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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| ALMA FRONTANEZ,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>TERENCE K. CHAN,<br><br>Defendant and Respondent. | B236870<br><br>(Los Angeles County<br>Super. Ct. No. BC411660) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Gregory W. Alarcon, Judge. Affirmed.

Law Offices of Ramin R. Younessi and Sandeep G. Agarwal for Plaintiff and Appellant.

William R. Moore for Defendant and Respondent.

Alma Frontanez (appellant) appeals from an order granting respondent Terence K. Chan's (respondent) motion for judgment notwithstanding the verdict (JNOV motion) following trial in this personal injury action. Appellant was injured when she stepped into an uncovered water meter box on a public sidewalk on February 29, 2008. In granting respondent's JNOV motion, the trial court held that appellant failed to produce sufficient evidence to show that respondent had a duty of care to inspect or cover the water meter box or to warn of its hazards on the day that appellant fell. We affirm.

## FACTUAL BACKGROUND

On February 29, 2008, appellant was walking to her residence on Brannick Avenue in Los Angeles after grocery shopping. She was walking with family members and pushing her own two-wheeled metal grocery cart, which was full of groceries. As she walked on the sidewalk in front of 443 Brannick Avenue (the Brannick property), she noticed a red pick-up truck in a driveway blocking the sidewalk. As she walked toward the street to cross to the other side, her left foot fell inside an uncovered water meter. The City of Los Angeles (the City) owns the sidewalk where appellant fell and the California Water Service Company owns the water meter, box, and cover.

Appellant's left leg fell into the hole to just below her knee. She fell to the ground and injured her low back, waist, ribs, and her left leg.

After she fell, appellant's sister helped her up. About six to eight individuals who were working at the Brannick property started yelling, "It's the City. It's the City. It's the City." After appellant got up, the workers quickly grabbed the cover to the water meter and covered it up. They also removed the truck that was blocking the sidewalk.

About two to two and one-half hours before the accident, appellant had walked with her sister and the grocery cart through the exact same area and had not noticed any uncovered holes in the sidewalk.

Appellant did not go to a medical clinic until March 15, 2008. The clinic sent appellant for X-rays, but she did not get them done at the time because she did not have any money to pay for them. Instead, she went to see an attorney because she could not pay for her medical expenses.

Appellant made no attempt to contact the owner of the house next to the water meter where she fell. She was unaware of the identity of the owner of the house, and she did not talk to anyone to try to get that information. Nor did she contact any representative of the City about the incident. Appellant did not go into the property because she could tell that only the laborers were there. She did not speak to any of them.

Respondent is a professional structural engineer. He also holds a contractor's license, and sometimes acts as a general contractor. In early February 2008, respondent obtained a permit for construction work at the Brannick property. Respondent was to act as the general contractor for an addition to the house. Respondent was also the structural engineer for the job and drew up some engineering plans for the project. Respondent was present during three or four inspections of the property. The workers were not present at the time of the inspections. Respondent did not manage or supervise any workers at the job site. Respondent never owned a red truck.

Respondent testified that he obtained the permit on behalf of an individual named Alison Fung, who was the project manager on the job. Fung did not get the permit herself because she was not a licensed contractor. However, Fung drew up the plans for the property and hired the subcontractors.

**PROCEDURAL HISTORY**

Appellant filed her complaint in April 2009. She sued California Water Service Co., the County of Los Angeles, Manuel and Eugenia Duran, Alison Fung, Rebeca Rivas, Pinnacle Building Structure, and respondent. All defendants except respondent were dismissed before trial.

Trial took place on June 15 and 16, 2011. After trial, the jury reached a verdict of $39,500 in favor of appellant.

On July 5, 2011, respondent filed his JNOV motion pursuant to Code of Civil Procedure section 629. Respondent argued that there was no substantial evidence presented at trial which showed respondent or any of the workers at the Brannick property uncovered the water meter. Appellant's case rested on the possibility that the

housing construction project involved plumbing work, and that the speculative plumbing work involved shutting off the water. Further, since the housing construction may have involved shutting off water to the house, appellant asked the jury to infer that the construction workers were so incompetent as to shut off the water using the main shut-off on the sidewalk rather than the shut-off valve at the house. Appellant presented no evidence that construction workers habitually or customarily remove water meter covers. In sum, respondent argued that appellant's entire case rested on a series of mere possibilities and conjectures, rather than substantial evidence.

The matter was argued on August 26, 2011. On the same date, the trial court issued a ruling granting the defendant's JNOV motion. The court reasoned that appellant failed to produce sufficient evidence that respondent owed her a duty to inspect and cover the water meter or warn of its hazards on the day that appellant fell. Specifically, there was no evidence that the workers did anything to indicate that they maintained, possessed, or controlled the public sidewalk where appellant fell. Without a duty of care owed, the court stated, there is no negligence as a matter of law.

On October 24, 2011, appellant filed her notice of appeal.

## DISCUSSION

### I. Standard of review

"'"A motion for judgment notwithstanding the verdict of a jury may properly be granted only if it appears from the evidence, viewed in the light most favorable to the party securing the verdict, that there is no substantial evidence to support the verdict. If there is any substantial evidence, or reasonable inferences to be drawn therefrom, in support of the verdict, the motion should be denied." [Citation.]'" (*Clemmer v. Hartford Ins. Co.* (1978) 22 Cal.3d 865, 878.)

In the appellate court, "[a]s in the trial court, the standard of review is whether any substantial evidence -- contradicted or uncontradicted -- supports the jury's conclusion. [Citations.]" (*Sweatman v. Department of Veterans Affairs* (2001) 25 Cal.4th 62, 68.)

In reviewing the evidence provided by appellant at trial, we must view the evidence in the light most favorable to the appellant, and indulge in every legitimate

inference which may be drawn therefrom. (*Hamilton v. Gage Bowl, Inc.* (1992) 6 Cal.App.4th 1706, 1710 (*Hamilton*).)

**II. The law of negligence**

In order to prove negligence, a plaintiff must establish three elements: (1) a legal duty to use due care; (2) a breach of such legal duty; and (3) the breach as the proximate cause of the resulting injury. (*United States Liability Ins. Co. v. Haidinger-Hayes, Inc.* (1970) 1 Cal.3d 586, 594.)

Negligence may be established by circumstantial evidence, which is "nothing more than one or more inferences which may be said to arise reasonably from a series of proven facts." (*Sparks v. Allen Northridge Market* (1959) 176 Cal.App.2d 694, 699 (*Sparks*).)

The key issue in this matter is whether respondent owed a legal duty to appellant. We must determine whether the evidence offered in support of plaintiff's position that respondent owed a legal duty to appellant is sufficient to support a judgment for the plaintiff. This is a question of law. (*Hamilton*, *supra*, 6 Cal.App.4th at p. 1710.)

**III. Appellant's evidence of the existence of a legal duty was insufficient as a matter of law**

A duty to take reasonable measures to protect people on land from danger does not only arise when the defendant owns the land on which the dangerous condition exists. A defendant who lacks title to property "still may be liable for an injury caused by a dangerous condition on that property if the defendant exercises control over the property." (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1158 (*Alcaraz*).)

Appellant asserts that respondent exercised substantial control over the private property adjacent to the water meter. Respondent was the one who pulled a permit for the work being done on the home. He also drew up plans for the project, and went to the property on at least three occasions while someone from the City performed inspections. Further, appellant argues, it was one of the workers on the adjacent property who covered

the water meter with its manhole cover after plaintiff got up and removed her foot from the hole.[1]

Appellant argues that this evidence meets the standard set forth in *Alcaraz*, cited by the trial court. In that case, the plaintiff was injured when he stepped into an uncovered water meter box located in the lawn in front of the rental property of which he was a tenant. (*Alcaraz, supra*, 14 Cal.4th at p. 1152.) He sued his landlords, but the superior court granted summary judgment in favor of the landlords because the water meter box was located within a strip of land that was owned by the city. (*Ibid*.)

The Court of Appeal reversed the summary judgment, finding that there were triable issues of fact as to whether the landlords "exercised control over that land and thus had a duty to protect or warn plaintiff." (*Alcaraz, supra,* 14 Cal.4th at p. 1157.) The court explained: "'"[T]he duties owed in connection with the condition of land are not invariably placed on the person [holding title] but, rather, are owed by the person in possession of the land [citations] because [of the possessor's] supervisory control over the activities conducted upon, and the condition of, the land."' [Citations.]" (*Id.* at pp. 1157-1158.)

As the *Alcaraz* court pointed out, whether the defendant landlords exercised control over the land was a question of fact. (*Alcaraz, supra*, 14 Cal.4th at p. 1157.) Evidence was introduced that established that the defendants maintained the lawn that covered the strip of land owned by the city and that, following the plaintiff's injury, the defendants constructed a fence that enclosed the entire lawn, including the portion located on the narrow strip of land owned by the city. (*Id.* at pp. 1161-1162.) Given this evidence, the *Alcaraz* court concluded, a reasonable trier of fact might determine that the

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**1** As the general contractor for the house construction project adjacent to the public sidewalk at issue, respondent had a "'general duty imposed by law to use reasonable care to prevent damage to persons whom he may reasonably expect to be affected by his work.'" (*Chance v. Lawry's, Inc.* (1962) 58 Cal.2d 368, 378.) Thus, respondent would be liable not only for his own negligence on the construction project but also the negligence of the workers. (*Id.* at pp. 377-378.)

defendant landlords exercised control over the strip of land owned by the city. (*Id.* at p. 1162.)

The evidence produced by appellant in this matter regarding respondent's control of the public sidewalk surrounding the water meter does not equate to the evidence discussed in *Alcaraz*. Respondent is an individual who was involved in certain aspects of a construction project on the private property adjacent to the public sidewalk. Even assuming that respondent's actions as general contractor for this project were sufficient to establish respondent's control of the adjacent privately owned land, the real issue in this case is whether respondent had control of the public sidewalk where appellant fell. Respondent cannot be "'liable merely because [his] property exists next to adjoining dangerous property.'" (*Lucas v. George T. R. Murai Farms, Inc.* (1993) 15 Cal.App.4th 1578, 1590.) The defendant must exercise control over the land containing the dangerous condition. (See, e.g., *Jones v. Deeter* (1984) 152 Cal.App.3d 798, 803 ["the abutting property owner is not liable in tort to travelers injured on the sidewalk, unless the owner somehow creates the injurious sidewalk condition"].)

As set forth above, there was evidence in *Alcaraz* that the landlords in fact exercised control over the narrow strip of city land. They maintained the lawn on that strip of land, and later enclosed the land with a fence, thereby asserting further control. As the *Alcaraz* court pointed out, a reasonable trier of fact could conclude that the defendant landlords "treated the land surrounding the meter box . . . as an extension of their front lawn." (*Alcaraz, supra*, 14 Cal.4th at pp. 1161-1162, fn. omitted.)

There is no similar evidence in the matter before us. There is no evidence that respondent ever maintained the public property containing the water meter, fenced it in, or treated it as an extension of the private land at the Brannick property. There was no evidence that respondent, or any of the construction workers present at the property, did anything to indicate that they maintained, possessed or controlled the public sidewalk, or ever even touched the water meter or the surrounding city-owned property prior to the time that appellant fell.

Because there was no evidence that respondent owned, possessed, or controlled the city sidewalk where appellant fell, respondent is not liable for negligence as a matter of law.

**IV. The inferences suggested by appellant do not constitute substantial evidence of control**

Appellant argues that the elements of negligence may be established by inference. In support of this argument, appellant cites *Sparks, supra,* 176 Cal.App.2d at page 699, in which it was held:

> "Negligence may be established by circumstantial evidence, which is nothing more than one or more inferences which may be said to arise reasonably from a series of proven facts. [¶] A plaintiff relying on circumstantial evidence does not have to exclude the possibility of every other reasonable inference possibly deriving from the evidence. [Citations.] We must assume the truth of plaintiff's evidence and every inference of fact which reasonably may be drawn therefrom."

Appellant insists that the jury could have relied on certain inferences in concluding that respondent exercised control over the area around the water meter.

First, appellant points to evidence that, upon seeing appellant fall into the opening containing the water meter, the workers on the private property adjacent to the water meter began yelling, "It's the City. It's the City." Appellant argues that the jury was permitted to view this evidence as "intentional misdirection." In other words, appellant argues, the jury "was free to make a credibility determination and interpret those statements as evidence that the workers knew full well that they were responsible for the absent manhole cover and were trying to shift the blame to someone else." Appellant argues that this is a reasonable inference, therefore the JNOV motion should have been denied.

This inference is insufficient to establish respondent's control of the water meter because it is based on pure speculation. In order to constitute substantial evidence, inferences "'must be "a product of logic and reason" and "must rest on the evidence" [citation]; inferences that are the result of mere speculation or conjecture cannot support a

finding [citations].' [Citation.]" (*Kasparian v. County of Los Angeles* (1995) 38 Cal.App.4th 242, 260 (*Kasparian*); see also *Casetta v. United States Rubber Co.* (1968) 260 Cal.App.2d 792, 799 ["the evidence produced by plaintiff must support a logical inference in his favor, sufficient to raise more than a mere conjecture or surmise that a fact is as alleged"].) Appellant's suggestion that the jury inferred that the contractors trumpeted the City's liability due to their own guilty consciences is "mere guesswork," and is therefore "insufficient to support a judgment." (*People v. Massie* (2006) 142 Cal.App.4th 365, 369.)

Next, appellant points out that the workers on the adjacent property replaced the cover on the water meter box after appellant fell. Appellant argues that the jury could have made several different inferences from this fact. One possible inference is that the workers were simply good Samaritans who didn't want to see anyone else get hurt. However, another possible inference is that, when they replaced the manhole cover, the workers knew full well that they were not interfering with anyone else's work. In other words, appellant argues, the jury was free to make the inference that the workers were the ones who removed the manhole cover in the first place.

Again, we find that this proposed inference is not a product of logic or reason. (See *Kasparian*, *supra*, 38 Cal.App.4th at p. 260.) Simply because the workers on the property took measures to cover the manhole after appellant fell in does not lead to the logical conclusion that they were the ones who uncovered it. In the absence of any evidence that the construction project on the home involved plumbing, or other work involving the water system, it is unreasonable to infer that the workers removed the manhole cover or ever even touched it prior to the time that appellant fell. The jury was required to make too large of a leap to find that, because the workers covered the hole after the accident, they must have uncovered it in the first place.[2]

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[2] We also reject appellant's argument that the jury may have noted that respondent failed to call as witnesses any of the laborers present at the Brannick property on that day, who presumably had knowledge of the City's liability. It was appellant's duty to establish each element of the tort of negligence. Respondent's failure to call certain

"'[I]f the word "substantial" [is to mean] anything at all, it clearly implies that such evidence must be of ponderable legal significance. Obviously the word cannot be deemed synonymous with "any" evidence. It must be reasonable . . . , credible, and of solid value . . . .' [Citation.]" (*Kuhn v. Department of General Services* (1994) 22 Cal.App.4th 1627, 1633.) The inferences that appellant relies upon are not reasonable, nor are they "'a product of logic and reason.'" (*Ibid.*) Under the circumstances, the trial court did not err in granting respondent's JNOV motion.

**DISPOSITION**

The judgment is affirmed.

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_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
ASHMANN-GERST

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witnesses cannot relieve appellant of her obligation to establish the necessary element of duty.