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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 THREE

FIROUZEH GHAFFARPOUR et al., Plaintiffs and Appellants, v. COMMERCE PLAZA HOTEL, Defendant and Respondent.	B256798 (Los Angeles County Super. Ct. No. BC375937)

APPEAL from a judgment of the Superior Court of Los Angeles County, Daniel J. Buckley, Judge. Affirmed in part and reversed in part.

Janice R. Mazur, William. E. Mazur; Aroustamian & Associates and Ara Aroustamian for Plaintiffs and Appellants.

Wood, Smith, Henning & Berman, Kevin D. Smith, Stacey F. Blank, Nicholas M. Gedo and Brandon C. Murphy for Defendants and Respondents.

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INTRODUCTION

Plaintiffs Firouzeh Ghaffarpour and Nabiollah Najafi Moallem appeal the trial court's judgment granting summary judgment in favor of Defendant Commerce Plaza Hotel (the Hotel), arguing that the court erroneously determined that the Hotel did not owe a duty to Plaintiffs. Pursuant to the nondelegable duty and peculiar risk doctrines, Plaintiffs asserted that the Hotel was vicariously liable for the actions of its independent contractor security guards, who allegedly assaulted Plaintiffs while they protested on Hotel property. Plaintiffs further contended that the Hotel was vicariously liable for the security guards' intentional torts simply because the acts were intentional. Plaintiffs also pursued a direct liability theory, asserting that the Hotel breached its duty to protect against the alleged criminal assault and battery. Finally, Plaintiffs alleged that the Hotel failed to provide aid to Plaintiffs following the assault.

On the vicarious liability causes of action, we affirm because Plaintiffs failed to meet their burden on summary judgment to show that an exception to the principle of nonliability for independent contractors applied in this case. We also affirm as to the premises liability cause of action since Plaintiffs failed to show that the Hotel was directly liable for failing to protect them from criminal assault and battery. We reverse the summary adjudication of Plaintiffs' claim for failure to render aid because the Hotel owed a duty to summon aid and failed to show that it did not breach that duty.

FACTS AND PROCEDURAL BACKGROUND

The Hotel rented one of its meeting rooms to several men to be used as a polling place for a presidential election. Although the Hotel made no inquiry as to the type of president being elected, it is undisputed that the election was for the President of the Islamic Republic of Iran. At the request of the election event organizers, the Hotel contracted with defendant South-west Private Patrol (SWPP), the Hotel's regular security company, for security services during the event. Two SWPP security guards arrived at

the Hotel on the morning of the election. It is undisputed that the security guards were independent contractors of the Hotel.[1]

Plaintiffs and other protesters assembled at the Hotel on the morning of the election to protest. The protesters entered the Hotel driveway and yelled at Hotel visitors, but were eventually asked to leave the Hotel property. At some point, Plaintiffs were allegedly assaulted by the security guards with elbows and pepper spray, and were allegedly forcibly detained. Someone called an ambulance, which arrived approximately 15 minutes after the incident.

Plaintiffs brought the present lawsuit against the Hotel and SWPP. Plaintiffs alleged liability under both direct and vicarious theories. Plaintiffs asserted that the Hotel was directly liable as a landowner for their injuries due to its negligent failure to protect against criminal assault and battery, and for its negligent failure to render aid. Plaintiffs also alleged causes of action for negligence, intentional infliction of emotional distress, civil battery, false imprisonment, and civil assault under a theory of vicarious liability, as the Hotel was the hirer of the security guards.

The Hotel moved for summary judgment, or in the alternative, summary adjudication, arguing that it was not vicariously liable for the torts of its independent contractors. The Hotel also asserted that it owed no duty and breached no duty of care to Plaintiffs as to the direct liability causes of action. The trial court granted summary judgment, finding that the Hotel was not vicariously liable for the security guards' conduct and that the Hotel owed the protesters no duty. Plaintiffs now appeal.

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[1] It appears that Plaintiffs admitted the security guards were independent contractors in a discovery response. Thus, a respondeat superior theory of liability was not pursued and is not at issue on appeal.

DISCUSSION

1. Standard of Review

We review the trial court's ruling on a motion for summary judgment de novo, considering all of the evidence in the moving and opposing papers. (*Wilson v. 21st Century Ins. Co.* (2007) 42 Cal.4th 713, 717.) "We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party." (*Ibid*.) A party moving for summary judgment "bears the burden of persuasion that there is no triable issue of material fact and that he is entitled to judgment as a matter of law." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) "There is a triable issue of material fact if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Ibid.*)

"A defendant bears the burden of persuasion that 'one or more elements of' the 'cause of action' in question 'cannot be established,' or that 'there is a complete defense' thereto. [Citation.]" (*Aguilar, supra,* 25 Cal.4th at p. 850.) In general, "the party moving for summary judgment bears an initial burden of production to make a prima facie showing of the nonexistence of any triable issue of material fact; if he carries his burden of production, he causes a shift, and the opposing party is then subjected to a burden of production of his own to make a prima facie showing of the existence of a triable issue of material fact. . . . A prima facie showing is one that is sufficient to support the position of the party in question. [Citation.]" (*Id*. at pp. 850–851, fns. omitted.) "The purpose of summary judgment is to separate those cases in which there are *material* issues of fact meriting a trial from those in which there are no such issues." (*Sangster v. Paetkau* (1998) 68 Cal.App.4th 151, 162.)

Here, the court's summary judgment was largely based on Plaintiffs' inability to show that the Hotel had a duty to Plaintiffs as to each cause of action. "The existence and scope of a duty are questions of law for the court's determination, and foreseeability is a critical factor in the analysis. When foreseeability is analyzed to determine the existence or scope of a duty, foreseeability is also a question of law." (*Ericson v. Federal Express Corp.* (2008) 162 Cal.App.4th 1291, 1300; *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 674 (*Ann M.*) superseded by statute on other grounds as stated in *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767-768.)

2. Defendants Had No Duty to Protect Against the Security Guards' Criminal Conduct Under a Theory of Premises Liability Because the Conduct Was Not Foreseeable

Based on the theory of premises liability, Plaintiffs' sixth cause of action alleged that the Hotel was negligent in failing to provide reasonable protection to Plaintiffs from the security guards' alleged assault and battery. The Hotel moved for summary judgment arguing that the Hotel had no duty to protect Plaintiffs from the security guards' criminal conduct. Specifically, Plaintiffs asserted that the Hotel should have asked the men renting the meeting room why they needed security and that the Hotel should have supervised its independent contractors.

"[T]he liability of a possessor of land no longer depends upon the 'rigid common law classifications' of trespasser, licensee, and invitee." (*Alcaraz v. Vece* (1997) 14 Cal.4th 1149, 1158, fn. 2 (*Alcaraz*).) Instead, the courts in California " 'approach the issue of the duty of the occupier [of land] on the basis of ordinary principles of negligence.' " (*Ibid.*) "It is now well established that California law requires landowners to maintain land in their possession and control in a reasonably safe condition. [Citations.] In the case of a landlord, this general duty of maintenance, which is owed to tenants and patrons, has been held to include the duty to take reasonable steps to secure common areas against foreseeable criminal acts of third parties that are likely to occur in the absence of such precautionary measures." (*Ann M., supra,* 6 Cal.4th at p. 674.)

"Turning to the question of the scope of [an owner/occupier]'s duty to provide protection from foreseeable third party crime, . . . [the Supreme Court has] recognized that the scope of the duty is determined in part by balancing the foreseeability of the harm against the burden of the duty to be imposed." (*Ann M., supra,* 6 Cal.4th at p. 678; *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213 (*Castaneda*) [Foreseeability of harm[2] to the plaintiff and the extent of the burden to the defendant are the most crucial considerations in performing a duty analysis.].) The owner or occupier of property only "has a duty to protect against *types of crimes of which he has notice* and which are likely to recur if the common areas are not secure." (*O'Hara v. Western Seven Trees Corp.* (1977) 75 Cal.App.3d 798, 802-803, italics added; see also *Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 807.) The Supreme Court has explained that "the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises." (*Ann M.,* at p. 679.) As the Supreme Court explained in *Castaneda*, we look to the circumstances of the case to see if the owner or occupier was on notice of facts making the harm at issue foreseeable. (*Castaneda,* at p. 1213.)

In *Ann M., supra,* 6 Cal.4th at page 679, the court found that a shopping center had no duty to provide security guards in common areas where the shopping center did not have notice of similar criminal incidents occurring on the premises. The evidence regarding the presence of transients and the statistical crime rate of the surrounding area was not of a type sufficient to establish the requisite foreseeability for the plaintiff's rape

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[2] "Some factors that courts consider in determining the existence and scope of a duty in a particular case are: '[T]he 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.' (*Rowland v. Christian* [(1968)] 69 Cal.2d [108,] 113.)" (*Ann M., supra,* 6 Cal.4th at p. 675, fn. 5.)

by an unknown assailant on the shopping center premises. (*Id.* at p. 680.) Similarly, in *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1191 (*Sharon P.*), the court concluded that there was no duty to install lighting and cameras without notice of criminal activity. The appellate court stated that "the prior robberies, which all specifically targeted a bank elsewhere on the premises and did not involve violent attacks against anyone, were not sufficiently similar to the sexual assault inflicted upon plaintiff to establish a high degree of foreseeability that would justify the imposition of such an obligation." (*Ibid.*)

Where the burden of preventing harm in the future is great, a high degree of foreseeability is necessary. Conversely, where were the harm can be easily be prevented, a lesser degree of foreseeability is required. (*Sharon P., supra,* 21 Cal.4th at pp. 1190-1191, disapproved on other grounds in *Aguilar, supra,* 25 Cal.4th at p. 853, fn. 19; *Ann M., supra,* 6 Cal.4th at pp. 678-679.) In sum, "duty in such circumstances is determined by a balancing of 'foreseeability' of the criminal acts against the 'burdensomeness, vagueness, and efficacy' of the proposed security measures." (*Ann M.,* at p. 679.)

In this case, the evidence produced at summary judgment showed that the Hotel had no notice that a large contingent of aggressive protesters would arrive on the premises and attempt to block ingress to the Hotel. While the event organizers appear to have anticipated some trouble based on their request for security, there is no evidence upon which to impute that knowledge to the Hotel. Nor is there an affirmative duty on the part of the Hotel to inquire further as to the need for security guards at a presidential election. As the presidential election could have been held for any number of entities and as the security guards could have been requested for various reasons, the record simply does not support imposing a duty to inquire on the Hotel.

Furthermore, a duty cannot be imposed on the Hotel to take steps to prevent intentional or negligent acts of the independent contractor security company through supervision. As explained above, the security guards' wrongful acts could not have been reasonably anticipated by the Hotel. Without foreseeability, the hotel lacks a duty to engage in some additional supervisory measures to secure its premises from the security guards' unexpected alleged criminal conduct. [3]

In light of the dearth of evidence showing foreseeability of harm, we conclude that Plaintiffs failed to meet their burden in showing that the Hotel owed them a duty.

3. The Hotel Had a Duty to Summon Aid and a Triable Issue of Material Fact Exists as to Whether the Hotel Breached That Duty

Plaintiffs assert that the trial court erroneously granted summary judgment as to their seventh cause of action for negligent failure to render aid to Plaintiffs. The Hotel sought summary adjudication of this cause of action on the basis that the Hotel had no affirmative duty to summon aid and breached no duty owed to the Plaintiffs. We address duty and breach in turn.

a. The Hotel Had a Duty to Summon Aid

"As a rule, one has no duty to come to the aid of another. A person who has not created a peril is not liable in tort merely for failure to take affirmative action to assist or protect another unless there is some relationship between them which gives rise to a duty

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[3] We note that during oral argument before this court, Plaintiffs asserted the Hotel engaged in negligent hiring and that the Hotel's duty to make the premises safe arose during the event when the Hotel became aware of the chaotic situation involving the protesters. Yet, in their complaint, in the summary judgment proceedings, and in their appellate briefs, Plaintiffs failed to make any arguments that the Hotel was negligent in hiring these particular security guards, that these security guards had a history of tortious or criminal conduct that would make their wrongful conduct foreseeable, or that the duty to make the premises safe evolved during the event. Thus, despite Plaintiffs' statements at oral argument, we do not address such issues as they were not preserved. (*Christina C. v. County of Orange* (2013) 220 Cal.App.4th 1371, 1383 [A party may not change its position and adopt a new and different theory of the case on appeal because to permit the party to do so would be unfair to the trial court and to the opposing party].)

to act." (*Williams v. State of California* (1983) 34 Cal.3d 18, 23.) Here, Plaintiffs assert that as the landowner, the Hotel had a duty to summon aid for Plaintiffs. We conclude that as a business entity, the Hotel had a duty to call for medical assistance when it learned of injuries to individuals on its property who were there for an event hosted by the Hotel.

"Because of the so-called 'special relationship' between a business entity and its patrons, past California cases have recognized that a business may have a duty, under the common law, to take reasonable action to protect or aid patrons who sustain an injury or suffer an illness while on the business's premises, including 'undertak[ing] relatively simple measures such as providing "assistance [to] their customers who become ill or need medical attention . . . ." ' " (*Verdugo v. Target Corp.* (2014) 59 Cal.4th 312, 355.) This "legal duty to the patron arises from the relationship between the parties and exists even though a business has not itself caused the injury or illness in question." (*Id*. at p. 337.) Here, the protesters were drawn to the Hotel as a result of a controversial election hosted by the Hotel. The assistance at issue was merely the Hotel calling for medical aid following the physical altercation with the security guards. This relatively simple measure of assistance imposes a very minor burden on the Hotel.[4] We therefore conclude that the Hotel had a duty to summon aid as a matter of law.

b. Triable Issues of Material Fact Exist as to Breach

Plaintiffs asserted that the Hotel breached this duty by failing to summon medical assistance despite the Hotel's knowledge of the physical altercation between the security guards and the protesters. In moving for summary judgment, Defendants presented no evidence showing that the Hotel summoned medical aid after learning of the Plaintiffs' injuries. Thus, the Hotel also failed to shift the burden as to the element of breach.

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[4] We note that the Hotel did not assert that it was unaware of Plaintiffs' injuries or of the confrontation between Plaintiffs and the security guards. Assuming the need for medical aid was communicated to the Hotel, a duty exists.

In sum, we conclude that the Hotel failed to meet its burden in moving for summary judgment on this cause of action because the Hotel had a duty to summon aid as a matter of law and triable issues of material fact exist regarding whether the Hotel breached that duty. We therefore reverse summary adjudication of the seventh cause of action.

4. Plaintiffs Failed to Show That the Hotel Was Vicariously Liable for the Torts of the Independent Contractors

In their first through fifth causes of action for negligence, intentional infliction of emotional distress, civil battery, false imprisonment, and civil assault, Plaintiffs assert that the Hotel was vicariously liable as an employer for the alleged actions of the security guards. It is undisputed that the security guards were independent contractors.

"At common law, a person who hired an independent contractor generally was not liable to third parties for injuries caused by the contractor's negligence in performing the work. [Citations.] Central to this rule of nonliability was the recognition that a person who hired an independent contractor had ' "no right of control as to the mode of doing the work contracted for." ' [Citations.] The reasoning was that the work performed was the enterprise of the contractor, who, as a matter of business convenience, would be better able than the person employing the contractor to absorb accident losses incurred in the course of the contracted work. This could be done, for instance, by indirectly including the cost of safety precautions and insurance coverage in the contract price. [Citations.] [¶] Over time, the courts have, for policy reasons, created so many exceptions to this general rule of nonliability that ' " 'the rule is now primarily important as a preamble to the catalog of its exceptions.' " ' " (*Privette v. Superior Court* (1993) 5 Cal.4th 689, 693 (*Privette*).)

Plaintiffs assert that three such exceptions, the nondelegable duty doctrine, peculiar risk doctrine, and the intentional tort exception, are applicable to this case. In analyzing the applicability of each exception below, we conclude that Plaintiffs failed to meet their burden in opposing summary judgment by not producing evidence to prove that one of these exceptions applied to the rule of nonliability.

a. Nondelegable Duty

Plaintiffs assert that the Hotel is liable for the actions of the independent contractor security guards pursuant to the nondelegable duty doctrine. "The nondelegable duties doctrine prevents a party that owes a duty to others from evading responsibility by claiming to have delegated that duty to an independent contractor hired to do the necessary work. The doctrine applies when the duty preexists and does not arise from the contract with the independent contractor." (*SeaBright Ins. Co. v. US* Airways, Inc. (2011) 52 Cal.4th 590, 600-601.)

Plaintiff argues that the Hotel has a nondelegable duty to maintain the property in a safe condition. In general, it is well settled that the possessor of the land has a nondelegable duty to put and maintain the land in a reasonably safe condition, and that " ' "the possessor is answerable for harm caused by the negligent failure of his [independent] contractor to put or maintain the buildings and structures in reasonably safe condition." ' " (*Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 726 (*Srithong*).) Furthermore, a commercial landowner has a duty to secure areas against third party criminal activity only when such activity is foreseeable. (*Ann M., supra,* 6 Cal.4th at p. 679.)

The Hotel's nondelegable duty under these circumstances was to maintain the premises in a reasonably safe condition, and more pertinently, to secure the property against third party criminal activity. (*Srithong, supra,* 23 Cal.App.4th at p. 726; *Ann M., supra,* 6 Cal.4th at p. 679.) The Hotel worked to fulfill this duty by hiring the security guards. As explained above, there is no evidence indicating that the wrongful acts of the security guards were foreseeable. A duty cannot be imposed on the Hotel to take steps to prevent the criminal acts of the security company where such acts cannot be reasonably anticipated.

b. Peculiar Risk Doctrine

Plaintiffs also argue that the Hotel is vicariously liable for the security guards' actions pursuant to the peculiar risk doctrine. The doctrine of peculiar risk "pertains to contracted work that poses some inherent risk of injury to others." (*Privette, supra,* 5 Cal.4th at p. 693.) At issue is whether the contracted work "involves a risk that is 'peculiar to the work to be done,' arising either from the nature or the location of the work and ' "against which a reasonable person would recognize the necessity of taking special precautions." ' [Citations.] The term 'peculiar risk' means neither a risk that is abnormal to the type of work done, nor a risk that is abnormally great; it simply means ' "a special, recognizable danger arising out of the work itself." ' " (*Id.* at p. 695.) "Under the peculiar risk doctrine, a person who hires an independent contractor to perform work that is inherently dangerous can be held liable for tort damages when the contractor's negligent performance of the work causes injuries to others." (*Id.* at p. 691.) "The analysis of the applicability of the peculiar risk doctrine to a particular fact situation can be broken down into two elements: (1) whether the work is likely to create a peculiar risk of harm unless special precautions are taken; and (2) whether the employer should have recognized that the work was likely to create such a risk." (*Jimenez v. Pacific Western Construction Co.* (1986) 185 Cal.App.3d 102, 110.)

Plaintiffs assert that there was a peculiar risk inherent in the security guards' work due to the fact that the guards were armed. Nonetheless, Plaintiffs failed to identify how special precautions would prevent this peculiar risk of harm associated with security work. Identification of the special precaution is essential to showing that the Hotel had a duty to act and failed to satisfy that duty. (See *Addison v. Susanville Lumber, Inc.* (1975) 47 Cal.App.3d 394, 400.) Plaintiffs failed to provide any evidence, like expert testimony or declarations, indicating that the Hotel had a duty to take particular special precautions to prevent this peculiar risk of harm.

c. Intentional Tort Exception to Nonliability

Lastly, Plaintiffs assert that the Hotel is vicariously liable for the security guards' intentionally tortious conduct pursuant to *Noble v. Sears, Roebuck & Co.* (1973) 33 Cal.App.3d 654, 657-658 (*Noble*). We note that a number of jurisdictions have imposed liability on hirers for their independent contractor's intentional torts based on various theories. (Annot., Liability for One Contracting for Private Police or Security Service for Acts of Personnel Supplied (1971) 38 A.L.R.3d 1332, § 2.) Nonetheless, we do not find those theories or the principle set forth in *Noble* applicable to the facts before us.

The plaintiff in *Noble* was injured while shopping in a Sears store. A private investigator hired by Sears to help defend the personal injury action entered the plaintiff's hospital room and deceived her into providing the address of a key witness. (*Noble, supra,* 33 Cal.App.3d at p. 657.) The appellate court held that an unreasonably intrusive investigation by the independent contractor investigator could give rise to a cause of action for invasion of privacy against Sears. (*Id.* at pp. 659–660.)

Notably, *Noble* provides no sound rationale for holding the hirer liable for the private detective agency's invasion of privacy. The *Noble* court bases its duty analysis on older case law, which failed to distinguish whether the tortious actor was an employee, agent, or independent contractor. (*Noble, supra,* 33 Cal.App.3d. at p. 662 citing *Weir v. Continental Oil Co.* (1935) 5 Cal.App.2d 714 [The court concluded that a company was liable for the unlawful imprisonment committed by employees of a private detective agency that was hired by the company, but failed to discuss whether the detective agency employees were independent contractors]; *Alterauge v. Los Angeles Turf Club* (1950) 97 Cal.App.2d 735 [The court found the turf club liable for the battery committed by the private security company it hired, without analyzing whether the guard acted as an agent or as an independent contractor].) The single case *Noble* relied on that even mentioned independent contractors was *Draper v. Hellman Com. T. & S. Bank* (1928) 203 Cal. 26, 39 (*Draper*). Yet, *Draper* does not appear to create an exception to nonliability premised on intentional torts. There, the defendant bank instructed a private detective

agency to communicate libelous information about a former employee to his new employer. The court concluded that the defendant bank could not escape liability for the libel committed by its private detective agency by asserting that the detectives were independent contractors. (*Ibid.*) Unlike the case before us, the intentionally tortious conduct in *Draper* was directed by the hirer.

Given that the *Noble* decision fails to provide a sound rationale for the imposition of liability on a premises owner for the intentional misconduct of its independent contractor security guard, more recent cases cited by Plaintiffs that rely on *Noble* are of equally questionable weight. (See *Stephen Slesinger, Inc. v. Walt Disney Co.* (2007) 155 Cal.App.4th 736, 740 (*Slesinger*) and *Johnson v. Ralphs Grocery Co.* (2012) 204 Cal.App.4th 1097, 1107 (*Johnson*).)

In dicta, the Court of Appeal in *Slesinger, supra,* 155 Cal.App.4th 736, 769, noted that "a litigant is vicariously liable for its investigator's intentional misconduct committed within the course and scope of employment." In so concluding, the court relied on the traditional notion of respondeat superior and its mandate that an "employer" cannot reap the benefits of its "employee's misconduct simply by claiming" that such conduct was unauthorized. (*Ibid.*) Likening the private detective, who engaged in a multi-year scheme to systematically take confidential corporate documents from the defendant, to an employee of the plaintiff, the Court of Appeal found the plaintiff-hirer liable for the detective's misconduct. In applying the principles of respondeat superior, the *Slesinger* Court concluded: "In short, [the private detective]'s deliberate misconduct is also the deliberate misconduct of [the plaintiff]." (*Ibid.*) As a result of the plaintiff's misconduct, the trial court dismissed the plaintiff's case against the defendant, and the Court of Appeal affirmed the terminating sanction.

The facts in the present case are wholly distinguishable from those in *Slesinger.* Here, it is undisputed that the security guards are independent contractors and thus the principles of respondeat superior are inapplicable. Unlike the hirer in *Slesinger,* the Hotel lacked control over how the guards secured the property, and the Hotel was unaware and could not anticipate the guard's sudden alleged battery. Moreover, the

Hotel did not benefit from the guard's misconduct, whereas the plaintiff-hirer in *Slesinger* benefitted from torts of its private detective who trespassed and stole documents from the defendant. In contrast to *Slesinger*, it does not offend fair play to allow the independent contractor rule to immunize the Hotel from liability in this case as the Hotel did not benefit from the security guard's unanticipated misconduct.

Johnson is similarly distinguishable from the case at bar. There, the Court of Appeal held that vicarious liability could not be imposed for purportedly negligent conduct by independent contractor security guards. (*Johnson, supra,* 204 Cal.App.4th at p. 1107.) As for intentional torts, the *Johnson* Court noted only that *Noble*'s imposition of liability on hirers, if still good law, was limited to intentional torts and distinguished it. (*Ibid.*) For the reasons discussed above, we believe that *Noble* is properly limited to those narrow facts in which the independent contractor is controlled by and fairly characterized as the agent of the hirer. There are no facts in the instant record to support such a characterization here.

Based on the foregoing, we conclude that an intentional tort exception to nonliability is not applicable to this set of facts. We therefore affirm summary adjudication of Plaintiffs' causes of action for negligence, intentional infliction of emotional distress, civil battery, false imprisonment, and battery.

DISPOSITION

The judgment is affirmed in part and reversed in part. We affirm summary adjudication as to the first through sixth causes of action. We reverse summary adjudication of the seventh cause of action alleging that the Hotel breached its duty to summon medical aid. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JONES, J. *

I concur:

EDMON, P.J.

LAVIN, J.

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* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.