that is, for each cause of action one or more elements "cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subds. (o), (p)(2); *Aguilar, supra*, 25 Cal.4th at p. 850; *Truong v. Glasser* (2009) 181 Cal.App.4th 102, 109.) If the moving defendant makes that showing, the burden then shifts to the plaintiff to make a prima facie showing that there exists a triable issue of material fact. (*Aguilar, supra*, 25 Cal.4th at p. 850.) On appeal, we

conduct a de novo review of the record to "determine with respect to each cause of action whether the defendant seeking summary judgment has conclusively negated a necessary element of the plaintiff's case, or has demonstrated that under no hypothesis is there a material issue of fact that requires the process of trial, such that the defendant is entitled to judgment as a matter of law." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334; *Daly v. Yessne* (2005) 131 Cal.App.4th 52, 58.)

In this case, the only issue before us is whether respondents had a legal duty to protect plaintiff from injury in the parking garage. Because the existence of a defendant's duty is an issue of law, it is suitable for resolution by a court in summary judgment or summary adjudication proceedings. (*Avila v. Citrus Community College Dist.* (2006) 38 Cal.4th 148, 161; *Garcia v. W&W Community Development, Inc.* (2010) 186 Cal.App.4th 1038, 1044-1045.)

2. *The Complaint*

Because it is the pleadings that define the issues presented in a summary judgment proceeding, we first examine the allegations of plaintiff's complaint. He asserted only one cause of action, for premises liability. Plaintiff alleged that he was injured by the "step differential between the exit from the Center to the garage level which is unmarked and not visible, both levels having the same appearance." According to plaintiff, "[d]efendants owned and maintained" the parking garage or contracted to maintain it, and knew or should have known that "the unmarked level differential was a dangerous condition with unreasonable risk of harm presented to the users of the Center and its attached garage which could result in pedestrians falling, causing injury, but failed to warn or mark the edge of the upper level. The failure to warn or to mark the level differential caused plaintiff to fall and suffer permanent injury."

3. *Respondents' Showing*

Respondents' summary judgment motion was based entirely on the assertion that they had no legal duty to protect plaintiff in the parking garage. They adhere to that

position on appeal, while plaintiff continues to argue that as "possessors of the parking structure" respondents had a nondelegable responsibility "for notice and warning related to the lack of striping and to advise [*sic*] persons using the parking structure of a level differential, since they are utilizing the parking structure for their commercial benefit." Plaintiff assigns liability alternately to all defendants and to only the Hyatt and Convention Center, even while representing himself as the invitee of only the Convention Center.

Respondents supported their motion with relevant paragraphs of the Hyatt and Techmart leases and the Management Agreement between the City and the Chamber of Commerce. Section 1429 of the hotel lease on Parcel 1 stated the following: "Lessee [i.e., the Hyatt], Agency and the lessee of Parcel 2 [i.e. Techmart] have the joint responsibility to arrange for the cleaning, repairing, maintenance and replacements to the Common Area (including, without limitation, the Parking Structure), which shall be performed through an assessment maintenance district, unless Agency, Lessee and the lessee of Parcel 2 agree to a separately created association formed by Agency, Lessee, and the lessee of Parcel 2 or other independent entities chosen and approved by Lessee, Agency and the lessee of Parcel 2. If an assessment maintenance district cannot be formed and if the parties cannot agree upon any of the foregoing substitute procedures, Agency, Lessee and the lessee of Parcel 2 shall prepare specifications for the contract for such cleaning, repairing and maintenance of the Common Area and offer the same for bidding by financially responsible parties and Lessee may bid upon such contract." Techmart's lease contained an identical provision, except that it referred to the "Lessee of Parcel 1."

Each lease assigned the tenant a set number of parking spaces on Parcel 4, and each stated that the entire common area, including the parking structure, was to be used for access and parking "for Lessee and Lessee's guests, invitees, sublessees, their

respective guests and invitees, and other authorized users" of both the lessee's parcel and the other parcels on the site.

Respondents also submitted declarations from Steve Van Dorn, the president and chief executive officer of the Chamber of Commerce, and John Mendoza, the manager of the parking structure. Van Dorn stated that he had the responsibility for overseeing the management of the Convention Center under the Management Agreement. The Convention Center, he explained, was owned by the City and managed by the Chamber of Commerce. The Chamber of Commerce, however, did not own or lease any portion of the parking structure. It was likewise "not responsible for maintaining, managing or operating the parking structure at the convention center site, and does not exert control over any portion of the parking structure by performing any such tasks."

Mendoza stated that he was employed by the City to manage the parking structure. He had the responsibility for "coordinating the maintenance activities at the parking structure including cleaning, upkeep, parking enforcement and repairs." He added that the maintenance was operated and managed by the City through Maintenance District No. 183, which was funded through tenant assessments. Payment of these assessments was the tenants' "sole participation" in the operations of the parking structure. Thus, "[t]he Chamber of Commerce, Santa Clara Convention Center, Hyatt Regency Santa Clara, and Techmart do not control the management, maintenance and operation of the parking structure. The City of Santa Clara, through its own staff and its outside contractors, performs all such tasks."

The terms of the Management Agreement did not contradict Van Dorn's and Mendoza's declarations. The agreement required the Chamber of Commerce to manage, arrange for, and supervise the Convention Center operations and activities. It did not impose any duties on the Chamber of Commerce with respect to the parking garage. Indeed, the only mention of parking was in the terms outlining City duties: it was the

City that was to "be responsible, through the Redevelopment Agency, for parking and landscaping."

Respondents' moving papers also included a copy of Resolution No. 5068 and 5081, which the City had adopted to create and fund "Convention Center Complex Maintenance District No. 183." The public area encompassed by Maintenance District No. 183 included "public off-street automobile parking lots and structures, including base, pavement, curbs . . . signing, striping, circulation drives, walkways," and other facilities. Assessments on the three occupied parcels within the district were to be used for all necessary repairs and improvements as well as maintenance and operation of the common area.

In their separate statement of undisputed facts, respondents asserted, citing the Van Dorn and Mendoza declarations, that each occupant of its designated parcel took "no affirmative action to maintain, manage or operate any aspect of the parking structure." Plaintiff disputed these representations, stating "maintenance obligations delegated" with respect to each defendant. Plaintiff offered no evidence, but only argued that (a) under the Hyatt and Techmart leases, each lessee "owns or possesses the parking structure and is responsible for maintenance of it"; and (b) the Convention Center defendants had the responsibility for maintaining the "related facilities" at the Convention Center.

Neither the leases nor the Management Agreement, however, supports plaintiff's position. All three documents clearly contemplated and provided for a third party to carry out all maintenance responsibilities. The tenants' sole responsibility (other than paying their assessments) was to cooperate with the lessor—i.e., the City—in *arranging for* those functions to be taken on and performed. Indeed, the agreements at issue not only imposed no duties of actual maintenance on respondents, but *required* those duties to be assumed by a City-controlled "maintenance district" or comparable third party. Plaintiff did not dispute the declaration of Mendoza, a *City employee*, which clearly portrayed him as the person charged with overseeing the maintenance of the parking

structure, with defendants' only responsibility being to pay the assessment that funded Maintenance District No. 183. Nor did plaintiff contradict the Van Dorn declaration, which disclaimed any responsibility of the Chamber of Commerce for maintaining the parking structure.

Plaintiff argues that respondents cannot escape liability by delegating the responsibility they took on. He cites Civil Code section 1714, subdivision (a), which provides: "Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person" But the issue in this case is not whether respondents were negligent in the management of their property. Contrary to the central premise of plaintiff's argument on appeal, respondents were neither owners nor possessors of the parking structure. That fact alone, which respondents established, is dispositive. The authorities cited by plaintiff imposing premises liability on property owners and possessors of land are inapposite. (See, e.g., *Rowland v. Christian* (1968) 69 Cal.2d 108 [setting forth factors applicable in determining when to depart from rule of Civil Code section 1714]; *Martinez v. Chippewa Enterprises, Inc.* (2004) 121 Cal.App.4th 1179, 1185 [circumstances of plaintiff's fall on defendants' wet driveway did not establish absence of duty as a matter of law, thus precluding summary judgment].) Plaintiff's attempt to add a maintenance duty to respondents' contractual obligations to the City was properly rejected by the trial court.

Plaintiff indirectly attempts to avoid this result by arguing that owners and possessors are liable for dangerous conditions existing on *adjacent* property. The two decisions on which he relies, however, do not support his position in this case. In *Alcaraz v. Vece* (1997) 14 Cal.4th 1149, the plaintiff was injured when he stepped into an uncovered water meter box located on a narrow strip of lawn adjacent to the property where he was a tenant. Although the landlords owned neither the meter box nor the strip of land, the landlords maintained the lawn on the strip of land surrounding the meter box.

(*Id.* at p. 1162.) In addition, before plaintiff's injury the landlords had received actual notice of the defective condition of the meter box. The Supreme Court overturned the grant of summary judgment in favor of the landlords, because there was "highly relevant" evidence (erroneously excluded by the trial court) which raised a triable issue of fact as to whether the landlords had taken possession of and had exercised control over the strip of land owned by the city. (*Id.* at pp. 1166-1167.) The landlords' maintenance of the lawn surrounding the meter box, together with their subsequent construction of a fence enclosing the lawn, served as a "consistent indication of the extent to which the defendants treated the city's property as their own." (*Id.* at p. 1168.) If the land was in the landlords' possession and control, then they had a duty to take "reasonable measures" to protect or warn persons entering the land, such as by placing a warning or barrier near the meter box. whether or not they owned, or exercised control over, the meter box itself. (*Id.* at pp. 1156, 1171.)

Alpert v. Villa Romano Homeowners Assn (2000) 81 Cal.App.4th 1320, also is of no benefit to plaintiff. In that case the root of the defendant landowner's tree caused the adjoining public sidewalk to become cracked and distorted, creating an "uplifted" and broken portion that caused plaintiff to trip and fall. The Second District, Division Two, overturned the trial court's grant of nonsuit, holding that the defendant owed a duty to warn pedestrians of the sidewalk defect or repair it. (*Id.* at p. 1330.) Applying *Alcaraz*, the court noted that the defendant, a homeowners' association of the adjacent condominium property, had planted and maintained the trees next to the sidewalk. Because those trees had grown the roots that had caused the sidewalk to become upturned and broken, and because the defendant was aware of the condition of the sidewalk for two years before the plaintiff fell, the defendant was deemed to be in possession and control of the sidewalk.

If plaintiff in this case had produced any evidence suggesting that respondents had exercised control over the *parking structure*, we would view his situation differently. But

he offers no evidence at all. Instead, plaintiff turns the *Alcaraz* rule on its head, suggesting that because respondents "maintained control over the adjacent property, i.e., *the Convention Center and the Hotel*," they are responsible for the parking garage as well, even though they had *no* control over that portion of the premises. He repeats this illogical assertion in attempting to compare the instant facts to those presented in *Alcaraz*: "In this case, similarly, defendants exercised control over the *hotel and the convention center* and the parking structure was directly connected to the hotel and convention center and used by the guests of the hotel and convention center."

No other authority cited by plaintiff supports his suggestion that a tenant's proximity to a parking facility used by its invitees is sufficient to make the tenant liable for any injuries at that facility. *Barnes v. Black* (1999) 71 Cal.App.4th 1473 does not assist him. There it was a dangerous condition *on the owner's property* that exposed children to the risk of injury off the premises (i.e. on the public street). (Compare *Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1624 [no duty to protect child from dangerous condition on adjacent public street where defendant had no right of possession, management or control of the street].) "The law of premises liability does not extend so far as to hold a defendant liable merely because its property exists next to adjoining dangerous property and it took no action to influence or affect the condition of such adjoining property." (*Donnell v. California Western School of Law* (1988) 200 Cal.App.3d 715, 720.)

In short, plaintiff offers no factual or legal basis for inferring possession or control of the parking garage where he was injured. At best he contends that respondents enjoyed a commercial benefit from the availability of parking spaces for them and their guests. That fact (of which plaintiff produced no evidence) would not in itself be sufficient to confer liability in the absence of control. As the Supreme Court in *Alcaraz* made clear, where control over the adjacent property is present, it is unnecessary also to impose a requirement that the possessor or owner also derive an economic benefit from

the use of that property. Nothing in the *Alcaraz* majority's opinion suggests the converse, that if an economic benefit is present, the element of control is unnecessary.

Plaintiff further argues that respondents owed him a duty of care not only while he was at the Convention Center, but also while he was using "any reasonable means of ingress and egress . . . that [he was] led to employ." None of the cases on which he relies advances his position. In *Johnston v. De La Guerra Properties* (1946) 28 Cal.2d 394, 401, for example, the Supreme Court noted that "[a] tenant ordinarily is not liable for injuries to his invitees occurring outside the leased premises on common passageways over which he has no control." Liability to the plaintiff in *Johnston* nevertheless existed because the defendant tenant "assumed some responsibility for, and exercised control over, the means of lighting the approaches to the side entrance to the De La Guerra building." (*Ibid.*) Similarly, as plaintiff himself points out, *Ross v. Kirby* (1967) 251 Cal.App.2d 267 involved an injury caused by a berm that was partially on the defendants' property, three feet from the back door of their restaurant. The defendants not only knew the berm was present but invited the public to enter the restaurant through the back door using the private walkway where the berm was located. The hazard presented by the berm resulted from defendants' own activities; they used the walkway for deliveries, and foot traffic from the parking lot had caused the paint in that portion to wear off, making the berm difficult to see as patrons approached the back door on the walkway. That defendants benefited from the berm's function of preventing drainage into their restaurant was only one circumstance leading the appellate court to hold that the issue of defendants' liability had been properly submitted to the jury.

Finally, the cases plaintiff cites that delineate the duty of street vendors to children, such as *Ellis v. Trowen Frozen Products, Inc.* (1968) 264 Cal.App.2d 499 and *Schwartz v. Helms Bakery Limited* (1967) 67 Cal.2d 232 are inapposite. As explained long ago in *Nevarez v. Thriftmart, Inc.* (1970) 7 Cal.App.3d 799, 805, "The rules laid down for street vendors are founded upon distinctions not here present. Thus, the street

vendor is present in the street with his truck; he invites people to do business with him at his truck and in that part of the public street around him; patrons are attracted from predictable groups and locations, arriving along reasonably predictable routes of approach. While the street vendor cannot control traffic on the street around him he can, to a degree, control his own movements, the places where he will do business and, thus, the avenues of approach to it. [Fn. omitted.] When the patronage of small children is involved his bell, chimes or whistle invites them to his truck in the street and he thus incurs a duty with respect to their safety, having in mind their often single-minded interest in his wares and their accompanying disregard of traffic."

We thus conclude that respondents established through admissible evidence that they owed no duty to plaintiff while he was in the parking garage. Plaintiff supplied no evidence in opposition, but only offered his attorney's interpretation of the terms of the leases and Management Agreement. Because respondents negated the essential element of duty in plaintiff's negligence claim and plaintiff failed to show a triable issue of material fact on that element, his complaint was properly adjudicated in respondents' favor. In light of this conclusion, it is unnecessary to address plaintiff's argument that there was a sufficient causal nexus between respondents' negligent acts and his injuries, or his assertion that respondents were liable even if they had no actual or constructive knowledge of the dangerous condition in the garage.

Disposition

The judgment is affirmed.

ELIA, J.

WE CONCUR:

RUSHING, P. J.

PREMO, J.