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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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

ANTOINETTE RODRIGUEZ et al., Plaintiffs and Appellants, v. HAMILTON PROTOTYPES, INC., Defendant and Respondent.	B278719 (Los Angeles County Super. Ct. No. BC569295)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stuart M. Rice, Judge. Affirmed.

Taylor & Ring, John C. Taylor and Natalie Weatherford for Plaintiffs and Appellants.

Kronenberg Law, William S. Kronenberg and Stacey D. Chau for Defendant and Respondent.

In April 2014, Raul Rodriguez (Rodriguez), while helping his friend, Raymond Cazares (Cazares) repair a rooftop air conditioning unit, lost his balance and tumbled off a wooden pallet attached to a forklift, and fell to his death. Rodriguez's wife and sons—Antoinette Rodriguez, Julian Rodriguez, Richard Gastelum, and Joseph Gastelum (Plaintiffs)—initiated a wrongful death action against a number of defendants, including Cazares, who was operating the forklift at the time of Rodriguez's fall, and Hamilton Prototypes, Inc. (Hamilton), Cazares's landlord. Against Hamilton, Plaintiffs asserted two causes of action: negligence and premises liability. The trial court granted Hamilton summary judgment, finding, inter alia, that Hamilton did not owe a duty to Rodriguez.

On appeal, Plaintiffs argue that under *Rowland v. Christian* (1968) 69 Cal.2d 108 (*Rowland*), Hamilton, as Cazares's landlord, owed a duty to Rodriguez, which Hamilton breached. We disagree and, accordingly, affirm.

BACKGROUND

I. The leases

A. HAMILTON'S LEASE

In 1999, Hamilton, a California corporation that renders prototypes, computer-assisted designs, and molds, leased commercial space in Inglewood, California.[1] The lease (signed by

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[1] Hamilton's lease, which had an initial term of one year, was extended a number of times through the end of 2011. Although, there is nothing in the record before us indicating that the lease was extended through the time of Rodriguez's death, it is not disputed that Hamilton's owner continued to occupy the property up to and beyond April 2014; in fact, the record indicates that Hamilton's owner began living at the property in

Hamilton's owner and president, Scott Hamilton) obligated Hamilton, among other things, to keep "the Premises and every part thereof in good order, condition and repair . . . including . . . air conditioning." The air conditioner for Hamilton's property stopped working in 2010.

B. CAZARES'S SUBLEASE

At some point in 2013,[2] Hamilton subleased part of its space to Cazares. Under the terms of the sublease, Hamilton did

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2010 and was still living there at the time of his deposition in 2016. Under California law, if, after a lease expires, a landlord consents to the tenant's continued possession of the property, the relationship between the two becomes a tenancy at will, and once the landlord accepts the payment of rent, the relationship presumptively becomes a periodic tenancy and the parties are presumed to have renewed on the same rental terms. (Civ. Code, § 1945; *Aviel v. Ng* (2008) 161 Cal.App.4th 809, 820; *Miller v. Stults* (1956) 143 Cal.App.2d 592, 598–599.)

[2] The parties do not agree on exactly when the sublease began. According to Hamilton, based on Scott Hamilton's declaration and the terms of the written lease, the sublease began on January 1, 2013. Plaintiffs took the position that the sublease began nearly a year later "at around the end of 2013." Plaintiffs' position is based on Cazares's deposition testimony. At his deposition Cazares testified that he only leased space from Hamilton for a short period of time, approximately five months and that he moved out shortly after Rodriguez's death. However, Cazares also testified that he had entered into a written sublease with Hamilton, but he could not remember when in 2013 he first began subleasing a portion of Hamilton's space.

Although the parties do not agree on when the sublease began, they did not formally dispute each other's position during the summary judgment briefing process. Moreover, Plaintiffs not only failed object to the admission of the copy of the sublease

not covenant to make any repairs to the property. Instead, the sublease provided that it was subject to the terms of Hamilton's lease and that Cazares would "assume *all* of the obligations and responsibilities of [Hamilton] under the original lease for the duration of the sublease agreement." (Italics added.) Hamilton attached a copy of its lease to the sublease. Cazares used the subleased space as a place to live, even though it was not designed as a living space (e.g., it had no kitchen sink or toilet).

II. The accident

A. CAZARES'S INSTALLATION OF AN AIR CONDITIONER

At some point after entering into the sublease, Rodriguez visited Cazares at the property; noting the high temperature inside Cazares's portion of the property, Rodriguez suggested that Cazares install an air conditioner. Subsequently, Rodriguez and Cazares installed an air conditioner unit on the roof of the property. The air conditioning unit serviced only the space subleased by Cazares.

Before installing the air conditioner, Cazares had not discussed with Hamilton which party was responsible for maintaining air conditioning for the subleased space. At no point did Hamilton ever ask Cazares to install an air conditioner on the roof of the property. And, for his part, Cazares never informed Hamilton that he was going to install an air conditioner on the roof of the property. Prior to Rodriguez's death, Hamilton did not

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submitted by Hamilton in support of its motion, but they submitted and relied upon an identical copy of the sublease in support of their opposition. Since the inception of the sublease is not critical to our decision, we do not resolve the discrepancy between the parties' positions.

know that Cazares had installed an air conditioner on the roof of the property.

B. CAZARES'S ATTEMPTED REPAIR OF THE AIR CONDITIONER

For a period,[3] the air conditioner performed properly, but then it "started blowing hot air." Rodriguez suggested that the air conditioner might need to be recharged with freon and offered to go up on the roof and recharge it. Cazares accepted Rodriguez's offer.

On April 7, 2014, Rodriguez suggested that Cazares use a forklift to lift to the roof all of the following: Rodriguez and his tools; the tanks of freon; and another friend who had helped with the unit's installation and was present to help with its repair. Cazares walked to an adjacent business, LAX Hydro, and "borrowed" one of that business's forklifts. Cazares was friends with the owner of LAX Hydro and had previously done odd jobs for that business, some of which had involved Cazares operating a forklift. However, Cazares was not a LAX Hydro employee and LAX Hydro had never trained Cazares in "proper forklift use"; moreover, at the time of the accident, Cazares was not certified to operate a forklift.

Using a forklift with a pallet but no safety cage or safety tether, Cazares lifted not only the repair equipment but also Rodriguez and the third individual to the roof of the property. As the pallet rose to the roof, the men on the pallet told Cazares to stop lifting them due to the presence of a camera affixed to the face of the building. To avoid hitting the camera, the men

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[3] Cazares's testimony on this issue varied widely, stating the air conditioner either worked for a "few days" or a "few weeks."

directed Cazares to re-position the forklift. As Cazares began to back the forklift into a different position with the pallet still raised, Rodriguez "stumbled twice" and then "stepped back" off the pallet and fell approximately 20 feet to the ground. Rodriguez suffered head trauma from the fall. When paramedics arrived, they found Rodriguez unresponsive. Emergency room personnel attempted to revive Rodriguez, but were unsuccessful.

Hamilton never asked Cazares to repair the roof-top air conditioner and never knew that Cazares was attempting to repair that equipment. In addition, Hamilton had no knowledge before Rodriguez's death that Cazares had used or was planning to use a forklift on the property.

III. The proceedings below

On January 15, 2015, Plaintiffs filed a wrongful death complaint against Hamilton and others. Against Hamilton, Plaintiffs asserted two causes of action: negligence and premises liability.

On June 20, 2016, Hamilton move for summary judgment on both causes of action because, inter alia, it did not owe a duty to Rodriguez. Plaintiffs opposed the motion.

On September 1, 2016, the trial court held a hearing on Hamilton's motion. At the start of the hearing the trial court noted that it had issued a tentative ruling in favor of Hamilton, and explained the reasoning underlying its tentative as follows: "This is such a strange factual scenario. It's not foreseeable. . . . [¶] Even if you accept Plaintiffs' argument that [Hamilton] rented this property that was too hot and didn't provide an air conditioner, it's such a leap to go from there to [Hamilton] hav[ing] a duty." During the course of the hearing, the trial court again returned to the attenuated nature of

Plaintiffs' duty analysis: "We don't have a scenario whereby a tenant dies of exposure to heat in the unit. We have another whole level, we have the tenant on his own putting an air conditioner on the roof and then bringing another person in that the landlord has never been exposed to, to repair it in a manner that was very dangerous and an ultimate outcome occurred as a result of that danger."

After hearing oral argument from the parties, the trial court adopted its tentative ruling. The trial court entered judgment in favor Hamilton on October 21, 2016, and Plaintiffs timely appealed.

DISCUSSION

I. Standard of review

We review an order granting summary judgment de novo, "considering all the evidence set forth in the moving and opposition papers except that to which objections have been made and sustained." (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334.)

A defendant moving for summary judgment must show "that one or more elements of the cause of action . . . cannot be established, or that there is a complete defense to the cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).) "In performing our de novo review, we must view the evidence in a light favorable to plaintiff as the losing party [citation], liberally construing [his or] her evidentiary submission while strictly scrutinizing defendants' own showing, and resolving any evidentiary doubts or ambiguities in plaintiff's favor." (*Saelzler v. Advanced Group* 400 (2001) 25 Cal.4th 763, 768.) We accept as true both the facts shown by the losing party's evidence and

reasonable inferences from that evidence. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 856.)

Summary judgment is appropriate only when "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A triable issue of material fact exists if the evidence and inferences therefrom would allow a reasonable juror to find the underlying fact in favor of the party opposing summary judgment. (*Aguilar v. Atlantic Richfield Co.*, *supra*, 25 Cal.4th at pp. 850, 856–857.)

II. Guiding principles regarding the duty of care

"An action in negligence requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff." (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673 (*Ann M.*).)

Premises liability is "a form of negligence." (*Brooks v. Eugene Burger Management Corp.* (1989) 215 Cal.App.3d 1611, 1619.) "The owner of premises is under a duty to exercise ordinary care in the management of such premises in order to avoid exposing persons to an unreasonable risk of harm. A failure to fulfill this duty is negligence." (*Ibid.*) The existence and scope of a defendant's duty are questions of law for a court to decide. (*Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 237.)

A. THE DUTY OF CARE GENERALLY

"The determination of duty is primarily a question of law. [Citation.] It is the court's 'expression of the sum total of those considerations of policy which lead the law to say that the particular plaintiff is entitled to protection.' [Citation.] . . . While the question whether one owes a duty to another must be decided

on a case-by-case basis, every case is governed by the rule of general application that all persons are required to use ordinary care to prevent others from being injured as the result of their conduct." (*Weirum v. RKO General, Inc.* (1975) 15 Cal.3d 40, 46, fn. omitted; *Cabral v. Ralphs Grocery Co.* (2011) 51 Cal.4th 764, 770 (*Cabral*) [reaffirming duty is a legal question].)

The Civil Code codifies the general duty of care. "Everyone is responsible, not only for the result of his or her willful acts, but also 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, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself." (Civ. Code, § 1714, subd. (a).) "Civil Code section 1714, subdivision (a) 'establishes the general duty of each person to exercise, in his or her activities, reasonable care for the safety of others.' [Citation.] ' "Courts . . . invoke[ ] the concept of duty to limit generally 'the otherwise potentially infinite liability which would follow from every negligent act.' " ' " (*Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077, 1083 (*Vasilenko*).) Our Supreme Court has said that "in the absence of a statutory provision establishing an exception to the general rule of Civil Code section 1714, courts should create one only where 'clearly supported by public policy.'" (*Cabral*, *supra*, 51 Cal.4th at p. 771.)

In determining whether policy considerations weigh in favor of such an exception, California courts balance the following factors: "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" (the *Rowland* factors). (*Rowland*, *supra,* 69 Cal.2d at pp. 112–113.)

An important feature of the duty analysis is that the *Rowland* factors are "evaluated at a relatively broad level of factual generality. Thus, as to foreseeability, [our high court has] explained that the court's task in determining duty 'is not to decide whether a *particular* plaintiff's injury was reasonably foreseeable in light of a *particular* defendant's conduct, but rather to evaluate more generally whether the category of negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that liability may appropriately be imposed.' " (*Cabral*, *supra*, 51 Cal.4th at p. 772; see *Vasilenko*, *supra*, 3 Cal.5th at p. 1084 ["Analysis of duty occurs at a higher level of generality" than other elements].)

"The *Rowland* factors fall into two categories. Three factors—foreseeability, certainty, and the connection between the plaintiff and the defendant—address the foreseeability of the relevan[t] injury, while the other four—moral blame, preventing future harm, burden, and availability of insurance—take into account public policy concerns that might support excluding certain kinds of plaintiffs or injuries from relief." (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1145.) Duty, in short, "is an allocation of risk determined by balancing the foreseeability of harm, in light of all the circumstances, against the burden to be imposed." (*White v. Southern Cal. Edison Co.* (1994) 25 Cal.App.4th 442, 447.)

B. A LANDLORD'S DUTY OF CARE TO THIRD PARTIES

It is now well established that California law requires landowners to maintain land in their possession and control in a reasonably safe condition. (See Civ. Code, § 1714; *Rowland*, *supra*, 69 Cal.2d 108; *Ann M.*, *supra*, 6 Cal.4th at p. 674.)

California courts, however, recognize that a landlord has an attenuated duty of care to the guest of a tenant. "[W]here a landlord has relinquished control of property to a tenant, a 'bright line' rule has developed to moderate the landlord's duty of care owed to a third party injured on the property as compared with the tenant who enjoys possession and control. ' "Because a landlord has relinquished possessory interest in the land, his or her duty of care to third parties injured on the land is attenuated as compared with the tenant who enjoys possession and control. Thus, before liability may be thrust on a landlord for a third party's injury due to a dangerous condition on the land, the plaintiff must show that the landlord had *actual knowledge* of the dangerous condition in question, plus the right and ability to cure the condition." [¶] Limiting a landlord's obligation releases it from needing to engage in potentially intrusive oversight of the property, thus permitting the tenant to enjoy its tenancy unmolested.' " (*Salinas v. Martin* (2008) 166 Cal.App.4th 404, 412, italics added.) The law has developed exceptions to this rule, "such as where the landlord volunteers to repair a defective condition, where the landlord fails to disclose defects of which he or she has actual knowledge but are unknown and not apparent to the tenant." (*Garcia v. Holt* (2015) 242 Cal.App.4th 600, 605.)

III. Hamilton did not owe a duty to Rodriguez

A. THE FORESEEABILITY OF RODRIGUEZ'S INJURY

As noted above, the first group of *Rowland* factors assess the foreseeability of the harm. (*Rowland*, *supra*, 69 Cal.2d at p. 113.) Here, only one of the foreseeability factors supports a finding of duty—certainty of injury. The other two factors—general foreseeability and "the closeness of the connection between the defendant's conduct and the injury suffered" (*Id.* at p. 113)—support a finding of no duty.

1. General foreseeability

In order for general foreseeability to obtain, the category of negligent conduct at issue must be " 'sufficiently likely to result in the kind of harm experienced.' " (*Cabral*, *supra*, 51 Cal.4th at p. 772.) Here, the allegedly negligent conduct by Hamilton was its alleged failure to lease an air-conditioned space to Cazares. According to Plaintiffs, Cazares's living space was "unbearably hot." However, even when viewed at a relatively broad level of factual generality, there is a gaping factual disconnect between Hamilton's alleged misconduct and Rodriguez's fatal injury.

While it may be generally or reasonably foreseeable that a nonair-conditioned space would prompt a tenant to engage in some form of self-help to cool the space, it is not generally or reasonably foreseeable that such self-help would involve the use of a forklift, let alone the use of a forklift to vertically *lift* men and material to a rooftop (as opposed to moving material horizontally along the ground). In other words, the category of negligent conduct at issue (an alleged failure to keep the air conditioner for a leased space operational) is not sufficiently likely to result in the kind of harm experienced (a fatal fall from a

raised forklift) such " 'that liability may appropriately be imposed.' " (*Cabral*, *supra*, 51 Cal.4th at p. 772.)

Plaintiffs attempt to bridge this disconnect by arguing that Rodriguez's injury was generally foreseeable because the "only" way to obtain air conditioning for Cazares's space was to "utilize a roof-installed air conditioning unit which required external means (i.e., a forklift) to get the air conditioning unit and installation/repair equipment to the roof." This argument is undermined by several evidentiary problems. First, there is no expert or percipient witness testimony that the "only" way to either cool Cazares's space or to get the repair materials to the roof was via a forklift. Second, and perhaps more critically, even if using a forklift were the only way to get the repair materials to the roof, there is no evidence that a forklift was a foreseeable means by which Rodriguez would access the roof; moreover, Plaintiffs did not show why it was foreseeable that Rodriguez would ride the forklift with the repair materials rather than simply off-load them from the pallet while standing on the roof.

2. Connection between defendant's conduct and injury

The closeness of the connection factor "accounts for third party or other intervening conduct. [Citation.] Where the third party's intervening conduct is foreseeable or derivative of the defendant's, then that conduct does not ' "diminish the closeness of the connection between defendant['s] conduct and plaintiff's injury." ' " (*Vasilenko*, *supra*, 3 Cal.5th at p. 1086.) But "when an injury is the product of the intervening act of a third person, *the test is whether the particular manner in which the third person acted is one of the hazards that makes an actor negligent*."

(*Wawanesa Mutual Ins. Co. v. Matlock* (1997) 60 Cal.App.4th 583, 588, italics added.)

Here, Cazares's particular conduct severed any cause and effect relationship between Hamilton's alleged failure with regard to air conditioning the subleased space and Rodriguez's fatal fall. First, Hamilton had no notice of the air conditioning problem or Cazares's proposed solution. Cazares never discussed the lack of air conditioning or the effects it was having on either the usability or habitability of the space, and never discussed installing a rooftop air conditioner with Hamilton. Cazares failed to tell Hamilton of the problems with heat in his space, even though Scott Hamilton told Cazares to talk with him if he had any problems. (Cf. *Evans v. Thomason* (1977) 72 Cal.App.3d 978, 984–985 [holding landlords had duty due to actual notice of defective kitchen outlet].) Second, Hamilton had no notice that there was a problem with the air conditioner installed by Cazares or of the proposed repair. Third, Hamilton had no notice of how Cazares planned to effect the repair. Finally, in carrying out the repair, Cazares made a number of questionable decisions that created and magnified the risk of the actual harm that befell Rodriguez—he chose a forklift that had no safety cage or safety tether; he chose to use the forklift to bring both materiel and men to the roof, instead of using the forklift to bring only the materiel to the roof (i.e., have Rodriguez and the third man use stairs or ladders to access the roof); and with the pallet raised almost to the roof, he chose to reposition the forklift without first lowering the pallet to a safe level. Under such circumstances, there is no close connection between Hamilton's alleged negligence and Rodriguez's death.

B. PUBLIC POLICY CONSIDERATIONS[4]

" '[F]oreseeability alone is not sufficient to create an independent tort duty. " ' . . . [The] existence [of a duty] depends upon the foreseeability of the risk and a weighing of policy considerations for and against imposition of liability.' " ' [Citation.] These policy considerations include ' "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" [citation].' [Citation.] 'A duty of care will not be held to exist even as to foreseeable injuries . . . where the social utility of the activity concerned is so great, and avoidance of the injuries so burdensome to society, as to outweigh the compensatory and cost-internalization values of negligence liability.' " (*Vasilenko*, *supra*, 3 Cal.5th at pp. 1086–1087.)

1. Moral responsibility

" 'To avoid redundancy with the other *Rowland* factors, the moral blame that attends ordinary negligence is generally not sufficient to tip the balance of the *Rowland* factors in favor of liability,' and courts require a higher degree of moral culpability such as where the defendant (1) intended or planned the harmful result, (2) had actual or constructive knowledge of the harmful consequences of their behavior, (3) acted in bad faith or with a

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[4] We do not address the final *Rowland* factor (the availability, cost, and prevalence of insurance) due the paucity of evidence on this issue. The only evidence on the issue was that in the wake of the accident Hamilton's landlord now requires all subtenants to have property and liability insurance.

reckless indifference to the results of their conduct, or (4) engaged in inherently harmful acts." (*Campbell v. Ford Motor Co.* (2012) 206 Cal.App.4th 15, 32.)

Here, there is no evidence that Hamilton was morally culpable under this heightened standard.

2. Preventing future harm

"The overall policy of preventing future harm is ordinarily served, in tort law, by imposing the costs of negligent conduct upon those responsible." (*Cabral*, *supra*, 51 Cal.4th at p. 781.) In general, internalizing the cost of injuries caused by a particular behavior will induce changes in that behavior to make it safer. That consideration may be "outweighed, for a category of negligent conduct, by laws or mores indicating approval of the conduct or by the undesirable consequences of allowing potential liability." (*Id.* at p. 782.)

Here, the policy of preventing future harm would not be served by imposing costs on Hamilton, because, as discussed above, the injury was not reasonably foreseeable. In other words, there is little that a landlord can reasonably do to prevent a tenant from undertaking a series of rash, if not reckless, decisions with regard to the physical safety of an invitee. (See *Formet v. The Lloyd Termite Control Co.* (2010) 185 Cal.App.4th 595, 603 [policy of preventing future harm does not support a duty where "outcome probably would not have been affected" by defendant's alleged misconduct].)

3. Burden

In cases, " ' "where the burden of preventing future harm is great, a high degree of foreseeability may be required. [Citation.] On the other hand, in cases where . . . the harm can be prevented

by simple means, a lesser degree of foreseeability may be required." ' " (*Ann M.*, *supra*, 6 Cal.4th at pp. 678–679.)

Here, the exact opposite conditions for the finding of a duty apply—there was a vanishing low degree of foreseeability and the burden of preventing similar harm is high—landlords would have to engage in extensive monitoring of their tenants in order to guard against potentially hazardous self-repair. Such intrusive oversight would run counter to longstanding policies permitting tenants to enjoy their tenancy largely undisturbed and unmonitored by their landlords. (*Salinas v. Martin*, *supra*, 166 Cal.App.4th at p. 412.)

In sum, after considering all of the *Rowland* factors, we decline to hold that Hamilton owed a duty of care to Rodriguez. There was, in this instance, no foreseeability and no close connection between Hamilton's alleged misconduct and the harm suffered. In addition, no moral blame could be attributed to Hamilton; it is unlikely future harm would be prevented by imposing a legal duty of care upon Hamilton and other landlords; and the economic and social burdens of trying to prevent such harm would be great.[5]

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[5] In addition to their *Rowland* argument, Plaintiffs also argue that Hamilton owed a legal duty to Rodriguez based on the leases. We are not persuaded by such an argument for a number of reasons, not least of which is that under the express terms of the sublease Cazares, not Hamilton, was responsible for air conditioning his space. In addition, Plaintiffs fail to explain how Hamilton owed a contractual duty to Rodriguez, who was not a party to either the lease or the sublease.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

BENDIX, 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.