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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 ONE

KAI SCHNEIDER, Plaintiff and Appellant, v. RALPHS GROCERY COMPANY, et al., Defendants and Respondents.	B282692 (Los Angeles County Super. Ct. No. BC541503)

APPEAL from judgment of the Superior Court of Los Angeles County, Michael P. Linfield, Judge. Affirmed.

Sharifi Firm and Scott M. Good for Plaintiff and Appellant Kai Schneider.

Wesierski & Zurek, Jennifer W. Naples, and Lynne Rasmussen for Defendant and Respondent Ralphs Grocery Company.

John M. Whelan for Defendant and Respondent American Guard Services, Inc.

Kai Schneider sued Ralphs Grocery Company (Ralphs) and American Guard Services, Inc. (American Guard), among others, for damages arising from an assault against him by a third party outside a Ralphs grocery store. The trial court granted defense motions for summary judgment on the ground that Schneider had failed to establish a triable issue of fact with respect to causation and that the moving parties were entitled to judgment as a matter of law. Schneider appealed. For the reasons discussed below, we affirm.

FACTUAL SUMMARY

On May 2, 2013, Kai Schneider rode his bicycle to a Ralphs grocery store near the intersection of Wilshire Boulevard and Western Avenue in Los Angeles. He arrived at the store at about 7:50 p.m. and chained his bicycle to a railing near the store's entrance. As he leaned down to pet a small dog that was leashed to the railing, a woman screamed at him: "Don't touch my girlfriend's dog." Schneider turned toward the woman and screamed, "What is your problem, [d]yke?" The woman made no gestures toward Schneider or indicate that she was about to move toward him. Schneider did not see any Ralphs employees or security guards in the area. He then went inside the store.

Schneider intended to tell a store manager that someone was outside the store screaming at him, but he could not find a manager. He shopped for about 20 minutes, and then went to a checkout stand. He told the cashier that "someone was outside screaming at [him]," and asked to see the manager. The cashier looked around and, without leaving her post, told Schneider that she did not know where the manager was. Schneider also asked if a security guard was nearby, and the cashier told him that she could not see one and that she could not leave her register. Schneider did not ask the cashier if he could speak to someone else or ask her to

have someone find a manager. He then paid for his groceries and, without speaking to any other store employees, left the store at about 8:15 p.m.

When Schneider walked outside, the woman who had screamed at him was hiding around a corner near the store's entrance. Schneider did not see her. About 10 or 15 seconds after Schneider stepped outside, when he was between six and eight feet from the entrance, the woman ran up to him from behind, kicked his ankle, and said: "That's what you get."

Schneider fell to the ground and yelled for help as the woman ran away. Schneider allegedly suffered severe injuries as a result of the attack.

PROCEDURAL HISTORY

In April 2014, Schneider filed a complaint in the superior court against Ralphs and unidentified "Doe" defendants alleging causes of action for negligence and premises liability. According to the complaint, defendants breached their duty of care to him by failing to: "provide adequate security"; "warn, protect, guard and secure the safety" of customers; have an adequate number of competent, trained security guards; reasonably and effectively use existing security devices, such as closed circuit television cameras; implement adequate security policies and procedures; "police, patrol, guard, deter, and otherwise provide adequate protection for [Ralphs's] patrons"; and to take unspecified "additional security measures." Schneider further alleged that, as a direct and proximate result of defendant's negligence, he was "criminally attacked" and suffered severe injuries.

In February 2015, Schneider substituted American Guard in place of a "Doe" defendant. Schneider also added two other defendants—HKBY LLC and 3870 Wiltern Center LLC (Wiltern)—who own or manage the property where the incident occurred.

In September 2016, Ralphs filed a motion for summary judgment on the ground that Schneider "cannot establish the element of causation" as to each cause of action.

In addition to the facts summarized above, the following facts were adduced in Schneider's opposing papers and Ralphs's reply papers.

Ralphs operates the store as a tenant under a lease. According to the lease and applicable covenants, conditions, and restrictions (CC&Rs), the area where the assault occurred is in a designated "[c]ommon [a]rea," over which Wiltern has "management, supervision and control," and the responsibility for providing security. A property manager for Wiltern testified, however, that although Wiltern's security guards would patrol the common area, she "thought" that Ralphs's security guards "had some responsibility for the area outside the common area."

Ralphs had an agreement with American Guard under which American Guard agreed to "provide such number of uniformed guards as may from time to time be required by Ralphs," and "the number of guard posts, their location, guards and the hours and nature of guard's duties may vary from time to time to meet Ralphs'[s] requirements." Under the agreement, American Guard's "sole duties are to deter losses, and its guards and security personnel shall be limited to observing and shall not be required to engage in any physical touching of any persons." Although American Guard "personnel will offer reasonable assistance to Ralphs employees," they will do so "only to prevent injury to that employee."

In a manual designed for American Guard security guards working at Ralphs, the main entrance of the store is described as "a highly visible and very public relations oriented position." The manual states that the duties of American Guard security officers include "[f]oot patrol of [the] entire site and adjoining parking area,

serving as a highly visible uniformed physical deterrent to all criminal activity and all forms of theft, such as shoplifting, vandalism." Officers shall also "[o]bserve and report all incidents and take necessary action to remedy any safety hazards, violations of store policy, criminal activity, etc."

An American Guard security guard was inside the store at the time of the verbal altercation between Schneider and the woman, and he did not see the exchange. Schneider claims he did not see any security guards inside or outside the store at any time on the day of the assault.

In October 2016, American Guard filed a motion for summary judgment on the grounds that it had no duty to control or provide security for the area where the incident occurred, and that Schneider cannot establish causation.[1] The evidence submitted in support of and in opposition to American Guard's motion is substantially similar to the evidence submitted in connection with Ralphs's motion, with additional declarations by (1) the American Guard security guard who was on duty at the time of the incident, (2) a "Safety Manager" for Ralphs, and (3) an American Guard security guard supervisor. The security guard stated that his "post orders limited [his] security duties and post boundaries to the inside of the entrance doors" of the Ralphs store, and the American Guard does "not provide security services in the common area outside of the [store]." Ralphs's Safety Manager and the American Guard supervisor stated that American Guard provides services inside the store, not outside or in the common area where the incident occurred.

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[1] The other defendants, HKBY LLC and Wiltern, also filed motions for summary judgment, which the court granted, and the court entered judgments in their favor. Schneider appealed from those judgments, but later dismissed the appeal as to those parties.

In opposing the motions, Schneider submitted a declaration from a retail industry consultant. According to the consultant, when Schneider informed the cashier of the altercation outside the store, the cashier should have called for a manager or guard via the store's public address system. The presence of a manager or guard, he concludes, would have acted as a deterrent and made an attack less likely.

Prior to hearing the motions on March 9, 2017, the court issued a tentative ruling denying Ralphs's motion and granting the motions by the other three defendants. After hearing argument, the court stated that it was adopting its tentative ruling. Later that day, the court issued a minute order stating that it had "reconsidered its ruling on the Motions for Summary Judgment" and granted Ralphs's motion, as well as the others. Each moving party was directed to prepare its "appropriate order and judgment."

Ralphs submitted a proposed judgment, which the court entered on April 26, 2017.

American Guard did not submit a proposed judgment and no judgment was entered as to it.

Schneider filed a notice of appeal on May 19, 2017.

DISCUSSION

I. Appeal as to American Guard

In his opening brief, Schneider asserts that he is appealing from the judgment entered in favor of Ralphs and "the judgment entered as to [American Guard] per the court's minute order." The referenced minute order, in which the court granted American Guard's motion for summary judgment, however, is not an appealable order (see *Kasparian v. AvalonBay Communities, Inc.* (2007) 156 Cal.App.4th 11, 14, fn. 1), and the appeal as to American Guard is therefore subject to dismissal (see *Modica v. Merin* (1991) 234 Cal.App.3d 1072, 1073-1075).

Appellate courts have discretion to construe an order granting summary judgment as incorporating a judgment and treat the appeal as taken from the judgment. (*Swain v. California Casualty Ins. Co.* (2002) 99 Cal.App.4th 1, 6; *Levy v. Skywalker Sound* (2003) 108 Cal.App.4th 753, 761-762, fn. 7.)

Here, the court's order granting American Guard's motion for summary judgment leaves no issue between Schneider and American Guard undecided, and the parties have briefed the merits of the court's ruling. The absence of a judgment appears to be due to American Guard's failure to comply with the trial court's direction to prepare the judgment, and American Guard does not challenge the appealability of the order. Dismissing the appeal as to American Guard would merely require the parties to return to the trial court to have judgment entered for American Guard, which would presumably produce another appeal resulting in unnecessary expense to the parties and a substantial delay in resolving this case. Meanwhile, the pending appeal of the judgment in Ralphs's favor, which involves essentially identical facts and overlapping legal issues must be decided.

In the interest of judicial economy and in the absence of any objection to considering the appeal, we exercise our discretion to construe the minute order granting American Guard's motion for summary judgment as the judgment with respect to American Guard, and deem Schneider's notice of appeal as encompassing that judgment. (See, e.g., *Donohue v. State of California* (1986) 178 Cal.App.3d 795, 800.)

II. The Court's Reconsideration of its Order Denying Ralphs's Motion for Summary Judgment.

After hearing argument on the motions for summary judgment on March 9, 2017, the court informed counsel that it was denying Ralphs's motion for summary judgment and granting the

motions by the other three defendants. Later that day, the court issued a minute order stating that it had, on its own motion, reconsidered its prior ruling and granted Ralphs's motion as well as the others. Schneider contends that the court had "no jurisdiction" to reconsider its ruling sua sponte. We reject this argument.

Trial courts have the " 'inherent constitutional power sua sponte to reconsider, correct and change [their] interim decisions.' " (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1107 (*Le Francois*); see *Darling, Hall & Rae v. Kritt* (1999) 75 Cal.App.4th 1148, 1156 [trial court retains the inherent authority to change its decision at any time prior to the entry of judgment].) If the rule were otherwise, a court that " 'realizes it has misunderstood or misapplied the law, [would be] prohibited from revisiting its ruling, whether it realize[d] its mistake 10 minutes or 10 days later, and no matter how obvious its error or how draconian the effects of its misstep. "A court could not operate successfully under the requirement of infallibility in its interim rulings. Miscarriage of justice results where a court is unable to correct its own perceived legal errors." ' " (*Le Francois*, *supra*, 35 Cal.4th at p. 1105; see also *Greenberg v. Superior Court* (1982) 131 Cal.App.3d 441, 445 [trial court has inherent power to "correct a ruling which it believes to have been erroneous"].)

This rule applies here. The court initially denied Ralphs's motion on the morning of March 9, 2017, and issued its minute order granting that motion later that day. Because the court's initial ruling was an interim order and judgment had not yet been entered, the court had the power to reconsider and change it.

Under *Le Francois*, *supra*, 35 Cal.4th 1094, when the court decides to reconsider an interim ruling sua sponte, it must give "the parties notice that it may do so and a reasonable opportunity to litigate the question." (*Le Francois*, *supra*, 35 Cal.4th at p. 1097.) Although the court did not do so here, the failure is harmless "if the

court's ultimate ruling on the summary [judgment] motion was substantively correct." (*Paramount Petroleum Corp. v. Superior Court* (2014) 227 Cal.App.4th 226, 238; accord *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667, 683.)[2] As discussed in the next part, we conclude that the court's ruling on Ralphs's summary judgment motion was substantively correct and, therefore, any error was harmless.

III. Ralphs's Motion for Summary Judgment

Summary judgment is proper when there are no triable issues of material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 843.) "We review the trial court's decision de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in favor of that party." (*State of California v. Allstate Ins. Co.* (2009) 45 Cal.4th 1008, 1017–1018.)

To prevail on his causes of action for negligence and premises liability, Schneider was required to prove that Ralphs owed him a legal duty, that it breached that duty, and that the breach was a proximate cause of his injuries. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 772 (*Saelzler*); *Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998.) In its motion for summary judgment, Ralphs challenged only the causation element.

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[2] In *Le Francois*, *supra*, 35 Cal.4th at p. 1097, the court declined to find the failure to hold a subsequent hearing harmless because the defendants "made no such harmless error argument" and the plaintiffs "had no chance to argue against it." (*Id.* at p. 1109, fn. 6.) Here, by contrast, Ralphs asserted that the error was harmless and Schneider argued that it was not.

To establish proximate cause, Schneider was required to prove that the defendant's negligent act or omission was a substantial factor in bringing about his injuries. (*Mitchell v. Gonzales* (1991) 54 Cal.3d 1041, 1052; *Nola M. v. University of Southern California* (1993) 16 Cal.App.4th 421, 427.) "[P]roof of causation cannot be based on mere speculation, conjecture and inferences drawn from other inferences to reach a conclusion unsupported by any real evidence, or on an expert's opinion based on inferences, speculation and conjecture." (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 488.) There must be "nonspeculative evidence [of] some actual causal link between the plaintiff's injury and the defendant's" breach of a duty. (*Saelzler*, *supra*, 25 Cal.4th at p. 774.)

Whether a defendant's breach of a duty caused the plaintiff's injuries is ordinarily a question for the trier of fact. (*Constance B. v. State of California* (1986) 178 Cal.App.3d 200, 207.) The issue presents a legal question, however, when reasonable persons cannot dispute the absence of causality (*ibid.*), or the facts regarding causation are undisputed (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1205).

Schneider asserts on appeal that the breaches of duty that caused his injuries are: (1) Ralphs failure to provide "security" for him after he notified the cashier "of a threat"; and (2) Ralphs failure to provide security guards outside or at the entrance to the store.[3] We address each in turn.

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[3] Ralphs addresses a third possible breach of duty: Its failure to escort Schneider to his bicycle. It does not appear from our reading of Schneider's opening brief, however, that Schneider is making this argument.

A.

With respect to the first alleged negligent omission, we reject Schneider's premise: that he had notified Ralphs of a "threat." Although Ralphs has, for purposes of its summary judgment motion, conceded the issues of duty and breach, it did not concede that Schneider had notified it of a threat. Ralphs, in moving for summary judgment, was required to address only the issues presented by the allegations of the complaint (see *Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1258), and Schneider did not allege that he notified Ralphs of any threat.

Nor does the evidence indicate that Schneider had been threatened or that he had notified Ralphs of a threat. According to Schneider, a woman screamed at him, "Don't touch my girlfriend's dog," but did not make any gestures or movements toward Schneider. The only person Schneider talked to about the woman was a Ralphs cashier, with whom he spoke while paying for his groceries after 20 minutes of shopping. According to Schneider, he told the cashier that there was a woman outside who screamed at him, and he asked to see a manager or a security guard. He did not say the woman had threatened him or even what the woman said when she screamed. Without more, the cashier could not reasonably have inferred a threat. The first alleged negligent omission is not, therefore, Ralphs's failure to respond to notice of a threat against Schneider; rather, it is Ralphs's failure to take further action in response to what Schneider actually told the cashier: A woman had screamed at him and he would like to see a manager or security guard.

According to Schneider, the particular action that Ralphs should have taken was to call for a manager or security guard via the store's public address system. Schneider relies on the opinion of a retail consultant, who stated that the presence of a manager or security guard accompanying Schneider as he left the store would

have made an attack less likely. Neither the consultant nor Schneider, however, point to any evidence to support the chain of events that would need to take place to connect the failure to contact a manager or security guard and the conclusion that the attack would not have occurred.

Schneider's consultant assumes that if the cashier had summoned a manager or security guard, Schneider would have requested that he be accompanied out of the store, that the manager or security guard would have done so, that the manager or security guard would have stayed close enough to Schneider and long enough to deter an attack, and that the attacker would have decided not to attack Schneider. Each assumption is speculative.

Schneider offers no evidence that, if the cashier had called for a manager or security guard, Schneider would have requested someone accompany him outside the store. Schneider might have simply desired to report the screaming incident to the manager without making any further request. Indeed, the assumption that Schneider would have asked a manager or security guard to accompany him is weakened by the fact that he left the store immediately after his conversation with the cashier without making further efforts to meet with a manager or security guard. Moreover, because Schneider had not been threatened and did not tell the cashier of a threat, a manager or security guard would have had no reason to anticipate an assault on Schneider, and it is therefore speculative to assume the manager would have volunteered to accompany him outside or escorted him to his bicycle. (See *Roe v. McDonald's Corp.* (2005) 129 Cal.App.4th 1107, 1119 [in the absence of a definite threat or some other criminal activity, restaurant "could not be expected to undertake significant efforts such as . . . providing a personal security escort for" patron].) Nor is there any basis for assuming that a manager would have asked Ralphs's security guard to take any action because American

Guard's contractual duties were limited to protecting Ralphs from loss and to preventing injury to Ralphs's employees. (See *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 244 [the hiring of security guards does not imply that the proprietor has undertaken a duty to protect invitees from the criminal acts of others].)

Even if a jury could reasonably conclude that Schneider would have asked a manager to accompany him outside the store and a manager agreed to do so, it is speculative to further assume that the manager would have either discovered the woman hiding behind a corner or escorted Schneider to his bicycle until Schneider had ridden safely away. Lastly, even if a jury could have reasonably inferred that each of these steps occurred, it would be speculative to conclude that the assailant would have thereby been deterred from an attack. As one court stated, "[n]o one really knows why people commit crime, hence no one really knows what is 'adequate' deterrence in any given situation. . . . Some persons cannot be deterred by anything short of impenetrable walls and armed guards." (*7735 Hollywood Blvd. Venture v. Superior Court* (1981) 116 Cal.App.3d 901, 905; see also *Lopez v. McDonald's Corp.* (1987) 193 Cal.App.3d 495, 516 [same].) It is thus conjectural to conclude that the assailant, who had apparently been waiting 25 minutes for Schneider to exit the store, would have simply abandoned her criminal plan merely because of the presence of a manager.

Because Schneider's conclusion that the cashier's failure to contact a manager or security guard caused his injuries is based upon a series of speculative inferences, he has failed to establish a triable issue of fact with respect to causation based on this scenario.

B.

Schneider's second theory of liability—that Ralphs should have provided security guards outside or, at least, at the entrance of the store—also fails.

Initially, we note that, as with the assertion that he had notified the Ralphs cashier of a threat, Schneider did not allege that Ralphs breached a duty of care by failing to have security guards outside the store. Although the complaint includes allegations regarding the insufficient number, lack of competency, and inadequate training of security guards, it does not allege that Ralphs was required to post security guards outside the store where the attack occurred. Ralphs, therefore, was not required to respond to that theory in its motion for summary judgment and its failure to challenge the issues of breach and duty cannot be viewed as a concession that it had such a duty.

Schneider did allege more generally that Ralphs failed to provide "adequate security" or "adequate protection for patrons of [the] supermarket." We must address, therefore, whether such general allegations encompass a duty to post security guards outside Ralphs's store.

A business owner has a duty to take reasonable precautions to protect its invitees against reasonably anticipated criminal conduct and, when such conduct is highly foreseeable, this duty may require the hiring of security guards. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 679.) Even if Ralphs owed its patrons such a duty, however, Schneider has cited no authority that would require the posting of security guards on property Ralphs does not possess, manage, or control. Indeed, courts have held that the duty to take measures to protect business invitees from the risk of a criminal assault extends to the protection of persons on property the landowner controls, and no further. (See *Isaacs v. Huntington Memorial Hospital* (1985) 38 Cal.3d 112, 134

["a defendant cannot be held liable for the defective or dangerous condition of property which it did not own, possess, or control"]; *Donnell v. California Western School of Law* (1988) 200 Cal.App.3d 715, 720 [college not liable for attack on a student on adjacent property]; *Southland Corp. v. Superior Court* (1988) 203 Cal.App.3d 656, 664 [duty "is limited to those cases where the plaintiff is injured on premises which are owned, possessed or *controlled* by the defendant"]; *Owens v. Kings Supermarket* (1988) 198 Cal.App.3d 379, 386 [no duty to person injured on adjacent property over which the defendant had no right to possess, manage, or control]; *Steinmetz v. Stockton City Chamber of Commerce* (1985) 169 Cal.App.3d 1142, 1147 [no duty to escort business invitee to car on lot not controlled by defendant].)

In its motion for summary judgment, Ralphs argued that it did not control the area where the attack occurred, and Schneider argued that there is a triable issue of fact on that point.

Ralphs pointed to undisputed evidence that it is a tenant, and that its lease and the governing CC&Rs have designated the area outside the store's entrance, where the attack occurred, as an area that Wiltern, not Ralphs, controlled.

In the effort to create a triable issue as to control of the area outside the store, Schneider points to Ralphs's agreement with American Guard and a security procedure manual defining the security guard's duties. The only language in any of these documents indicating that Ralphs could control the area outside a store is in a section of a security procedures manual titled, "Security Procedures For New & Remodel Store Construction." (Boldface omitted.) Schneider relies on the following statements in this section under the heading, "Contract Guard Primary Duties" (boldface omitted): "Strict control of all ingress and egress must be maintained at all times. One guard will be stationed at the front entrance during all hours of business that require the door to be

opened"; and "[t]he second guard will constantly patrol the inside and outside store perimeter while closely monitoring all other portals." Ralphs objected to these statements on the ground that they misstate the document because the statements expressly apply to stores that are being constructed or remodeled, which does not cover the subject store. The objection, which the court did not appear to rule upon, should have been sustained.[4] As Ralphs points out, the statements appear in a section of the manual governing sites that are under construction. In addition to the title of the section so indicating, the section begins by providing that the "procedures are intended to provide heightened security awareness while discouraging the theft of company assets inclusive of product, equipment, and construction materials at all Ralphs/Food 4 Less *new store and remodel construction sites*. These procedures are universal to all store *construction locations*." (Italics added.) Because the subject store was not under construction or being remodeled, the statements Schneider relies upon are taken out of their context and, when read in their context, are irrelevant.

Moreover, even if Ralphs and American Guard had agreed to provide security guards outside the store for the purpose of "discouraging the theft of company assets," Ralphs did not thereby assume a duty to provide security to others outside the store. (See *Delgado v. Trax Bar & Grill*, *supra*, 36 Cal.4th at p. 249.) Although a business that does hire security guards may have a duty based upon an increased risk of harm due to the presence of the guards or where a patron reasonably relied on such presence to his detriment (*id.* at p. 250), these rules do not apply here because no security

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[4] Objections made in connection with a summary judgment motion to which the trial court did not rule are preserved on appeal. (*Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 532.)

guard increased the risk that Schneider would be attacked, and Schneider did not see any security guards at Ralphs.

Schneider also refers to a Wiltern property manager's testimony that she "thought" that Ralphs's security "guard had some responsibility for the area outside the common area and [Wiltern's] security service would provide patrols, and when requested by Ralphs to assist, [Wiltern's] security guard would go up and assist." In light of the unequivocal contractual language governing the control over common areas, the individual's thoughts on this question are insufficient to create a triable issue of fact.

Schneider further relies on the property manager's testimony that Ralphs or its security guard would occasionally call Wiltern's security guards to remove transients from tables located in the common area. Such calls to Wiltern's guards, however, indicate that Ralphs considered Wiltern to be responsible for dealing with the transients; the calls do not support a conclusion that Ralphs was responsible for security in the area. Another Wiltern employee stated that he mentioned to a Ralphs manager that Ralphs should put security "out there" among the tables, but the manager apparently rejected the suggestion. Lastly, Schneider cites to evidence that Ralphs used the common area for "periodic holiday displays." This shows only that Ralphs used the common area for that purpose; such use, presumably with the owner's permission, does not establish control for purposes of imposing liability for criminal attacks against patrons that occur in the area.

In light of the evidence establishing that Ralphs does not own, possess, or control the area where Schneider was attacked, any duty it could have had to provide security guards for its patrons did not include a duty to provide guards in the area outside its store where the assault occurred, and its failure to do so is not a breach of a duty. At most, any negligent omission with respect to providing security guards occurred because Ralphs did not have a security

guard available *inside* the store. That, then, is the negligent omission to which Schneider must establish a causal link with his injuries.

Even if we assume that Ralphs was required to have not only, as it did, a security guard inside the store, but to have one posted at the entrance to the store, Schneider offers no "nonspeculative evidence" of an "actual causal link between" his injury and the absence of such a guard. (*Saelzler*, *supra*, 25 Cal.4th at p. 774.) There is no direct evidence as to whether Schneider's assailant would have gone through with the attack if a security guard was at the door. There is, however, circumstantial evidence that the assailant could have done so. She waited until Schneider was at least six feet outside the door, then appeared "out of nowhere," kicked him, and ran away. Under these circumstances, the assault "could have occurred" even if a security guard was posted at the entrance (*id.* at p. 775), and Schneider offers only the speculative opinion of his retail consultant that the attack would probably not have occurred. Although it is possible that a guard's presence might have deterred the attacker, the " 'mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, *it becomes the duty of the court to direct a verdict for the defendant.*' [Citation.]" (*Id.* at pp. 775-776; see also *Thai v. Stang* (1989) 214 Cal.App.3d 1264, 1276 [expert's opinion that the presence of uniformed security officers would have deterred attack on plaintiff in defendant's parking lot was speculative and insufficient to create a triable issue of fact].)

Schneider, we conclude, has failed to establish a triable issue of fact as to the element of causation and, because Ralphs's breaches of duty, if any, did not cause Schneider's injuries as a matter of law, the court did not err in granting Ralphs's motion for summary judgment.

IV. American Guard's Motion for Summary Judgment

American Guard moved for summary judgment on the grounds that it owed no duty to Schneider and that any breach of duty it owed to him did not cause his injuries. As noted above, the evidence offered in support of and in opposition to the motion was substantially identical to the evidence submitted in connection with Ralphs's motion, supplemented with additional evidence to support American Guard's position that it did not provide security services outside Ralphs's store.

Our analysis and conclusion regarding causation with respect to Ralphs's motion applies equally to American Guard's motion. Accordingly, the court correctly granted American Guard's motion for summary judgment.

DISPOSITION

The judgment in favor of respondents Ralphs Grocery Company and American Guard Services, Inc., are affirmed. Respondents shall recover their costs on appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.