CASE STUDY PREPARED FROM ORIGINAL PUBLISHED OPINION

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Vasilenko v Grace Family Church 6/17/16

Premises Liability; Duty of Landowner for Damage on Adjacent Property

Grace Family Church (GFC) is located on Marconi Avenue across from the Debbie Meyer Swim School. The section of Marconi Avenue that separates GFC and the swim school consists of five lanes: two eastbound; two westbound; and a central universal left-turn lane. The nearest cross street is Root Avenue, which intersects Marconi Avenue about 50 to 100 feet east of the church and the swim school. There is no traffic signal or marked crosswalk at the intersection of Marconi and Root Avenues.

GFC had an agreement with the swim school allowing it to use the swim school's parking lot (swim school lot or overflow lot) when the church's main lot, located adjacent to the church, was full. Church members served as volunteer parking attendants. Attendants assisted drivers with navigating through the church's main parking lot and identifying alternate places to park when the main lot was full. Attendants provided some invitees with a printed map showing alternate places to park, including the swim school lot. Attendants also were stationed at the swim school lot.

On the evening of November 19, 2010, Plaintiff Vasilenko went to GFC to attend a function being held at the church. When he arrived, the church's main parking lot was full, and the attendant gave him a map and told him that he could park across the street at the swim school lot. According to plaintiff the

attendant did not instruct him to cross at the intersection of Marconi and Root Avenues when returning to the church.

Sergey Skachkov and his girlfriend parked in the swim school lot at about the same time as Vasilenko. Two parking attendants were on duty at the swim school lot when Skachkov arrived; one waved drivers into the lot entrance and the other directed drivers where to park. Neither attendant provided any instruction or assistance on how to cross Marconi Avenue.

Skachkov and his girlfriend took the most direct route to the church and crossed in the middle of the block. After looking both ways, they crossed the two eastbound lanes and waited in the universal turn lane. Once there, Skachkov noticed Vasilenko about 15 feet to his right. Vasilenko waited with Skachkov and his girlfriend in the center lane for the westbound traffic to clear. After about a minute, all three attempted to cross the two westbound lanes. After walking half way across the last two lanes, Skachkov saw the headlights of an upcoming car and he, his girlfriend, and Vasilenko started running. Vasilenko was hit by the car and injured.

Vasilenko sued GFC for negligence and loss of consortium. In his third cause of action for general negligence, Vasilenko alleged that GFC created a foreseeable risk of harm by maintaining an overflow parking lot in a location that required its invitees to cross Marconi Avenue, was negligent in failing to protect against that risk, and as a result, he was hit by a car while crossing the street.

GFC moved for summary judgment on the ground, among others, that it "did not have a duty to assist Vasilenko with or provide instruction about how to safely cross a public street" that it did not own, possess, or control. Vasilenko responded that GFC's lack of ownership or control over the public street was not dispositive where, as here, GFC controlled the overflow parking lot, including its location. Specifically, Vasilenko asserted that GFC created a dangerous

condition by "selecting and establishing a location for the overflow lot with a dangerous avenue of approach to the church." The trial court granted GFC's motion for summary judgment, finding that GFC "did not owe a duty of care to the plaintiff or other members of the public to assist them in safely crossing a public street, which it did not own or control." Vasilenko appeals from the judgment of dismissal entered in GFC's favor following the grant of its summary judgment motion.

Vasilenko challenges the trial court's determination that GFC did not owe him a duty of reasonable care. He asserts that "there is no public policy basis for exempting GFC from the fundamental principle that everyone is responsible for injury caused by his or her negligence," and our "Supreme Court rejects the view that a defendant cannot be liable for injury to a business invitee not physically present on land owned or possessed by defendant."

A fundamental element of any cause of action for negligence is the existence of a legal duty of care running from the defendant to the plaintiff. (*Taylor v. Elliott Turbomachinery Co. Inc.* (2009) 171 Cal.App.4th 564, 593.) The existence and scope of any such duty are legal questions for the court. (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 477.)

"**The general rule in California is that 'everyone is responsible . . . 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 . . . .' (Civ. Code, § 1714, subd. (a).) In other words, 'each person has a duty to use ordinary care and "is liable for injuries caused by his failure to exercise reasonable care in the circumstances . . . ."**' " (*Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 771) **In *Rowland v. Christian* (1968) 69 Cal.2d 108, 112, our Supreme Court "identified several considerations that, when balanced together, may justify a departure from the fundamental principle embodied in Civil Code section 1714: 'the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff**

suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.' (*Cabral,* at p. 771, quoting *Rowland*, at p. 113.)

"The *Rowland* factors are evaluated at a relatively broad level of factual generality." In determining whether those factors support an exception to the general duty of reasonable care, the Third District Court of Appeal will focus is not on the facts of the particular case, but instead, ask "whether carving out an entire category of cases from that general duty rule is justified by clear considerations of policy." "By making exceptions to Civil Code section 1714's general duty of ordinary care only when foreseeability and policy considerations justify a categorical no-duty rule, the Justices preserve the crucial distinction between a determination that the defendant owed the plaintiff no duty of ordinary care, which is for the court to make, and a determination that the defendant did not breach the duty of ordinary care, which in a jury trial is for the jury to make."

As the moving party on a summary judgment motion, GFC had the burden of showing that Vasilenko's negligence causes of action lacked merit because one or more elements of the causes of action could not be established or there was a complete defense to those causes of action. (Code Civ. Proc., § 437c, subd. (p)(2).) GFC's motion for summary judgment was predicated primarily on the assertion that the **element of duty was lacking** because Vasilenko was injured while walking across a public street that was **not owned, controlled, or otherwise occupied by GFC**. However, on appeal the majority of the Third DCA panel adjusted the focus, noting that here, the issue is whether property that was

owned, possessed, or controlled by GFC was maintained in such a manner as to expose persons to an unreasonable risk of injury offsite.

Those who own, possess, or control property generally have a duty to exercise ordinary care in managing the property in order to avoid exposing others to an unreasonable risk of harm. (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1156; § 1714, subd. (a).) "In most instances, where there is no control over the premises, there is no duty to exercise reasonable care to prevent injury. (*Hamilton v. Gage Bowl, Inc. (*1992) 6 Cal.App.4th 1706, 1711.) Generally, 'a landowner has no right to control and manage premises owned by another.' (*Steinmetz v. Stockton City Chamber of Commerce* (1985) 169 Cal.App.3d 1142, 1147.) Thus, **usually a landowner has no duty to prevent injury on adjacent property**. (See *Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 386; *Hamilton v. Gage Bowl, Inc.*, *supra*, 6 Cal.App.4th at p. 1714) **Similarly, an adjacent landowner has no duty to warn of dangers outside of his or her property if the owner did not create the danger.** (*Seaber v. Hotel Del Coronado* (1991) 1 Cal.App.4th 481, 487-488; *Annocki v. Peterson Enterprises*, LLC (2014) 232 Cal.App.4th 32, 37.) However, as the *Annocki* court recognized, there are exceptions to the general principle.

For example, in *Barnes v. Black* (1999) 71 Cal.App.4th 1473, a child died after the "big wheel" tricycle he was riding veered off a sidewalk inside the apartment complex where he lived, travelled down a steep driveway and into a busy street where he was struck by an automobile. The sidewalk and driveway were within the grounds of the apartment complex; the busy four-lane road where the child was struck was not. The child's family sued the owner of the apartment complex for, among other things, negligence, premises liability, products liability, and negligent infliction of emotional distress. The apartment owner moved for summary adjudication of those causes of action on the ground that the element of duty was lacking because the injury occurred on the public street and not on land owned or controlled by the owner. The trial court granted the motion, and the child's family appealed, arguing that the apartment owner "owed its tenants

a duty of reasonable care to avoid exposing children playing on the premises to an unreasonable risk of injury on a busy street off the premises and the owner failed to satisfy its burden on summary adjudication to negate the duty of care."

The Court of Appeal reversed, holding that the apartment owner failed to satisfy its burden to negate a duty of care. (*Barnes,* at p. 1479.) The court explained that "**a landowner's duty of care to avoid exposing others to a risk of injury is not limited to injuries that occur on premises owned or controlled by the landowner. Rather, the duty of care encompasses a duty to avoid exposing persons to risks of injury that occur off site if the landowner's property is maintained in such a manner as to expose persons to an unreasonable risk of injury offsite.**" The court determined that the fact the child was injured on a public street over which the apartment owner had no control was "not dispositive under the *Rowland* analysis," and that the apartment owner failed to "offer any evidence to show the injury was not foreseeable, the injury was not actually suffered, or the slope of the driveway and configuration of the sidewalk, play area, and driveway were not **closely connected** to the injury, or to negate any of the other *Rowland* factors."

In this case, as in *Barnes*, the salient fact is not that GFC did not control the public street where Vasilenko was injured, but that it *did* control the location and operation of its overflow parking lot, which Vasilenko alleges caused or at least contributed to his injury. (*Barnes,* at p. 1479.) Like the configuration of the sidewalk and driveway in *Barnes,* the location of the overflow lot, which GFC concedes it controlled at the time of the accident, required GFC's invitees who parked there to cross a busy thoroughfare in an area that lacked a marked crosswalk or traffic signal in order to reach the church, **thereby exposing them to an unreasonable risk of injury offsite.** Like the apartment owner in *Barnes*, GFC failed to offer any evidence to show the injury was not foreseeable, the injury was not actually suffered, or the location and management of its overflow parking lot, which GFC concedes it "temporarily controlled," were not closely

connected to the injury, or to negate any of the other *Rowland* factors. Indeed, GFC made no attempt to apply the *Rowland* factors based on the mistaken belief that the place of Vasilenko's injury--a public street--was dispositive.

Our Supreme Court recently affirmed that while a dangerous condition "most obviously" exists when property is "defective in such a way as to foreseeably endanger those using the property itself," property has also been considered dangerous because of its location. (*Bonanno v. Central Contra Costa Transit Authority* (2003) 30 Cal.4th 139, 148-149.) The question presented in that case was "whether the location of a bus stop may constitute a 'dangerous condition' of public property, within the meaning of Government Code sections 830 and 835, where, in order to reach the stop, bus patrons must cross a busy thoroughfare at an uncontrolled intersection." The plaintiff was hit by a car while attempting to cross a busy thoroughfare on her way to a bus stop. The plaintiff sued the transit authority, among others. The jury returned its verdict in the plaintiff's favor, expressly finding that the bus stop was a dangerous condition of public property, and the Court of Appeal affirmed. In affirming the judgment of the Court of Appeal, our Supreme Court rejected the transit authority's contention that it could not "be liable for an injury occurring on property (the street) it neither owned nor controlled," reasoning that the transit authority "owned and controlled its own bus stop, and a condition of *that* property, its physical situation, caused users of the bus stop to be at risk from the immediately adjacent property . . . ." The court found that the location of the plaintiff's injury, on adjacent county property, was not dispositive, explaining, "In the circumstances, that the plaintiff was injured trying to access transit authority's property makes her no less a user of it. If a transit authority bus stop could be reached only by jumping across an adjacent ditch, the transit authority would logically bear the same liability to a patron who fell into the ditch attempting to reach the stop as to one who fell while waiting at the stop." Although *Bonanno* involved a public entity and thus was governed by Government Code sections 830 and 835, not Civil Code section 1714, our

Supreme Court has determined that "the definition of dangerous condition found in section 830, combined with the traditional requirement—codified in section 835, subdivision (a)—that the public entity's creation of the dangerous condition must have been unreasonable, reflects an ordinary-negligence standard." (*Metcalf v. County of San Joaquin* (2008) 42 Cal.4th 1121, 1136.)

In its respondent's brief, GFC contends that California courts have consistently declined to impose a duty on private landowners for injuries caused by third parties on premises not owned, controlled, or possessed by the landowner, citing this court's decision in *Steinmetz v. Stockton City Chamber of Commerce* (1985) 169 Cal.App.3d 1142. At issue in that case was "a landowner's liability for a criminal assault by a third person upon an invitee which occurs off the landowner's premises." There, the plaintiff's decedent attended a social mixer sponsored by the Stockton City Chamber of Commerce (Chamber) and held on premises leased by the California Human Development Corporation (CHDC). There were only 25 to 30 parking spaces on the premises, but there was additional parking off the premises. The decedent left the mixer around 7:30 p.m. and headed to her car, which was parked about one block away, off CHDC's premises. When she reached her car, she was fatally stabbed by an unknown assailant.

The plaintiffs sued the Chamber and CHDC alleging that they "breached a duty owing to the decedent as a business invitee in failing to provide a safe place for her to park her car while she attended the mixer." The complaint further alleged that a lack of security and supervisory personnel contributed to the decedent's death. The Chamber and CHDC moved for summary judgment on the ground they "had no liability or responsibility for an attack occurring off CHDC's leased premises."

The trial court granted the motion, and the Third DCA affirmed. In doing so, it explained, "The duty to take affirmative action for the protection of

individuals coming upon the land 'is grounded in the possession of the premises and the attendant right to control and manage the premises.' Generally, however, a landowner has no right to control and manage premises owned by another. CHDC had no right to station security guards on premises it neither owned nor controlled. Nor did CHDC have any right to place lighting in any parking area other than its own parking area. Moreover, neither CHDC nor Chamber had any right to control the activities of either their invitees or third parties where those activities occur off premises which they neither own, possess, nor control." Accordingly, the appellate court held under the facts presented that "there is simply no basis for finding that defendant owed any duty of care to decedent while decedent was on premises neither owned, possessed, nor controlled by the defendant."

The Justices pointed out that *Steinmetz* is distinguishable. Contrary to GFC's assertion, Vasilenko did not argue that "where the parking provided on the landowner's premises was inadequate . . . , the landowner should have foreseen that invitees would be forced to park in outlying areas and thus had a responsibility to insure safe egress and ingress." Rather, Vasilenko's claim is that while GFC may not have had a duty to provide additional parking for its invitees, its maintenance and operation of an overflow parking lot in a location that it knew or should have known would induce and/or require its invitees to cross Marconi Avenue created a foreseeable risk of harm to such persons.

In *Seaber v. Hotel Del Coronado,* 1 Cal.App.4th 481, cited by both GFC and the trial court, the Fourth District Court of Appeal affirmed an order granting summary judgment in favor of the defendant hotel in a wrongful death action. A hotel guest was killed when he was struck in a marked crosswalk on a street adjacent to the hotel's property. The guest had parked in a private lot owned by a third party across the street from the hotel and was leaving the hotel when he was hit. In sustaining a grant of summary judgment in favor of the hotel, the court noted, " 'The courts . . . have consistently refused to recognize a duty to

persons injured in adjacent streets or parking lots over which the defendant does not have the right of possession, management, and control.' " Furthermore, a landowner cannot be responsible for controlling or regulating pedestrian traffic across public streets. A landowner has no duty to warn of dangers beyond its own property when the owner did not create those dangers.

Again, the Justices distinguish the cited case. *Seaber* stands for the proposition that an adjacent landowner has no duty to warn of alleged dangers outside of his or her property if the owner did not create the danger. (*Seaber,* at pp. 487-488.) Here, unlike *Seaber,* GFC created the danger by maintaining the overflow lot in a location that required invitees to cross a busy thoroughfare that it knew lacked a crosswalk or traffic signal in order to reach the church. In distinguishing *Warrington v. Bird* (1985) 204 N.J.Super. 611, where the appellate court recognized that liability may rest upon a restaurant for injuries suffered by patrons who were struck by a motor vehicle while crossing a county road which passed between the restaurant and its parking lot, the *Seaber* court noted that the hotel "neither owned the . . . parking lot nor provided it as a parking facility for its patrons." Here, **it is undisputed that GFC controlled the overflow lot at all relevant times herein and provided that lot as a parking facility for its invitees**. As detailed above, by maintaining its overflow lot across the street from the church, GFC exposed its invitees who utilized that lot to an unreasonable risk of harm, and thus, owed them a duty to take steps to protect against that risk.

Contrary to GFC's assertion, the circumstances of this case are not analogous to "the case of a downtown restaurant owner whose building does not offer any parking or a downtown law firm with limited offsite parking, prompting the owners to provide instructions about where visitors are able to park." This is not simply a case where a business merely provided instructions about where to park; rather, **this is a case where an entity maintained and operated a parking lot in a location that required its invitees to cross a busy thoroughfare *and* directed its invitees to that lot when its main lot was full.**

For all the foregoing reasons, the majority find that GFC failed to establish that the general duty of ordinary care set forth in section 1714 does not apply.

Having concluded that summary judgment was not properly sustained on any of the grounds urged by GFC, we shall reverse the judgment of dismissal entered in its favor. The matter is remanded to the trial court with directions to vacate its order granting summary judgment in favor of GFC.

Vasilenko shall recover his costs on appeal.

In his dissent, referring to *Barnes* and *Bonanno*, Justice Raye agrees they do not apply. As for *Seaber* and *Steinmetz*, he again agrees they can be distinguished from this present case factually, but he concludes *Seaber* articulates principles of law that are controlling in the present case.

As the majority notes, the court in *Seaber* applied this general rule: " 'The courts . . . have consistently refused to recognize a duty to persons injured in adjacent streets or parking lots over which the defendant does not have the right of possession, management and control.' " (*Seaber*, *supra*, 1 Cal.App.4th at p. 489.) Furthermore, a landowner cannot be responsible for controlling or regulating pedestrian traffic across public streets. A landowner has no duty to warn of dangers beyond its own property when the owner did not create those dangers. The majority distinguishes *Seaber* thusly: "Here, unlike *Seaber*, GFC created the danger by maintaining the overflow lot in a location that required invitees to cross a busy thoroughfare that it knew lacked a crosswalk or traffic signal in order to reach the church."

The dissenting Justice concludes this is a distinction without a difference. In *Seaber*, he points out that the entrance to the defendant hotel was located adjacent to a busy intersection. The hotel recognized the danger and implored

the California Department of Transportation (Caltrans) to install a traffic control device, but Caltrans chose instead to provide a painted crosswalk. However, the issue in *Seaber* was not whether the hotel acted reasonably, but whether the hotel had a duty at all given that the allegedly dangerous crosswalk, though adjacent to the hotel, was owned by the State of California, and in light of the rule that the hotel owed no duty "to persons injured in adjacent streets . . . ." (*Seaber*, at p. 489.) The plaintiffs sought to bring their case within the "special benefit" exception to the general rule by showing the dangerous crosswalk was constructed abutting the hotel at the hotel's request and for its benefit, but the court rejected the attempt.

So it is not enough to say that the church created the danger by using a lot next to a busy street over which people needed to cross, any more than the hotel created the danger by establishing its entrance next to a dangerous crosswalk. While *Seaber* is distinguishable—the "special benefit" exception is not involved in our case—the case is nonetheless noteworthy for its reaffirmation of the general rule that landowners owe no duty to prevent injury on adjacent property and for its explanation of the exceptions to the rule, where the management of property has increased the risk presented by the property's location. As expressed by the court, "although the scope of premises liability has greatly expanded over the past decade and a half, liability has been restricted within the context of landowners whose property abuts public sidewalks and streets. For, it cannot be ignored that premises liability is predicated upon the concept that possession includes the attendant right to manage and control, justifying liability when one has failed to exercise due care in property management." (*Seaber*, at p. 489.) It was the property owner's management of the properties involved in the *Bonanno* and *Barnes* cases that led to imposition of a duty and consequent liability.

Here, the church was not a property manager. The swim school merely gave permission to the church's members to park there. Unlike the poorly designed sidewalk in the *Barnes* case, no features of the swim school parking lot

had been altered by the church. The church did nothing to increase the risk posed by adjacent property over which neither it nor the swim club exercised control.

Finally, it is worth noting that parking lots servicing a multiplicity of businesses are frequently located next to busy streets. More will be built in the future as metropolitan areas become increasingly congested. The safety of streets and crosswalks has never been the responsibility of parking lot operators or businesses that rely on such parking lots; it is the responsibility of those who maintain the streets and those who choose to cross them. There is no compelling reason to refashion the rules of premises liability or principles of negligence to impose a duty on parking lot operators or owners of land adjacent to busy thoroughfares to guarantee the safety of pedestrians who cross such roadways. Accordingly, Justice Raye would have affirmed the trial court ruling.