Filed 1/16/18 De Leon v. AvalonBay Communities CA2/2

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

| | |
|---|---|
| CHRISTINE DE LEON,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>AVALONBAY COMMUNITIES, INC.,<br><br>Defendant and Respondent. | B272008<br><br>(Los Angeles County Super. Ct. No. BC529909) |

APPEAL from a judgment of the Superior Court of Los Angeles County. David Sotelo, Judge. Affirmed.

Law Offices of Siamak Vaziri, Siamak Vaziri and Mark J. Giannamore for Plaintiff and Appellant.

Gordon & Rees, Miles D. Scully, R. Scott Sokol, Matthew G. Kleiner and Andreas K. Scripps for Defendant and Respondent.

---

Christine De Leon (De Leon) appeals from the summary judgment granted in favor of AvalonBay Communities, Inc. (AvalonBay). We find no error and affirm.

**FACTS**

De Leon filed a complaint against AvalonBay for premises liability and negligence. As alleged, she resided at an AvalonBay owned apartment complex (property). On July 29, 2013, AvalonBay breached its duty of care by failing to detect a natural gas leak and inform De Leon. This caused her to become dizzy and disoriented while walking down some steps. As a result, she broke an ankle.

AvalonBay moved for summary judgment. The following was undisputed: On the side of the property there were two boilers in a fenced enclosure. De Leon claimed that these boilers were the source of the alleged natural gas leak. On June 26, 2013, De Leon contacted Southern California Gas Company (SoCal Gas) to report a gas odor at the property. That same day, a SoCal Gas technician investigated and repaired a fizzer leak but did not inform AvalonBay. Rather, SoCal Gas gave De Leon a Form 1813 indicating that one of the boiler's combustion levels were in need of adjustment. Three days later, De Leon provided the form to AvalonBay. In response, AvalonBay contacted its vendor Ironwood Plumbing to make adjustments to the combustion levels, and the adjustments were made on July 1, 2013. On July 5, 2013, De Leon again contacted SoCal Gas to report a gas odor. A technician went to the property but a gas odor was not detected. With respect to the second boiler, the technician issued a Form 1813 indicating there were "spilling aldehydes." At AvalonBay's direction, Ironwood Plumbing performed work on the second boiler on July 8, 2013. As a result,

the second boiler began working properly. The next day, July 9, 2013, a SoCal Gas technician tested both boilers at the property. The technician did not find any gas odor or gas leak, and confirmed that both boilers were tuned, operating properly and not in need of any adjustments. SoCal Gas provided AvalonBay with a Flue Gas Analysis report for each boiler indicating that they were properly tuned. From the time SoCal Gas performed testing on the boilers at the property on July 9, 2013, through the date of De Leon's injury, De Leon did not report a natural gas odor or natural gas leak to AvalonBay. From the time SoCal Gas performed testing on the boilers on July 9, 2013, through the date of De Leon's injury, AvalonBay staff consistently worked in the vicinity of the property, and no natural gas odor or indication of a natural gas leak was present.

Further, it was undisputed that on August 5, 2013, De Leon's husband "came to the [p]roperty's leasing office to advise AvalonBay of an issue with his garage door. At that time, [he] stated that [De Leon] had injured herself on July 29, 2013 by falling down the short stairway that connects the sidewalk down to her unit. [He] stated that [De Leon] missed the last two steps and fell. He also stated that [De Leon] had been falling a lot lately. [He] did not state that his wife was dizzy at the time of her fall or that the fall was the result of an alleged natural gas leak at the [p]roperty." For "approximately 50 minutes prior to the [i]ncident, [De Leon] was involved in a project of breaking down and moving boxes between her apartment and her detached garage, during which she repeatedly went up and down the steps to/from her apartment."

According to the separate statement, "[De Leon] was not feeling dizzy at the time the [i]ncident occurred." AvalonBay

cited to De Leon's deposition testimony in which she described her fall. She stated, "I came—I remember walking back. I remember taking one step to come back, I took one step from the . . . steps. And from that point, I don't remember anything after that. All I remember is waking up at the bottom of the steps in excruciating pain[.]"

The separate statement indicated "[t]here was not a natural gas leak at the [p]roperty on the date of the incident." The cited evidence was from SoCal Gas technicians regarding their service calls on June 26, 2013, July 5, 2013, and July 9, 2013. Two of the technicians smelled aldehydes, and one thought the aldehydes were in the exhaust gases being vented from the boilers.

In its motion, AvalonBay argued that De Leon could not establish the existence of a natural gas leak or AvalonBay's knowledge of one. Also, it argued that De Leon could not establish that it failed to use ordinary care in the management of the property, that it breached a duty to warn, or that a natural gas leak caused her injury.

De Leon filed an opposition and argued, in part, that there were triable issues as to whether the boilers were unsafe because they were still emitting natural gas or aldehydes, and as to whether a noxious odor from the boilers had caused her to become dizzy and fall.

AvalonBay objected to exhibits cited by De Leon to support her assertions that (1) the "boilers had a history of emitting aldehydes and other issues," (2) AvalonBay "has internal records demonstrating issues with the boilers," (3) it "had a company come out and perform service and repairs to the boilers," and (4) the company it hired "noted several issues with the boilers

and gas fumes."[1] AvalonBay averred that De Leon "alleges that a natural gas leak—not aldehydes or other boiler 'issues'—caused her to fall and suffer injuries. . . . The existence of aldehydes or other boiler 'issues' is therefore outside the scope of the [c]omplaint[.]" The trial court sustained these objections.

The trial court granted the motion and entered judgment in favor of AvalonBay.

The timely appeal followed.

## DISCUSSION

### I. Standard of Review.

"We review a grant of summary judgment de novo, considering "'all of the evidence set forth in the [supporting and opposition] papers, except that to which objections have been made and sustained by the court, and all [uncontradicted] inferences reasonably deducible from the evidence.'" [Citation.] 'In independently reviewing a motion for summary judgment, we apply the same three-step analysis used by the superior court. We identify the issues framed by the pleadings, determine whether the moving party has negated the opponent's claims, and determine whether the opposition has demonstrated the existence of a triable, material factual issue.' [Citation.]" (*Granadino v. Wells Fargo Bank, N.A.* (2015) 236 Cal.App.4th 411, 415.)

### II. Legal Principles.

The elements of negligence are duty, breach and proximate cause of injury. (*Ann M. v. Pacific Plaza Shopping Center* (1993)

---

[1] De Leon stated these purported facts in her statement of undisputed facts. That statement did not provide citations to specific exhibits. Rather, it merely stated, "See Exhibits Attached hereto."

6 Cal.4th 666, 673.) Whether a duty exists is a question of law. (*Id*. at p. 674.) California law "requires landowners to maintain land in their possession and control in a reasonably safe condition. [Citations.]" (*Ibid*.) An owner must have actual or constructive notice of a dangerous condition before it can incur liability. (*Ortega v. Kmart Corp.* (2001) 26 Cal.4th 1200, 1203.) Evidence of an owner's failure to inspect its premises within a reasonable period of time permits an inference that a dangerous condition existed long enough to allow the owner "to discover and remedy it. [Citation.]" (*Ibid*.)

Case law establishes that an owner must warn of latent or concealed dangers. (*Beauchamp v. Los Gatos Golf Course* (1969) 273 Cal.App.2d 20, 27.) Ordinarily, there is no duty to warn of obvious dangers. (*Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077, 1088.)

**III. Dangerous Condition.**

In her opening brief, De Leon contends there is a triable issue as to the existence of a dangerous condition because she offered evidence that there was a noxious odor emanating from the boilers for weeks prior to her fall. Moreover, she notes that AvalonBay admitted that there was a fizzer leak at some point, as well as the smell of aldehydes. This argument is unavailing. The complaint alleged that De Leon's injury was caused by natural gas that made her dizzy and disoriented. To establish a triable issue as to the existence of a dangerous condition, De Leon was required to provide evidence of a natural gas leak as opposed to a generic noxious odor.

In her reply brief, for the first time, she states that she introduced evidence of the boilers leaking natural gas. She cites to various pages of AvalonBay's separate statement and four

pages of her statement of additional facts but did not identify or analyze her purported evidence regarding natural gas. Some of it was the subject of sustained objections. Those portions cannot be considered absent a showing that the trial court abused its discretion when it ruled on the objections. De Leon's argument is not sufficiently developed to be cognizable on appeal. Moreover, it "is not our responsibility to develop an appellant's argument." (*Alvarez v. Jacmar Pacific Pizza Corp.* (2002) 100 Cal.App.4th 1190, 1206, fn. 11.)

Also in her reply, De Leon contends that she introduced evidence of the repairs to the boilers and the results. But she does not explain the relevance to the issue of whether natural gas caused a dangerous condition.

**IV. Duty.**

Citing *Anderson v. Shuman* (1967) 257 Cal.App.2d 272, 275 and *Rowland v. Christian* (1968) 69 Cal.2d 108, 119, De Leon contends that if a landlord has reason to know a dangerous condition exists, then the failure to either warn of the condition or repair it is negligence.

De Leon contends that AvalonBay failed to negate the issue of duty. The record belies this. The undisputed evidence showed that AvalonBay was never on notice of a natural gas leak. Also, within five weeks of De Leon's fall, SoCal Gas inspected the boilers on multiple occasions and did not find a natural gas leak, and Ironwood Plumbing serviced the boilers and made sure they were properly tuned and working. Even if there was a natural gas leak, these inspections and repairs qualified as inspections within a reasonable time such that AvalonBay could not have had constructive notice. As a consequence, there is no triable issue as to whether AvalonBay knew or should have known of a

natural gas leak and therefore had a duty to either warn or repair the condition.

All other issues are moot.

**DISPOSITION**

The judgment is affirmed. AvalonBay shall recover its costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
HOFFSTADT

_____, J.*
GOODMAN

---

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