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MCLE

Defendants can be held liable for injuries on non-owned property

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California has long recognized that a defendant owes a duty of care for injuries that occur on property which it does not own when the defendant exercised control and effectively treated the non-owned property as its own. “A defendant need not own, possess *and* control property in order to be held liable; control alone is sufficient.” (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1162, italics in original.)

Duty can be based on *Civ. Code* § 1714 (a). “As codified in section 1714, the general rule governing duty 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. Section 1714 establishes the *default* rule that each person has a duty to exercise, in his or her activities, reasonable care for the safety of others. (*Hacala v. Bird Rides, Inc.* 2023 Cal.App. LEXIS 270 (4/10/23) [306 Cal.Rptr.3d 900, 914], internal quotation marks and citations omitted. Italics in original.) This general duty of care means that “all persons are required to use ordinary care to *prevent others from being injured* as the result of their conduct.” (*Jackson v. Ryder Truck Rental, Inc.* (1993) 16 Cal.App.4th 1830, 1837-38. Emphasis added.)

The California Supreme Court has considered whether a private landowner owes a duty of care to



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persons injured on public property where the evidence shows that the landowner “controlled” the public property. In *Alcaraz, supra*, plaintiff was injured when he stepped into a broken utility meter box that was embedded in the lawn in front

of defendant’s rental property. It was undisputed that the city owned the lawn area, which was a strip of land next to the sidewalk. The Supreme Court determined there was sufficient evidence of control because the private landowner

“maintained the lawn that covered the approximately two-foot-wide portion of the strip of land owned by the city surrounding the meter box and adjoining their property and that, following plaintiff’s injury, defendants constructed a fence that enclosed the entire lawn.” (*Id.* at 1161-62.) Control can be shown by evidence that the defendant “took action to influence or affect the condition of such adjoining property.” (*Alcaraz, supra*, at 1164.)

Control can also be shown by evidence that the defendant derived a commercial benefit from the use of the public street. (*Southland Corp. v. Superior Court* (1988) 203 Cal.App. 3d at 660; see also *Kopfinger v. Grand Central Public Market* (1964) 60 Cal.2d 852; *Johnston v. De La Guerra Properties, Inc.* (1946) 28 Cal.2d 394; *Schwartz v. Helms Bakery Limited* (1967) 67 Cal.2d 232.) *Southland, Kopfinger, Johnston and Schwartz* all arose in commercial contexts, where the defendants received direct pecuniary benefits from the plaintiff’s use of the areas where the plaintiffs were injured. Moreover, the defendants either directly created the danger or exercised control over the area where the danger existed, or both. (See *Schwartz, supra* at 239-40 [child crossed the street to buy doughnuts from retail truck after driver’s invitation to meet up the street]; *Kopfinger, supra*, at 856 [plaintiff fell on meat gristle dropped on public sidewalk during meat deliveries to defendant’s store]; *Johnston, supra* at 398 [restaurant encouraged patrons to park in adjacent lot and access the restaurant

through a parkway that had an 18-inch drop in elevation.]

In *Southland*, defendant argued that it did not own adjacent property on which the plaintiff had been beaten by thugs. The *Southland* Court held there were triable issues of fact as to the defendant store's "control over the property where the assault occurred and (2) the foreseeability of such assault." (*Southland, supra*, 203 Cal.App.3d at 660.) The *Southland* Court used the following as evidence of control: (1) the store provided inadequate parking, (2) customers regularly used the adjacent lot, a fact petitioners were aware of, (3) petitioners likely realized a significant commercial benefit from their customers' use of the lot, (4) the adjacent lot had become a hangout for local juveniles, among whom fist fights sometimes broke out, and (5) the store employees had previously taken action to remove juvenile loiterers from both the store premises and the adjacent lot. (*Id.*)

CACI 1002 states: "A person controls property that the person does not own or lease when the person

uses the property as if it were the person's own."

An abutting landowner has always had an obligation to refrain from affirmative conduct which results in a dangerous condition upon public streets or sidewalks. *Selger v. Steven Brothers, Inc.* (1990) 222 Cal.App.3d 1585, 1592.

The courts have held that liability for an off-site injury may be based on the way the defendant maintained its own property. In *Barnes v. Black*, defendant's own property had an unbarricaded sidewalk on top of a steep driveway that let out into the public street. Plaintiffs' child was killed when his tricycle veered off the sidewalk. The child lost control down the steep driveway, went into the street, and was struck by a car. Citing *Alcaraz*, the *Barnes* Court held that "[a] landowner owes a duty to exercise reasonable care to maintain his or her property in such a manner as to avoid exposing others to an unreasonable risk of injury." (*Barnes v. Black* (1999) 71 Cal.App.4th 1473, 1478)

In *Annocki v. Peterson Enterprises,*

LLC (2014) 232 Cal.App.4th 32, plaintiff's son's motorcycle was struck by a car exiting the wrong way from defendant's restaurant driveway. In rejecting a "no duty" argument, the Court said: "This case is analogous to *Barnes* because like *Barnes*, the property configuration here allowed restaurant patrons to leave Geoffrey's

premises in a manner that was unsafe to themselves and others." (*Annocki v. Peterson Enterprises, LLC* (2014) 232 Cal.App.4th 32, 38.)

As such, a defendant's control of the property and the foreseeability of harm should always be considered carefully in assessing liability, regardless of ownership of the property.

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