

Superior Court of California County of San Benito



Edgar Nolasco
Court Executive Officer

Tentative Rulings for July 25, 2022

Courtroom #3: Judge Patrick K. Palacios

PR-22-00041 Guardianship of Legend Parra Orozco

No opposition. The Petition is GRANTED.

PR-22-00079 Conservatorship of Paul Yamaoka

Pursuant to the stipulation of the parties, the Petition is DISMISSED, without prejudice; the Temporary Conservatorship is TERMINATED; and, the Temporary Conservator is DISCHARGED.

CU-20-00119 Maurice Thompson v. Casa de Fruta, et al.

This cases arises from Plaintiff's 9-9-20 complaint seeking damages against Defendants for injuries occurring as a result of Defendant Van Unen striking him with a golf cart on 9-14-19 while employed by Defendant Play Faire, while on the premises rented from and owned by Casa De Fruta. As a result of the incident, Plaintiff was injured and suffers long lasting effects, including the loss of vision in one eye. Plaintiff presents causes of action for both General Negligence, and Premises Liability, alleging negligence and willful failure to warn, and claims that that Van Unen was an employee of the Defendants, that he was intoxicated at the time of the incident, that the golf cart which struck him on was owned by the Defendants, and that they and each of them ratified Van Unen's presence and use of the golf cart on 9-14-19. Defendants, except Van Unen, collectively move for Summary Judgment.

Preliminary issues:

Evidentiary Objections to Defendants UMF: Plaintiff objects to Defendant's undisputed fact 8, "According to Plaintiff, he had previous interactions with Plaintiff prior to the subject incident, none of which escalated to physical contact" on the basis that it is vague

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and ambiguous as to the terms “he” and “interactions.” The objection is sustained. The Plaintiff also objects to 9, stating “Prior to the subject incident, none of the Defendants had been made aware of any incident involving an individual intentionally striking another with a motorized vehicle on the premises where the fair was held.” Plaintiff objects that no facts or evidence prove the act was intentional. The objection is sustained.

Evidentiary Objections to Plaintiff’s UMF: AS to UMF 1, partially sustained and partially overruled. To the extent that the claim is that Defendant Van Unen is an employee, the objection is sustained. As to UMF 2, sustained only as to the claim that Van Unen was an employee of the Zanger family; UMF 3: Sustained; UMF 4: Overruled as to whether Mr. Van Unen would visit the fairground often and as to where he went; Sustained as to whether Defendants had knowledge of his presence. UMF 5: Sustained as to whether Defendants had knowledge that Van Unen was coming onto the premises, overruled as to Defendant’s failure to adequately secure and staff entry to fairgrounds. UMF 6: Sustained; UMF 7: Sustained; UMF 8: Overruled; UMF 9: Overruled as to Plaintiff being injured while an employee and being on the clock; sustained as to whether Defendant Play Faire carried Worker’s Compensation Insurance; UMF 10: Overruled; UMF 11: Overruled; UMF 12: Overruled; UMF 13: To the extent Defendant objects, Overruled; UMF 14: Sustained; UMF 15: Overruled; UM 16: Overruled to the extend Defendant is objecting; UMF 17: Sustained; UMF 18: Overruled; UMF 19: Overruled; UMF 20: Overruled; UMF 21: Sustained.

Rulings on Defendants 79 Evidentiary objections follow the tentative ruling.

Request for Judicial Notice: Defendant’s request for judicial notice is granted.

Legal Standards:

The moving party bears the initial burden to make a prima facie showing that there are no triable issues of material fact and that it is entitled to a judgment as a matter of law (*Aguilar v Atlantic Richfield Co.* (2001) 25 Cal. 4th 826,850.) Once the moving party has made a prima facie showing, the burden shifts to the party defending against the motion to produce admissible evidence showing that a triable issue of material fact exists (CCP§437(p)(2).) A Defendant moving for summary judgment must “show” that there is a complete defense to a cause of action or that one or more elements of the cause of action cannot be established. (CCP§437c (p)(2).) Reflecting the cautious judicial attitude about granting summary judgment, any evidentiary doubts or ambiguities must be resolved in the opposing party’s favor (*Johnson v. American Standard, Inc.* (2008) 43 Cal. 4th 56, 64.) Similarly the declarations and evidence offered in opposition to the motion must be liberally construed, while the moving party’s evidence must be construed strictly in determining the existence of a triable issue of fact. (*D’Amico v. Board of Medical Examiners I 91974) 11 Cal 3d 1, 2; Binder v Aetna Life ins. Co (1999) 75 Cal. App. 4th 832,839, Johnson, 42 Cal 4th at 56, 64.) .)*

The issues to be considered on a motion for summary judgment/adjudication are defined by the pleadings. (*Doe v. Good Samaritan Hospital* (2018) 23 Cal.App.5th 653, 661; *Teselle v. McLoughlin* (2009) 173 Cal.App.4th 156, 161 [“The complaint measures the

materiality of the facts tendered in a defendant's challenge to the plaintiff's cause of action.,” quoting *FPI Development, Inc. v. Nakashima* (1991) 231 Cal.App.3d 367, 381.) Therefore, the other way for a Defendant to obtain a Summary Judgment is to “show” that an essential element of plaintiff’s claim cannot be established. Defendant does so by presenting evidence that plaintiff ‘does not possess and cannot reasonably obtain needed evidence’ (because the plaintiff must be allowed a reasonable opportunity to oppose the motion.)’ (*Id.*, §10:242. P 10-105i, citing *Aguilar*, supra at 854-855.) Such evidence usually consists of admission by plaintiff following extensive discovery to the effect that he or she has discovered nothing to support an essential element of the cause of action (*Id.*) Throughout the process the trial court must “consider all of the evidence and all of the inferences drawn therefrom.” (*Aguilar*, supra, at 856.)

Ruling:

Defendants argue that there is no issue of material fact to be tried. Specifically, that Van Unen was not an employee of any of the other named defendants. A defendant moving for summary judgment must show either one or more essential elements of the Plaintiff’s claims for premises liability or negligence cannot be separately established or that there is an affirmative defense barring recovery. (*Kline v. Turner* (2001) 87 Cal. App. 4th 1369, 1373; CCP§437c sub (p)(2).) Defendant has met their burden, which shifts the burden to Plaintiff. Plaintiff’s case is premised on his being an employee of either Casa de Fruta or of Play Faire. There is no admissible evidence to support this claim, other than Van Unen’s statement in his unverified answer that he was asked by a Play Faire representative to go to the premises and assist with machinery. As such, it does not support Plaintiff’s assertion that Van Unen was acting as either an employee or agent of the other named Defendants, nor does any other statement by Plaintiff under penalty of perjury in his deposition support his being an employee or agent of the other Defendants. The premise therefore is that the Defendants cannot be held to any liability because Van Unen was acting without any order or authority from either of them.

The elements of a claim for premises liability are: (1) defendant owned, leased, occupied, and/or controlled the property; (2) defendant was negligent in the use or maintenance of the property; (3) causation; (4) damages. (CACI 1000; see also *Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1158 [stating that “[t]he elements of a negligence claim and a premises liability claim are the same: a legal duty of care, breach of that duty, and proximate cause resulting in injury”] [citations omitted].) The elements of negligence are: (1) defendant’s legal duty to conform to a standard of conduct to protect the plaintiff; (2) defendant failed to meet this standard of conduct; (3) causation; (4) damages. (*Ladd v. County of San Mateo* (1996) 12 Cal.4th 913, 917.) Whether or not Van Unen was an employee of the other defendants does not approach whether the other Defendants and each of them were negligent in the use or maintenance of the property, specifically whether they provided appropriate and adequate signage, training, and staffing to prevent someone from taking a motorized vehicle into a restricted area of the leased premises. (Plaintiff’s UMF ¶5; Plaintiff’s deposition transcript 51:25-052-13; 82:18-83-11; Wheatley Declaration ¶¶ 15, 17, 20.) Therefore a material issue of fact exists which is proper for determination by trial.

Defendants also argue that they cannot be held liable as they do not owe a duty to Plaintiff arising from the intentional torts by Van Unen in hitting him with a golf cart, in part because of Plaintiff's primary assumption of the risk. The argument by the Defendants that an intentional tort would not be foreseeable and therefore something for which they had no duty to protect would be appropriately made if there were any admissible evidence that this were in fact an intentional tort by Van Unen against the Plaintiff. Nothing in the complaint or in any admissible evidence regarding the event itself supports that this was anything other than an accident. Whether Van Unen and Plaintiff had a prior history of unpleasant interactions, or Van Unen was known to be belligerent at times does not signify. This would therefore be a question of whether Defendants had a duty to Plaintiff either as an employee, or as the employee of a lessee on the premises, or as an invitee to the premises, to protect him (or others) from the negligence of third parties, whether invitees or otherwise from being struck by motorized vehicle in what no one disputes was a staff only area. Admissible evidence supports the contention that the various gates were not fully staffed, the training and presence of security staff, and security protocols, and whether the various gates and trails were properly marked or secured. Contrary to the arguments of the Defendant the potential risks of an accident involving a motorized vehicle in the back stage areas is a foreseeable risk. Moreover, the presence or lack of presence of adequate signage or staffing is an issue of material fact relevant to the determination of duty.

The motion is DENIED.

Defendants' Evidentiary Objections:

1. Van Unen Answer to Complaint	Objection: Co Defendant's pleading is not Evidence to be used against other Co Defendants to oppose their motion for summary Judgment	Sustained
2. Van Unen Answer ¶4: stating Play Faire Representative called and asked for his assistance with machinery	Hearsay.	Sustained
3. Wheatley's Report items 3 to 26...	Hearsay, Lack of Foundation, Speculation, Lack of Personal Knowledge, Relevance	Sustained
27. Wheatley's Report at p.7: "It's unknown at this time if Van Unen was an employee of Play Faire or Casa de Fruta and, if so, what, if any employment related access or permissions he had to the property	Lack of Foundation, Speculation, lack of personal knowledge, improper expert opinion	Overruled.
28: Wheatley's Report at p 7: No documentation has been provided by the defendants supporting their assertion in the interrogatories that they banned Van Unen from the site.	Lack of foundation, speculation, lack of personal knowledge, Improper expert opinion	Overruled
29: Wheatley's Report at p 7: Defendants acknowledged that they didn't complete an incident report....The fact that they didn't fill out an incident report in this case or call the police calls into question the veracity of their assertion that they've had no prior events, given their poor record keeping"	Hearsay, Lack of foundation, speculation, lack of personal knowledge, Improper expert opinion, Irrelevant	Sustained
30: Wheatley Report at p 7: No documentation has been provided to indicate that a security risk analysis was conducted to determine that threats and vulnerabilities of the Faire that could have been used	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion, Irrelevant	Overruled

to inform what security measures should have been in place.”		
31: Wheatley Report, at p 7: Defendants believe Van Unen used the general parking lot...	Hearsay, lacks foundation, speculation, lack of personal knowledge, improper expert opinion	Sustained
32: Wheatley Report p 7-8: If that’s the case then after gaining legitimate access to the parking lot, Van Unen exploited an obvious weakness in their perimeter security. Just as Thompson was stationed at the Crossroads to screen and control access to the camping area they should have either had a security guard stationed at the dirt road entry to the production yard road from the general parking area on the eastern side of the parking lot to prevent unauthorized vehicle or pedestrian access onto the road that led to where Thompson was standing. Or they could have installed a locked gate to prevent unauthorized vehicle or pedestrian access. If they had done either of those two things Van Unen would have been denied entry to the backstage portion of the property and the incident with the golf cart wouldn’t have occurred.	Hearsay, lacks foundation, speculation, lack of personal knowledge, improper expert opinion	Partially Overruled. Sustained as to the sentence starting “ If they had done either of these two things...”
33: Wheatley Report at p 8: The only other known point of entry at this time was through the main gate—gate 5. If Van Unen gained access through that entry without having a VIP or Preferred Parking Pass, or a Handicap placard, then there was a failure by the Play Faire security staff at the gate to successfully control access to the property.	Hearsay, lack of foundation, lack of personal knowledge, improper expert opinion, Irrelevant	Overruled
34. Appendix A to Wheatley Report (Google Earth Map of the Casa de Fruta location with annotations.)	Hearsay, lack of foundation, speculation, lack of personal knowledge, Improper expert opinion, improper authentication	Overruled
Transcript of P’s Deposition:		
35. P’s Deposition transcript page 47 :7-16	Hearsay, lack of foundation, speculation, lack of personal knowledge	Overruled
36. P’s Deposition 49:3-4	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Overruled
37: P’s Deposition at 49:18--50:8	Lack of foundation, speculation, lack of personal knowledge	Overruled
38: P’s Deposition at 51:16-21	Hearsay, lack of foundation, speculation, lack of personal knowledge	Overruled
39: P’s Deposition at p 51:25-52-3	Hearsay, lack of foundation, lack of personal knowledge	Overruled
40: P’s Deposition at 53:23-54:6	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Sustained as to relevance
41: P’s Deposition at 55:8-17	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Overruled
42: P’s Deposition at 55:20-25	Hearsay, lack of foundation, lack personal knowledge	Sustained
43: P’s Deposition at 56 1-5	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Overruled
44: P’s Deposition at 58:6-11	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Overruled
45: P’s Deposition at 58:17-21	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Sustained as to hearsay

46: P's Deposition at 58:22-59:24	Hearsay, lack of foundation, speculation, lack of personal knowledge	Sustained
47: P's Deposition at 60:3-7	Hearsay, lack of foundation, speculation, lack of personal knowledge	Sustained
48: P's Deposition at 66:16-17	Lack of foundation, speculation, lack of personal knowledge	Overruled-
49: P's Deposition 81:25-82:7	Lack of foundation, speculation, lack of personal knowledge	Sustained
50: P's Deposition 82:8-10	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Overruled
51: P's Deposition at 82:18-83:11	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant	Overruled
52: P's Deposition at 166:21-167:13	Hearsay, lack of foundation, speculation, lack of personal knowledge, Irrelevant	Sustained as to relevance
53: Report of Labor Law Violation P's ex H	Lack of authentication, hearsay, lack of foundation, speculation, lack of personal knowledge , irrelevant	Overruled
Objections to Declaration of Ken Wheatley		
54. at ¶12 Mr Thompson, the Plaintiff was an employee of PlayFaire productions and therefore covered under the OSHA requirement to have a place of employment free from recognized hazards	Hearsay, lack of foundation, speculation, lack of personal knowledge, irrelevant, improper expert opinion	Overruled
55: at ¶14 Lisa Stehl, an 18-year employee of Play Faire Productions, and the General Manager, stated in her Answers to P's Special Interrogatories, set two, dated 10-12-21, that the plaintiff was located in a backstage area called Crossroads that is closed to the public: page 7, lines 16-18	Hearsay, lack of foundation, speculation, lack of personal knowledge, Irrelevant, secondary evidence rule	Overruled
56: Wheatley Dec. at ¶15: During my site visit, the only place I saw a restricted area sign was to a fenced area behind the ticket booth where there was an RV and some tents	Irrelevant, in so far as the site visit occurred in a limited area on a date when the fair was not in operation more than two years after the incident that is subject to this litigation and thus may have looked different	Overruled
57. Wheatley Dec. at ¶15: I saw no signage indicating that the area that MR Thompson was working was closed to the public	Irrelevant, as noted above	Overruled
58: Wheatley Dec. ¶16: Stehl also stated in the Interrogatory set two that "Play Faire Productions does not permit golf carts on the Fair premises" (p 8:19-20)	Secondary evidence rule, hearsay	Overruled
59: Wheatley Dec. ¶17: During my site visit I saw no signage prohibit golf carts from the property	Irrelevant as noted in item 56	Overruled
60. Wheatley Dec. ¶18: And her statement contradicts what she and Dwight Hackman, Thompson's supervisor told me during the site visit.	Improper expert opinion	Overruled
61: Wheatley Dec. ¶18: They said that people with golf carts rode their carts from Casa De Fruta RV park and were allowed, with their carts to enter through Gate 6, the VIP/Preferred parking entrance if they had a pass or handicap placard. IF the person didn't have a pass or placard, they would park in the general parking area to the north.	Hearsay	Sustained
62. Wheatley Dec. ¶19: Stehl Said that the premises lased b play Fair had fences on the perimeter	Hearsay, lack of foundation	Sustained

63. Wheatley Dec. at ¶20 There are two fenced perimeters--an outer and an inner. The inner perimeter fence, between the general parking area and the Fairgrounds had at least one unsecured and unstaffed vehicle entry, and one unsecured and unstaffed pedestrian entry. I saw no physical barriers that would have prevented a vehicle or golf cart from leaving the general parking area and entering the area where Mr. Thompson was working. There was no signage at the unsecured vehicle entry that indicated it led to a restricted area	Irrelevant as noted in 56	Overruled
64: Wheatley Dec. at ¶21: Lisa Stehl and Dwight Hackman stated to me that they believe that Van Unen the driver of the golf cart that hit Mr. Thompson, entered through that unsecured and unstaffed vehicle entry	Hearsay	Sustained
65: Wheatley Dec. at ¶21 So they had knowledge that the unsecured and unstaffed entry could have been used for unauthorized entry to the Fair Grounds	Improper expert opinion, lacks foundation, speculation, lack of personal knowledge	Sustained
66. Wheatley Dec.. at ¶22 In her responses to P's special interrogatories, set one, dated 4-1-21, Lisa Stehl stated at p7:19-20 "Responding Defendant has advised Mr. Kenny Van Unen not to come onto the premises prior to September 14, 2019."	Hearsay, lack of foundation, speculation, lack of personal knowledge, secondary evidence rule	Overruled
67: Wheatley Dec. at ¶23 No documentation has been provided by Defense to support that assertion. No documentation has been provided to explain why he was banned. And no documentation has been provided to indicate how and when the ban was communicated to Mr. Van Unen."	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion	Overruled
68: Wheatley Dec. at ¶24: Stehl stated the same in the Interrogatory responses cited above (Set Two 16:5-6, 15-16, P 24:3-4)	Hearsay, lack of foundation, speculation, lack of personal knowledge, secondary evidence rule	Overruled
69: Wheatley Dec. at ¶25 " Van Unen's answer on form PLD-PI-003 dated 3-17-22 stated that 'a representative of Play Faire (sic) Production called and requested his assistance with a piece of equipment'"	Secondary Evidence rule, Hearsay	Overruled
70: Wheatley Dec. at ¶26 "No documentation, i.e., payroll records, time sheets, W2, 1099 forms, etc. have been provided by Defendants to either support their assertion that Van Unen wasn't an employee, or to refute Van Unen's statement that he was contacted by Play Faire to perform work on their equipment."	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion, Irrelevant	Sustained
71. Wheatley Dec. at ¶27: Defendants didn't conduct a site risk assessment	Speculation, lack of personal knowledge, improper expert opinion, irrelevant as stated in 56	Overruled in part. Sustained as to the sentence : An although both Stehl and Hackman were aware of the vulnerability at the vehicle gate in the general parking area they did nothing to secure that entry" as speculative.

72. Wheatley Dec. at ¶28: The defense has not provided any evidence of the existence of a security program, i.e., risk assessment report(s) , daily security reports, internal incident reports, police reports, calls to 911, or a training program.	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion, irrelevant.	Overruled.
73. Wheatley Dec. at ¶30: Defendants failed to assess and mitigate the vulnerability presented by the unsecured opening in the perimeter fence	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion, irrelevant	Overruled
74. Wheatley Dec. at ¶30 Failure to secure that opening provided an opportunity to drive his golf cart onto the property and have the accident with Mr. Thompson	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion, irrelevant	Overruled.
75. Wheatley Dec. at ¶31 Although Lisa Stehl stated in Interrogatory Set Two, page 23, lines 15-1 that training is provided to security personnel . . .	Secondary Evidence rule	Overruled
76. Wheatley Dec. at ¶31 [N]o evidence has been provided by defendants regarding what general or specific training was provided to employees regarding their responsibility to report incidents; the forms used to record their daily activities or any incidents; when to call the police; the need to conduct criminal background checks and verification of criminal background check results; conflict resolution; de-escalation procedures; or what avenues there are for reporting incidents, such as tip lines.	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion, irrelevant	Overruled
77. Wheatley Dec. ¶ at ¶32: No evidence has been provided that the Defendants had a workplace violence prevention program, written policies to prevent violence, or that training was provided regarding workplace violence and its prevention.	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion, Irrelevant because Van Unen was not an employee of Defendants	Overruled- Goes more to show the lack of security training globally.
78. Wheatley Dec. at ¶33 Defendants lack of established processes, procedures, and training in the absence of a site/event risk assessment did not meet the standard of care, and that lack of preparedness led to the circumstances that resulted in the injuries sustained by Mr. Thompson on September 14, 2019	Lack of foundation, speculation, lack of personal knowledge, improper expert opinion	Overruled
Objections to Declaration of Jake Cohen		
79. Cohen Dec. ¶9: Attached as Ex H to the compendium is a true and correct copy of Plaintiff's report of labor law violation to the Labor Commissioner of California, Bureau of Field enforcement for Play Faire's lack of Worker's Compensation insurance coverage for the date of the subject incident	Lack of foundation, lack of personal knowledge, Improper authentication, Irrelevant	Overruled

END OF TENTATIVE RULINGS