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INJURED PARTY CAN OVERCOME SUMMARY JUDGMENT DESPITE NO MEMORY OF TRIP AND FALL

3.7.22

In the case of *Lydia Kaney v. Carol A. Custance*, the California Court of Appeal provided great latitude to plaintiffs when it comes creating a triable issue as to causation where the plaintiff lacked any recollection of the incident, or knowledge of what may have caused the incident.

A woman visiting her sister woke up on the floor of the bathroom in pain. She did not recall slipping and falling, or what caused it, but proceeded to sue her sister and the property owner, Carol A. Custance, for damages relating to injuries sustained in the fall. Plaintiff/Appellant, Kaney, contended that the stairs leading up to the bathroom were dangerous for a variety of reasons, one of which, and the primary reason focused on by the California Court of Appeal -the lack of a handrail. The California Court of Appeal held that the granting of the defense's motion for summary judgment was in error because there was circumstantial evidence that could allow a trier of fact to make reasonable inferences that the dangerous condition of the stairs (i.e. *the lack of a handrail*) was a substantial factor in the fall creating triable issues of fact surrounding the landlord's duty in regard to the safety of the premises.

BACKGROUND OF THE CASE

Defendant, Cassell, was the owner of a single family house in Hermosa Beach that she rented out to Plaintiff's sister, Marilyn Mazza. The property had one bathroom which was reached by accessing a two step stairway leading up to a platform, which housed the toilet area. The stairway did not have a handrail. Mazza rented the property from Cassell for over eighteen years and during that period the Plaintiff/ Appellant, visited her sister on numerous occasions. In fact, the Appellant would sometimes stay for extended periods of time up to two weeks. Appellant used the restroom in the home during her visits many times without sustaining any injuries. During Appellant's visit with her sister in September of 2014, she used the bathroom up to five times without issue. However, at some point during her visit, the

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CASE UPDATES

light burned out in the bathroom. Appellant claimed that on the night of the incident, she used the stairs to access the bathroom and fell. Appellant had no memory of how she fell or what caused it, but rather only recalled that she woke up on the floor in pain.

Appellant filed a complaint against Mazza as well as the property owner. She asserted claims involving premises liability and negligence. The crux of her complaint stated that the stairs leading to the bathroom posed a dangerous condition that resulted in her injuries. In addition, she claimed that the stairway violated the Americans with Disabilities Act, the California Health and Safety Code and local building codes and ordinances.

Mazza settled with the Appellant, paying her \$300,000. Cassell, the property owner filed a motion for summary judgment stating that she neither had a duty to warn the Appellant of the open and obvious dangerous stairway, nor did she have a duty to remedy or change the stairway because the tenant never gave her notice or requested repairs in that area of the home. She was also not given any notice that there was an issue with the bathroom light. Cassell stated in her motion that the building was not in violation of any laws, ordinances, or codes because it was grandfathered in as a permissible nonconforming use under the City of Hermosa Beach's Municipal Code section 17.52.020.

Cassell also hired an expert who was a Building and Code Enforcement Officer for Hermosa Beach who testified that the residence was in compliance with all applicable laws and confirmed that it was grandfathered into the previous laws and did not require any corrective action to remain in compliance. He also indicated that single family homes are not governed by the Americans with Disabilities Act.

Appellant opposed the motion for summary judgment stating that there were several issues of triable fact relating to compliance with code standards, negligence and duty of care as well as the stairs as an open and obvious danger. Appellant presented her own expert who testified that the stairs should have had a handrail in order to successfully comply with building codes and that the stairway was a hazard that could have been made safe by the property owner. The trial court granted the motion for summary judgment and the injured party appealed.

WAS THE PROPERTY OWNER NEGLIGENT IN FAILING TO ALTER THE STAIRWAY?

Premises liability occurs when a property owner, or landlord is negligent and their action or inaction leads to injury or damage. In order to prove premises liability a party must make a showing that:

- The property owner had a legal duty to use care.
- It breached that duty; and
- The breach is the proximate cause of the injury at issue.

Jones v. Awad, (2019) 39 Cal.App.5th, 1200, 1207.

The *Civil Code* goes on to state in section 1714, "Everyone is responsible to another by his or her ordinary care or skill in the management of his or her property... except so far as the latter has, willfully, or by want of ordinary care brought the injury upon himself or herself."

In this case, the California Court of Appeal noted that the trial court did not discuss whether the property owner owed appellant an ordinary duty of care, or if that duty was breached by failing to change the structure of the stairway in the home. Cassell argued that the danger of the stairs was open and obvious and that the Appellant was well aware of their precarious nature as

CASE UPDATES

she had stayed in the home on numerous occasions and used the bathroom on every visit. She argued that she did not have any duty to warn or give the Appellant notice of the danger because it was obvious and known to the Appellant well before the date of the injury. However, Cassell's arguments were rejected as the Court found that there were other triable issues related to duty and breach. The Court further noted that, while Cassell made various arguments, including any dangerous condition was open and obvious, she lacked notice, and denied any duty to Appellant, Cassell never argued that the stairs were safe.

In determining whether a landlord owes a duty to another in this situation the Court looked to *Rowland v. Christian*, (1968) 69 Cal.2d 108, 112-113 for guidance. In that case, the Court held, "Generally, if a danger is so obvious that a person could reasonably be expected to see it, the condition itself serves as a warning, and the landowner is under no further duty to remedy or warn of the condition." The only exception to this general rule is when it is foreseeable that the danger may cause injury despite the fact that it is obvious.

Here the Appellant was familiar with the stairway and the danger it posed. Despite this, she argued that it still posed a threat of injury to her and did in fact cause her to suffer injuries. Cassell argued she owed no duty to remedy any condition because she was never given notice that the stairs were dangerous or needed repair, nor were there any prior incidents related to the steps. Cassell further argued that Mazza previously stated that she liked the steps and thought they were "cute."

On appeal the Court reframed the question to examine whether the property owner knew or had reason to know that the stairway posed a dangerous condition and as a result an unreasonable risk. A landlord can only be held liable for an injury to a third party if it is shown that the landlord had actual notice of the dangerous condition and the ability to reduce or eliminate the danger. *Garcia v. Holt*, (2015) 242 Cal.App.4th, 600. Here, the risk was obvious, but the Court found that did not necessarily relieve the landlord of her duty to make it safe. As such, the Court found the foreseeability of harm remained a triable issue of fact.

IF AN INJURED PARTY DOES NOT RECALL THE FALL, CAN CAUSATION BE ESTABLISHED?

A person who is injured by a slip and fall need not necessarily remember the circumstances surrounding the fall in order to show that a defendant's action or inaction caused the injury. If a reasonable and probable inference can be made using circumstantial evidence, a connection of fault on the part of the defendant may result.

Here the circumstantial evidence, presented by way of a declaration from Appellant's expert, showed that the stairway was inherently dangerous because it lacked a proper handrail. In addition, the light in the bathroom was not operational on the night of the injury. Given these facts surrounding the incident, a reasonable jury could conclude that the property owner acted negligently in this situation by not taking proactive steps to safeguard the stairway with a proper handrail. They could also possibly conclude that the Appellant would not have fallen at all, or maybe would have sustained a lesser injury had a handrail been in place. The Court noted, it is common knowledge that handrails prevent falls and make the climb and descent of stairs more safe.

Due to all of the circumstantial evidence suggesting that the stairs were an unreasonable hazard that could have been remedied by the property owner, the California Court of Appeal reversed the motion for summary judgment and ruled that triable issues of fact existed that warranted further review.

Of note, the Court did clarify that this was not a case of *negligence per se* as the Court was not adopting the argument that the fall, by itself, would establish the presence of a dangerous condition. Absent an injured party's recollection of the incident, there must be circumstantial evidence that the alleged dangerous condition, was a substantial factor in the fall. However, the Court's

CASE UPDATES

ruling in *Kaney* relied heavily on the declaration of Appellant's experts – suggesting a well-crafted expert declaration may be all the circumstantial evidence an injured party needs to create a triable issue of fact when the party has no recollection of the incident.