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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 FOUR

CARL J. SIMON, as Personal Representative, etc., et al., Plaintiffs and Appellants, v. CERRITOS TOWNE CENTER, LLC, Defendant and Respondent.	B228597 (Los Angeles County Super. Ct. No. VC054538)

APPEAL from a judgment of the Superior Court of Los Angeles County, Yvonne T. Sanchez, Judge. Affirmed.

Burlison Law Group and Robert C. Burlison, Jr., for Plaintiffs and Appellants.

Horvitz & Levy, Stephen E. Norris, Wesley T. Shih; Bragg & Kuluva and Sherry L. Grguric for Defendant and Respondent.

In this action for wrongful death, premises liability, and negligent infliction of emotional distress, plaintiffs contend that a parking lot owner breached its duty of care by failing to install protective posts or bollards[1] to prevent vehicles from jumping a curb and entering the raised landscaped median where the decedent was killed by an errant vehicle. The trial court granted the parking lot owner's motion for summary judgment, finding that because the accident was caused by the negligence of a third party driver and was not causally related to the design or construction of the parking lot, the accident was not sufficiently foreseeable to require the installation of protective bollards around the landscaped median. In this appeal from the judgment, we find there are no triable issues of material fact and we affirm.

BACKGROUND

On August 17, 2009, decedent Jill L. Simon was walking through the Cerritos Towne Center parking lot when a third party driver, Jhi Yeon Chung,[2] lost control of her Honda Pilot sport utility vehicle (SUV) while backing out of a parking space. According to the sole eyewitness, the SUV was backing out quickly with its tires screeching when it hit another vehicle, jumped over the concrete curb of the raised landscaped median (island), ran over Simon, stopped and changed direction, and ran over Simon again. Simon's daughter, Erin Simon, was present during the accident.

Carl J. Simon, husband of Jill L. Simon, and Erin Simon sued Cerritos Town Center, LLC, the owner of the parking lot, for wrongful death, premises liability, and

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[1] Bollards are "a series of short posts set at intervals to delimit an area (as a traffic island) or to exclude vehicular traffic." (Webster's 9th New Collegiate Dict. (1983) p. 166.)

[2] Chung was named as a defendant, but according to plaintiffs' opening brief, Chung "is not a party to this appeal and the matter of liability against Chung has been resolved."

negligent infliction of emotional distress.[3] Plaintiffs contend that "because the island was not protected by bollards, it offered no protection and decedent Jill L. Simon was struck and killed."

I. Defendant's Summary Judgment Motion

Defendant moved for summary judgment of the second amended complaint, the operative pleading. Defendant provided evidence that there were no prior similar incidents on its property, which it contended is similar in design and construction to countless other parking lots. Defendant argued that the undisputed facts clearly showed "that the incident was not reasonably foreseeable or connected to any conduct of [defendant] or condition of its premises." Defendant asserted that the accident "occurred entirely as a result of [Chung's] exceedingly negligent operation of [the SUV]."

In support of its position that it had no duty to install bollards to prevent vehicles from jumping the curb of the raised island, defendant cited *Jefferson v. Qwik Korner Market, Inc.* (1994) 28 Cal.App.4th 990 (*Jefferson*).

A. The Jefferson Case

Jefferson involved a pedestrian (Jefferson) who was hit by a car on the raised sidewalk in front of a convenience store. The driver was pulling into a parking space in front of the store when he depressed the accelerator instead of the brake. The car jumped over both a concrete parking block and a curb before it entered the raised sidewalk in front of the store and injured Jefferson.

Jefferson sued the store for general negligence and premises liability, claiming that the accident was foreseeable and that "metal posts at the ends of the parking spaces would have prevented the car from reaching the sidewalk and failure to install such posts constituted negligence." (*Jefferson*, *supra*, 28 Cal.App.4th at p. 992.) The store moved

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[3] Chung apparently did not own the SUV. In addition to Chung, there are two other defendants (Honda Lease Trust and Chung Hae Young) who are not parties to this appeal.

for summary judgment based on evidence that the parking lot met or exceeded all applicable codes and regulations, and there were no prior similar incidents on the premises. The trial court granted the summary judgment motion and entered judgment for the store, which was affirmed on appeal.

Jefferson argued on appeal that summary judgment was improper because, given the triable issues of material fact concerning the foreseeability of the accident, it was premature to conclude the store had no duty to prevent cars from entering the sidewalk by installing bollards in front of the store. The court responded by first noting that all persons have a general "duty to use ordinary care to prevent injury to others from their conduct. (Civ. Code, § 1714, subd. (a).) 'This general rule requires a property owner to exercise ordinary care in the management of his or her premises in order to avoid exposing persons to an unreasonable risk of harm.' (*Scott v. Chevron U.S.A.* (1992) 5 Cal.App.4th 510, 515.)" (*Jefferson*, *supra*, 28 Cal.App.4th at pp. 992-993.)

The *Jefferson* court then considered the high degree of foreseeability that is required before a duty of care will be imposed on a shopping center to protect its invitees from the criminal acts of third parties. In this context, the court cited *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 676 (*Ann M.*) (disapproved on another ground in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5), in which the plaintiff, an employee of a shopping center lessee, was raped by a third party on the leased premises. She alleged that the defendant owner of the shopping center was negligent in failing to provide security guards. According to *Ann M.*, the "duty to take steps to prevent the wrongful acts of a *third party* 'will be imposed only where such conduct can be reasonably anticipated.' (*Ann M.*[, *supra*,] 6 Cal.4th [at p.] 676.)" (*Jefferson*, *supra*, 28 Cal.App.4th at p. 993.) And "[w]hen determining the existence of a duty, foreseeability is a question of law. ([*Ann M.*, *supra*,] at p. 678.)" (*Jefferson*, *supra*, at p. 993.)

The *Jefferson* court concluded that where a customer is injured by the negligent driving of a third party on the defendant's commercial property, the court must consider whether "'the category of negligent conduct at issue is *sufficiently likely* to result in the

kind of harm experienced . . . .' (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 572-573, fn. 6, italics added.)" (*Jefferson*, *supra*, 28 Cal.App.4th at p. 993.) It then stated: "There is very little California case law regarding cars negligently coming onto the sidewalks of businesses. Courts in other states, however, have considered similar scenarios. The majority have concluded there is no liability because such accidents are insufficiently likely as a matter of law. [Citations.]" (*Ibid*.)

The *Jefferson* court agreed with the majority of courts that have considered the issue and held that the convenience store had no duty to install bollards to keep vehicles from entering the walkway in front of the store. It pointed out that, with one arguable exception, no court "has imposed liability on the set of facts found here, where the business provided both a curb and wheelstops, the parking lot design is typical of most businesses and meets all city standards and regulations, there were no prior similar incidents and nothing required customers to remain in a fixed location adjacent to the parking area. Of course, such a result is only common sense. The probabilities that someone will be struck by an out-of-control vehicle are far lower when there are both curb and wheelstops, and there is no expectation that customers will be at any particular point, such as a walk-up window.

"An act must be *sufficiently likely* before it may be foreseeable in the legal sense. That does not mean simply imaginable or conceivable. Given enough imagination, *everything* is foreseeable. To paraphrase Justice Eagleson, with apologies to Bernard Witkin, on a clear judicial day, you can foresee forever. (*Thing v. La Chusa* (1989) 48 Cal.3d 644, 668.) If the law imposed a duty to protect against every *conceivable* harm, nothing could function.

"Imposing a duty on a convenience store to protect a customer from every imaginable incident is an unreasonable burden: a motorcycle can pass between metal posts and a large truck can break through a cement wall. Only an impregnable barrier would suffice, in essence holding the store owner as the insurer of its customers' safety. The law does not impose such a burden. (See [*Ann M.*], *supra*, 6 Cal.4th at p. 679 [to hold landlords as insurers of public safety would be 'contrary to well-established

policy']; Rest.2d Torts § 344, com. d [owner of land open to public is not insurer of visitors' safety against acts of third persons].)" (*Jefferson*, *supra*, 28 Cal.App.4th at pp. 995-996.)

B. Defendant's Reliance on Jefferson

As previously mentioned, defendant moved for summary judgment on the ground that it had no duty to install bollards around the island because, as in *Jefferson*, the accident was caused solely by a third party's negligence and, under the circumstances, was not reasonably foreseeable as a matter of law: "[*Jefferson*] is similar in essential facts to the facts of this case. Although we don't know what caused Ms. Chung to reverse rapidly out of her parking space backwards, towards Ms. Simon, who moved onto the 'island,' whereupon the Chung vehicle struck another car, and jumped the curb onto the island and struck Ms. Simon, it can be inferred that she did not have reasonable control of the vehicle, and more likely than not, applied the accelerator in place of the brake."

Defendant argued that the parking lot, as was self-evident from the photographs and diagrams supplied in support of the motion, had no unusual characteristics and was similar to countless parking lots "throughout America, and indeed the world." Citing *Jefferson*, defendant argued that "[n]o premises owner can be held to be an insurer of safety in all conceivable situations. No parking lot, where pedestrians and autos necessarily share the same space, can be made completely safe against every possible danger, and when a car is completely out of control, injury and even death is possible, and is not either foreseeable or preventable. There are, ultimately, unavoidable risks inherent in our automotive culture, where human beings and automobiles sometimes share the same space, and liability does not attach to the owner of premises where automobiles park merely because an accident has happened."

Defendant contended that given the lack of any causal relationship between its acts or omissions and the fatal incident, the present incident was not reasonably foreseeable as a matter of law: "[A]s the undisputed facts make clear[, n]o actions or omissions of

moving defendant were involved. Moreover, . . . the actions of Ms. Chung in backing her SUV over Ms. Simon, and then running over her again, atop a grassy island separated from the parking area by a curb, were *not reasonably foreseeable as a matter of law*."

II. Plaintiffs' Opposition to the Summary Judgment Motion

In opposition to the summary judgment motion, plaintiffs argued that with regard to foreseeability, the court in *Jefferson* had erroneously focused on the specific incident in question, rather than the general risk that a car will collide with a pedestrian in a parking lot.[4] In plaintiffs' view, the relevant inquiry is not the specific likelihood that a car would strike a pedestrian "atop a grassy island separated from the parking area by a curb," but rather the general likelihood "that at some point, a vehicle would collide with a pedestrian in the subject parking lot." Plaintiffs argued that because it was readily conceivable that, at some point, a vehicle would collide with a pedestrian in defendant's parking lot, defendant owed a duty of care to its customers to take reasonable preventative measures. Plaintiffs contended that "[c]ommon or ordinary measures, such as placement of bollards to protect the elevated grassy area, which appeared to be a safe

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[4] Plaintiffs contended that *Jefferson*, which found there was no duty to install bollards in front of the convenience store, was based on outdated case law: "Defendant CTC offers up a panoply of antiquated out-of-state case law (mostly 1987 or older and mainly from Texas, Mississippi, Alabama and Georgia) in an effort to buttress its reliance on one California case, *Jefferson*[, *supra*,] 28 Cal.App.4th 990[,] which held that an accident is not reasonably foreseeable where a car jumped over a parking block and curb striking the plaintiff because the parking lot was typical of most businesses, there was no evidence of prior similar incidents, and nothing required customers to remain in the location adjacent to the parking area. [¶] Defendant CTC fails to cite more recent cases that hold that the proper focus is on the foreseeability of a harmful event of the general type that occurred and not the 'foreseeability of the particular and possibly unique details of how and why a particular harmful event came to pass.' The instant case fits two of the three scenarios enunciated in *Jefferson* upon which liability and duty are imposed upon a property owner, to wit, no protection from encroaching vehicles and plaintiff must 'remain in a fixed' area (albeit here they are required to traverse over the 'fixed' area) caused by the very design of CTC's parking lot—a proverbial 'accident waiting to happen.'"

haven to decedent Jill L. Simon, or a sidewalk up the middle of the parked vehicles would have prevented injury to decedent . . . ."

According to the declaration[5] of plaintiffs' expert safety engineer, Brad Avrit, the painted pavement (or "colored walkway") between the rows of parking spaces and the entrances to the Office Max and Trader Joe's stores was unsafe because it encouraged pedestrians to walk across the most congested area where vehicles enter and exit the parking lot. In addition, allowing two-way traffic through the parking lot was unsafe because it forced cars to back out onto the colored walkway, "where there is cross traffic and pedestrian traffic. This creates a hazard as vehicles are backing up into the most highly trafficked area of the parking lot, and there is no refuge for pedestrians traversing the subject parking lot."

Avrit proposed the following solutions to the allegedly dangerous conditions: (1) allowing only one direction of vehicular traffic through the parking lot, which "would eliminate vehicles being forced to back into the greatest risk area with cross traffic and pedestrian traffic on the colored walkway"; and (2) installing bollards or protected walkways through the parking lot to provide pedestrians with a "refuge area."

III. Defendant's Evidentiary Objections and Reply

Defendant argued that the law does not impose on commercial property owners the impossibly broad duty of protecting pedestrians in all conceivable circumstances. Defendant sought to exclude Avrit's declaration as irrelevant because the accident did not occur in the so-called "painted walkway," but atop a landscaped island surrounded by a concrete curb. Defendant argued that Avrit would impose an unrealistic standard of care that the law does not require in order to guarantee the safety of all pedestrians:
"Mr. Avrit harps on the brick-colored apron depicted in the photos as a 'walkway,' but this is irrelevant, as the undisputed facts establish that the incident did not occur there. The opinion that 'bollards' could have prevented the accident ignores the obvious,

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5 As will be explained, the declaration was excluded by the trial court below.

common-experience fact that it is simply not practicable to erect physical barriers against every possible instance of a car jumping a curb; were that the standard, every sidewalk in America would have to be lined with bollards. The same applies to Mr. Avrit's fanciful standard of raised walkways in parking lots. Even if such a raised walkway were present, there is no basis for his unfounded opinion that it would have prevented the accident. Ms. Simon *was* in a raised area, separated from the parking area by a curb; the recklessly driven out of control car leapt that curb and struck her. There is no basis to conclude the circumstances would have been any different if she had been on a raised sidewalk instead of a raised landscaped area. These opinions are also inadmissible, because they contradict matters of common experience and attempt to impose a legal standard of foreseeability, which . . . is not the province of an expert to define."

Defendant sought to exclude Avrit's declaration on the ground that his opinions were "speculative and conclusory, and lacking in foundation. [There was no] showing that the described features had anything to do with this accident, no factual basis for opinion as applied to what occurred according to the undisputed facts of this case."

IV. The Trial Court's Evidentiary Ruling and Grant of Summary Judgment

The trial court sustained defendant's objections to Avrit's declaration, which it excluded as "speculative and conclusory. . . . There is no evidence that the design features described in the declaration had anything to do with the subject accident."

The trial court granted the summary judgment motion, stating: "As discussed in *Jefferson*[, *supra*,] 28 Cal.App.4th 990, an act must be 'sufficiently likely' before it may be foreseeable in the legal sense. *Id*. at 996. Imposing a duty on a store to protect a customer from every imaginable incident is an unreasonable burden. *Id*. 'The duty to take steps to prevent the wrongful act of a third party "will be imposed only where such conduct can be reasonably anticipated."' *Id*. at 993 (quoting *Ann M*.[, *supra*,] 6 Cal.4th 666, 679). The question here, as it was in *Jefferson*, *supra*, is whether the instant accident was sufficiently likely to occur to require the landowner to take more extensive measures than it did. *Id*. While evidence of a prior similar incident is not necessarily

required to establish foreseeability and a duty to protect, plaintiffs have not established that the accident was otherwise sufficiently likely. *Bigbee v. Pacific Tel. & Tel. Co.* (1983) 34 Cal.3d 49, 57-58. The fact, in hindsight, that a condition could have been made safer, does not establish that it was dangerous at the time or that the defendants knew it was unsafe or that this incident was foreseeable. Accordingly, the motion is granted."

After granting the summary judgment motion, the trial court entered judgment for defendant. This timely appeal followed.

DISCUSSION

The standard of review for summary judgment is well established. The motion "shall be granted if 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 moving defendant has met his burden of showing that a cause of action has no merit by establishing that one or more elements of a cause of action cannot be established or that there is a complete defense. (*Aguilar v. Atlantic Richfield Co*. (2001) 25 Cal.4th 826, 849-850; *Lackner v. North* (2006) 135 Cal.App.4th 1188, 1196.)

We independently review an order granting summary judgment, viewing the evidence in the light most favorable to the nonmoving party. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *Lackner v. North*, *supra*, 135 Cal.App.4th at p. 1196.) In performing our independent review of the evidence, "we apply the same three-step analysis as the trial court. First, we identify the issues framed by the pleadings. Next, we determine whether the moving party has established facts justifying judgment in its favor. Finally, if the moving party has carried its initial burden, we decide whether the opposing party has demonstrated the existence of a triable, material fact issue." (*Chavez v. Carpenter* (2001) 91 Cal.App.4th 1433, 1438.)

In determining whether there are triable issues of material fact, we consider all the evidence set forth by the parties, except that to which objections have been made and properly sustained. (Code Civ. Proc., § 437c, subd. (c); *Guz v. Bechtel National, Inc*. (2000) 24 Cal.4th 317, 334.) We accept as true the facts supported by plaintiff's evidence and the reasonable inferences therefrom (*Sada v. Robert F. Kennedy Medical Center* (1997) 56 Cal.App.4th 138, 148), resolving evidentiary doubts or ambiguities in plaintiff's favor (*Saelzler v. Advanced Group 400*, *supra*, 25 Cal.4th at p. 768).

I. The Accident Was Not Reasonably Foreseeable

Plaintiffs contend that because "accidents of the general type, pedestrian v. vehicular in parking lots are sufficiently foreseeable, if not in fact, likely to occur," defendant had a duty "to take precautionary measures at minimal cost to protect pedestrians required to traverse its parking lot." In support of their contention, plaintiffs rely heavily on two cases. We discuss those cases in parts *A* and *B* before we distinguish them in part *C* below.

A. The Bigbee Case

In *Bigbee v. Pacific Tel. & Tel. Co.*, *supra*, 34 Cal.3d 49 (*Bigbee*), the plaintiff (Bigbee) was allegedly trapped in a telephone booth when it was struck by a vehicle. Bigbee sued the owner of the telephone booth and those responsible for its design, location, installation, and maintenance on theories of negligence and strict product liability. He alleged that as a result of the telephone booth's defective design and/or manufacture, he was trapped inside the booth when the collision occurred. He also alleged that defendants had created an unreasonable risk of harm to anyone using the booth by placing it near a busy street with fast moving cars.

Defendants moved for summary judgment, contending they "had no duty to protect phone booth users from the risk encountered by plaintiff—a car veering off the street and crashing into the phone booth—since that risk was unforeseeable as a matter of law. [Fn. omitted.] For the same reason, they maintained that Roberts' intervening

negligent driving constituted a 'superseding cause' of plaintiff's injuries. Therefore, no act or omission of theirs could be found to be a proximate cause of those injuries. [Fn. omitted.]" (*Bigbee*, *supra*, 34 Cal.3d at pp. 53-54.) The trial court granted the motion and entered judgment for the defendants.

The Supreme Court, however, reversed the summary judgment. It pointed out that "[o]rdinarily, foreseeability is a question of fact for the jury. [Citation.] It may be decided as a question of law only if, 'under the undisputed facts there is no room for a reasonable difference of opinion.' [Citations.]" (*Bigbee*, *supra*, 24 Cal.3d at p. 56.) In determining whether the risk that a car might crash into the phone booth and injure an individual inside was reasonably foreseeable, the Court stated, "it is well to remember that 'foreseeability is not to be measured by what is more probable than not, but includes whatever is likely enough in the setting of modern life that a reasonably thoughtful [person] would take account of it in guiding practical conduct.' [Citation.] One may be held accountable for creating even '"the risk of a slight possibility of injury if a reasonably prudent [person] would not do so."' [Citations.] Moreover, it is settled that what is required to be foreseeable is the general character of the event or harm—e.g., being struck by a car while standing in a phone booth—not its precise nature or manner of occurrence. [Citations.]" (*Bigbee*, *supra*, 24 Cal.3d at pp. 57-58.)

Turning to the facts before it, the Supreme Court found there was a triable issue of fact as to the foreseeability of the accident: "Here, defendants placed a telephone booth, which was difficult to exit, in a parking lot 15 feet from the side of a major thoroughfare and near a driveway. Under these circumstances, this court cannot conclude as a matter of law that it was unforeseeable that the booth might be struck by a car and cause serious injury to a person trapped within. A jury could reasonably conclude that this risk was foreseeable. (Cf. *Barker v. Wah Low* (1971) 19 Cal.App.3d 710, 723 [reasonable jurors could find that the chance that a car in the parking lot of a drive-in restaurant might strike a patron at the adjacent service counter was foreseeable].) This is particularly true where, as here, there is evidence that a booth at this same location had previously been struck. (See, *ante*, pp. 54-55 and fn. 6.)" (*Bigbee*, *supra*, 24 Cal.3d at p. 58.)

B. The Robison Case

In *Robison v. Six Flags Theme Parks Inc.* (1998) 64 Cal.App.4th 1294 (*Robison*), the owner of an amusement park (Magic Mountain) provided a picnic table in the grassy area of its parking lot. Plaintiffs were sitting at the picnic table when they were struck by a car. Plaintiffs sued the owner of the amusement park, which obtained summary judgment on the theory that because the accident was legally unforeseeable, it had no duty to take any precautions. (*Id.* at p. 1297.) Division Two of this District reversed, however, based on the existence of triable issues of material fact as to the foreseeability of the accident.

Significantly, the picnic table was located near a "T" intersection where exiting cars had to turn left in order to avoid hitting the table. In addition, there were no physical barriers or changes in elevation to separate cars from the grassy area where the picnic table was located. (*Robison*, *supra*, 64 Cal.App.4th at p. 1296.) In light of those facts, the court concluded that "the proper focus of the relevant foreseeability inquiry" was "whether it was reasonably foreseeable, in view of the configuration and use of the parking lot and picnic area, that a car might fail to turn left at the word 'stop' painted on the pavement, and that picnickers might be injured as a consequence of Magic Mountain's failure to provide an appropriate separation between the parking lot and the picnic area." (*Id*. at p. 1299.)

The panel discussed *Ann M.*, *supra*, 6 Cal.4th 666, which held that unless the risk of criminal activity is highly foreseeable, a shopping center has no duty to provide security patrols in the common areas. (*Robison*, *supra*, 64 Cal.App.4th at p. 1300, citing *Ann M.*, *supra*, at p. 679.) The court distinguished *Ann M.* on the ground that "[c]rime can happen anywhere, but cars cannot crash into picnic tables just anywhere. In order for a car to crash into a picnic table, the picnic table must first be placed in harm's way. If traffic and picnic tables are placed into a configuration in which the cars can hit the tables, the resulting danger can be identified by simple observation. Here, for example, it was open to simple observation that Magic Mountain had aimed a heavily traveled

parking lane (with a speed limit of 25 miles per hour) directly at the picnic table with no separation other than 40 feet of flat grass, and that a car traveling at a speed no higher than Magic Mountain's own speed limit would cover this distance in less than 2 seconds, too short a time to allow for reliable evasive action by an unsuspecting person seated at a picnic table, possibly with his or her back to the oncoming car. When such an observable danger ripens into an accident, the accident is foreseeable for purposes of duty analysis. There is no legal requirement in such circumstances for the type of heightened notice which might be provided by a prior similar incident, as *Ann M.* found may be necessary in instances of third party crime. Instead, the debatable issue usually posed by such circumstances is whether the landowner took reasonable precautions in light of the observable danger presented." (*Robison*, *supra*, 64 Cal.App.4th at p. 1301.)

The panel also distinguished *Jefferson*, which involved an injury caused by a car that had jumped over a concrete parking block and curb in front of a convenience store. It stated that Magic Mountain "arguably provided 'no protection *whatever*' from an oncoming car which fails to turn left at the appropriate point. [In addition,] the design of the parking lot and picnic area required customers to assume a fixed position at the picnic table in the direct line of traffic." (*Robison*, *supra*, 64 Cal.App.4th at p. 1303.) In contrast, the convenience store in *Jefferson* had provided a concrete wheelstop and curb, and had done nothing to encourage or require customers to remain at a fixed location next to the parking area. (*Id.* at p. 1302.)

The court concluded that the evidence, when viewed with an eye toward the "general danger of a car hitting unsuspecting picnickers in the parking area" as opposed to "the specific circumstances under which the developmentally disabled woman lost control of this car in this particular instance," was sufficient to create a triable issue of material fact as to foreseeability. It found that the evidence required "a balancing of the probability of an accident, the severity of the expectable harm, the burden of providing specific protective measures, etc. (see, e.g., *Ann M.*, *supra*, 6 Cal.4th 666), an exercise shortstopped here by the erroneous summary judgment." (*Robison*, *supra*, 64 Cal.App.4th at p. 1305.)

C. This Case Is Distinguishable From Bigbee and Robison

In our view, neither *Bigbee* nor *Robison* stands for the proposition that, where there is a foreseeable risk that at some point a vehicle will collide with a pedestrian in a parking lot, the owner of the parking lot has a duty to install protective bollards. In both *Bigbee* and *Robison*, the court held that foreseeability could not be decided as a matter of law because the defendants had provided amenities (a phone booth in *Bigbee* and a picnic table in *Robison*) that had encouraged (or even trapped) customers to remain at the specific location where the accident occurred.

The present case is more similar to *Jefferson*, where the convenience store had done nothing to encourage customers to remain where they could be hit by vehicles that jumped over the wheelstop and curb. As is self-evident from the photographs and diagrams of the parking lot in this case, its design is similar to that of any other parking lot and there is nothing in the record to indicate otherwise. We therefore conclude there is no basis to impose liability "on the set of facts found here, where . . . the parking lot design is typical of most businesses . . . , there were no prior similar incidents and nothing required customers to remain in a fixed location [in] the parking area." (*Jefferson*, *supra*, 28 Cal.App.4th at pp. 995-996.)

II. The Expert's Declaration Was Properly Excluded

Plaintiffs contend that the trial court abused its discretion in excluding Avrit's declaration. We are not persuaded.

Avrit concluded that the painted area in front of the store entrances was congested with vehicular and pedestrian traffic and was therefore dangerous. The accident, however, did not occur in the painted area. The trial court excluded Avrit's declaration because it was "speculative and conclusory," and there was no "evidence that the design features described in the declaration had anything to do with the subject accident."

We find no abuse of discretion. Given the undisputed evidence that the accident occurred on the raised island, Avrit's opinions were properly rejected as speculative and

conjectural because they were based on dangers posed by congestion in an area where the accident did not occur. An "expert opinion may not be based on assumptions of fact that are without evidentiary support or based on factors that are speculative or conjectural, for then the opinion has no evidentiary value and does not assist the trier of fact. [Citation.] Moreover, an expert's opinion rendered without a reasoned explanation of why the underlying facts lead to the ultimate conclusion has no evidentiary value because an expert opinion is worth no more than the reasons and facts on which it is based. [Citations.]" (*Bushling v. Fremont Medical Center* (2004) 117 Cal.App.4th 493, 510.)

DISPOSITION

The judgment is affirmed. Defendant is awarded its costs on appeal.

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SUZUKAWA, J.

We concur:

EPSTEIN, P. J.

MANELLA, J.