

DANGEROUS CONDITION OF PUBLIC PROPERTY

Stufkosky v. Department of Transportation

Docket: B317192 (Second Appellate District; Sixth Div.)

Opinion Date: 10/30/23

Judge: Beebe

Facts: The appellants in the case alleged that the California Department of Transportation (Caltrans) was liable for an accident on State Route 154 (SR-154). They claimed the highway had a dangerous design and lacked adequate warnings for drivers about deer crossings, which contributed to the accident.

Analysis & Holding:

Design Immunity Defense (Gov. Code §830.6)

Caltrans claimed design immunity under §830.6, which requires evidence of a causal relationship between the plan and the accident, discretionary approval of the plan prior to construction, and substantial evidence supporting the design's reasonableness. The court found that the appellants' own allegations established the required causal connection between the highway's design and the accident. Caltrans provided detailed plans and a traffic engineer's declaration, affirming the highway met safety standards and the reasonableness of its design.

Failure to Warn

The appellants also argued that Caltrans created a dangerous condition by failing to adequately warn drivers of deer crossings. The court addressed this claim, differentiating it from the Supreme Court's decision in *Tansavatdi v. City of Rancho Palos Verdes*. In this case, Caltrans had considered warning measures for deer crossings, and the dispute was only about their adequacy.

Conclusion

The appellate court affirmed the judgment in favor of Caltrans. The court's decision emphasized that Caltrans' design decisions, including considerations of safety features and warnings, were sufficient to establish design immunity under §830.6.

Summerfield v. City of Inglewood

Docket: B324117 (Second Appellate District; Eighth Div.)

Opinion Date: 10/25/23

Judge: Stratton

Facts: Appellants filed a wrongful death action against the City of Inglewood for the death of their son. Appellants alleged the City was negligent and created a "dangerous condition" in a public park by failing to install security cameras in an area with ongoing criminal activity, which caused an unknown third party to fatally shoot their son. The trial court sustained the City's demurrer to the complaint with leave to

amend. Appellants filed a first amended complaint, which the trial court sustained, this time without leave to amend. The trial court then entered a judgment of dismissal.

Analysis & Holding: Affirmed. The court concluded that Appellants' dangerous condition and negligence claims failed, and the trial court did not err in declining to grant leave to amend. The court explained that here Appellants' proposed allegations about "additional problematic criminal activity in Darby Park" and "crime in the areas of Inglewood immediately surrounding Darby Park" were vague and not specific. Appellants in no way explained how the proposed amendments would change the legal effect of the allegations in their FAC and merely stated in a conclusory fashion that they "could have created a dangerous condition and a duty to warn." Furthermore, the court wrote that Appellants failed to propose any new facts addressing the main issue of the FAC.

'PREMISES LINE' RULE / EXCEPTION

Jones v. Regents of the University of California

Docket: G061787 (Fourth Appellate District; Third Div.)

Opinion Date: 11/28/23

Judge: O'Leary

Facts: Plaintiff Jones, an employee of the University of California (UC), experienced a bike accident on UC grounds while heading home from work, after which she filed suit against the UC. In response, the UC contended that Plaintiff's injuries fell under the workers' compensation "exclusivity" rule. It argued that the "premises line" rule extended the scope of employment until Plaintiff left UC's premises, making her eligible for workers' compensation. The trial court agree with UC and granted summary judgment in its favor.

Analysis & Holding: Plaintiff argued there was a triable issue on whether the premises rule applied to her accident, citing factors like her leaving work, use of public areas, and her choice of commuting method. The appeals court affirmed the trial court's judgment, stating that the factors cited by appellants did not raise any question about the applicability of the premises line rule. Under this rule, an employee's injuries are considered within the scope of employment if they occur on the employer's premises. The rule is designed to provide a clear demarcation point for when employment begins and ends. The court noted that the circumstances of Plaintiff's accident (occurring just after leaving her workstation on UC grounds) brought her injuries within the workers' compensation scheme as per the premises line rule. The factors cited by appellants (leaving work, public area usage, commuting method) did not alter the rule's applicability.

The court also concluded that Plaintiff's injuries occurred in the scope and course of her employment as a matter of law, thus the workers' compensation exclusivity rule barred her tort claim. Appellants further argued for a "dual capacity" exception to the exclusivity rule, suggesting that at the time of the injury, Plaintiff was a pedestrian or bike path user. However, the court noted that Labor Code §3602 (a) contradicts this contention, as it states that occupying a dual capacity at the time of injury does not allow for an action at law for damages against the employer. The judgment was affirmed, upholding the trial court's decision that workers' compensation was the exclusive remedy for Plaintiff's injuries.

VOLUNTEER vs. EMPLOYEE – STATUS AND REMEDIES

Perez v. Galt Joint Union Elementary School District

Docket: C092691 (Third Appellate District)

Opinion Date: 9/25/23

Judge: Hull

Facts: Plaintiff was seriously injured while volunteering at a spelling bee organized at a school in the Galt Joint Union Elementary School District. In her subsequent lawsuit against the school district, the critical issue was whether the district's governing board had passed a specific resolution, Resolution No. 37 in 1968 under Labor Code §3364.5, and whether this resolution still applied. Under the Act, plaintiff's status was converted from volunteer to employee, rendering workers' compensation the sole remedy to compensate Plaintiff for her injuries.

Analysis & Holding: On appeal, Plaintiff argued that because: (1) there was no evidence the district board members were aware of their duties under Labor Code §3364.5 at the time she was injured, (2) none of the members were present at the event at which she was injured, and (3) there was no evidence they knew about the bee, she was therefore neither "authorized by the governing board" to act as a volunteer nor performing services under their "direction and control" at the time of injury. Thus, plaintiff reasoned, the trial court should have rejected the defendant's affirmative defense that she was covered by the Act and, therefore, that workers' compensation provided her exclusive remedy. Finding no reversible error in finding plaintiff's exclusive remedy was under the Act, the Court of Appeal affirmed the trial court.

In conclusion, the appellate court reversed the trial court's judgment, holding that the district could potentially be liable for injuries that occur while students are waiting for transportation that the district had undertaken to provide.

ATTORNEY FEES

Doe v. Atkinson

Docket: A166145 (First Appellate District; First Div.)

Opinion Date: 10/19/23

Judge: Hume

Facts: John Doe, a junior at UC Davis, was suspended for a year for violating the university's Sexual Violence and Sexual Harassment Policy. This action followed an incident where Doe made a brief video-recording during a consensual sexual encounter with Jane Roe. After investigation, UC Davis found that Doe had violated their policies. Despite an internal appeal, UC Davis upheld the one-year suspension, resulting in Doe's delayed graduation. Doe filed a petition for writ of administrative mandate. The trial court overturned the suspension, finding it "objectively excessive and punitive," but upheld UC Davis's Title IX procedures. UC Davis adjusted the suspension period and later issued Doe's degree retroactively. Doe then sought attorney fees under Civil Procedure Code § 1021.5 and Government Code §800.

Analysis & Holding:

Denial of Attorney Fees Under §1021.5: The trial court denied Doe's request for attorney fees, ruling the lawsuit did not confer a significant benefit on the public or a large class of persons. The court's ruling helped ensure that UC schools would impose reasonable sanctions in future Title IX cases, but this benefit was deemed insufficient to meet the statutory requirement.

Remand for Reconsideration Under §800: The trial court also denied fees under §800, which applies to arbitrary or capricious actions by public entities. The appellate court concluded that the trial court applied an incorrect legal standard in this assessment and remanded the case for reconsideration under the proper standard. The appellate court noted that while the trial court's ruling suggested that the one-year

suspension resulted from an arbitrary or capricious action, a factual determination and evaluation of Doe's attorneys' billing records were necessary for awarding fees under §800.

Disposition: The order denying attorney fees was affirmed in part and vacated in part, with instructions for the trial court to reconsider Doe's entitlement to fees under Government Code §800.

PUBLIC RECORDS ACT

City of Gilroy v. Sup. Court of Santa Clara County

Docket: H049552 (Sixth Appellate District; X Div.)

Opinion Date: 10/23/23

Judge: Greenwood

Facts: The Gilroy Police Department (GPD) receives complaints about homeless encampments, including on the property of the Santa Clara Valley Water District. GPD assists with the cleanup of homeless encampments ("sweeps") on Water District property, after which the Water District is responsible for collecting any belongings left at the site. GPD collects and stores some items, such as ID cards. GPD officers assisting with sweeps have body-worn cameras, which they activate during "criminal investigation or enforcement" actions. This footage is retained for one year, then automatically deleted by a computer system unless flagged for preservation.

After receiving complaints from homeless persons that their personal property was being destroyed during sweeps, the Law Foundation made numerous public record requests and sought declaratory relief under the California Public Records Act (CPRA; Gov. Code, 7920.000).

Analysis & Holding: The court of appeal held that the trial court erred in granting declaratory relief on the basis that GPD's past conduct in responding to the Law Foundation's public records requests violated the CPRA. The trial court did not err by denying the Law Foundation's request for a declaration that Gilroy violated the CPRA by failing to preserve responsive records it claimed were exempt while the records requests were pending. CPRA is not a records retention statute.

County of San Benito v. Superior Court of San Benito County

Docket: H050285 (Second Appellate District; X Div.)

Opinion Date: 10/10/23

Judge: Lie

Facts: Western Resources Legal Center (Western) requested records "about or related to" the Strada Verde Project, including: (1) "all Public Records Act requests sent by anyone concerning" the Project; (2) "all writings received by the County concerning the Project"; (3) "all writings sent by the County to anyone" concerning the Project; (4) "all writings concerning" two individuals; (5) "all text messages sent or received by" two individuals relating to the Project; (6) "all writings" concerning procedures relating to the consideration of general plan amendments; and (7) "all writings concerning potential offsite consequences." Western later requested documents "concerning or discussing" a presentation titled "San Benito Public Records Reveal Deception and Misconduct" and investigations into said deception and misconduct.

Western sued to compel the County to produce the documents for both requests and sought a declaration that the County's policies and procedures were unlawful. In the litigation, Western's requests for production of documents included a request for "all documents responsive to the public records request."

Analysis & Holding: The court of appeal modified the discovery order, citing the California Public Records Act (Gov. Code 7921.000), which states that the "court must determine whether the discovery sought is necessary to resolve whether the agency has a duty to disclose, and ... consider whether the request is justified given the need for an expeditious resolution." Although most of Western's discovery requests were proper, the request to produce the same documents ultimately at issue in the proceeding and the interrogatories seeking a new narrative justification for the County's past decisions were improper.

Bondgraham v. Superior Court of Alameda County

Docket: A1675187 (First Appellate District; Second Div.)

Opinion Date: 9/25/23

Judge: Roesch

Facts: In 2019, two Oakland journalists filed request under the California Public Records Act (CPRA) for information from the Oakland Police Department, specifically regarding the "Celeste Guap" scandal involving police officers and an underage individual. The trial court order the OPD to produce documents related to this case, but with certain redactions.

Analysis & Holding:

The appellate court reviewed three primary arguments made by the petitioners challenging the redactions:

1. Redactions Under Section 837.2, Subdivisions (b)(4) and (b)(5): The court found that the trial court erred in permitting certain redactions under these subdivisions. It highlighted that subdivisions (b)(4) and (b)(5) had specific limitations on what could be redacted, and the redacted information in question, including general policy recommendations and screenshots of Guap's Facebook profile, did not meet these criteria.
2. Redaction of Officer Names Under Section 832.7, Subdivision (b)(6)(B): The court disagreed with the trial court's decision to redact the names of officers who were witnesses under this section. The appellate court argued that preserving the anonymity of witnesses does not apply equally to officers and civilians, especially considering the significant public interest in the conduct of peace officers.
3. Redaction Under Former Government Code Section 6254, Subdivision (f): The appellate court found that the trial court incorrectly permitted redactions based on this former government code section. Section 832.7, subdivision (b)(1) explicitly states that certain police officer records shall not be confidential and should be available for public inspection, overriding the exemptions in former Government Code section 6254, subdivision (f).

The appellate court's decision emphasizes the importance of transparency and public access to police records, especially in cases of police misconduct. The court's directive for the trial court to reconsider the redactions under the proper interpretation of section 832.7 aligns with the CPRA's intent to broadly provide public access to information, balancing this with individual privacy rights. This decision is a significant assertion of the public's right to access records concerning police misconduct, reflecting the evolving legal landscape in this area.

FEHA

Martin v. Board of Trustees of the Cal. State University

Docket: B303509 (Second Appellate District; Eighth Div.)

Opinion Date: 11/14/23

Judge: Bachner

Facts: California State University (CSU) hired Plaintiff as the director of university communications of CSU Northridge's Marketing and Communications Department (the Department). The VP testified that after speaking with employees while investigating complaints against Plaintiff, he determined that Plaintiff could not be an effective department leader because he disregarded CSU's direction regarding professionalism. Staff could not work with him, and subordinates were intimidated and threatened by him. Plaintiff filed a complaint against CSU alleging gender, race, color, and sexual orientation discrimination under the Fair Employment and Housing Act (FEHA); race, gender, and sexual orientation harassment; and failure to prevent harassment and discrimination. CSU filed a motion for summary judgment or adjudication. The trial court entered the order granting summary judgment to Defendants and Plaintiff appealed.

Analysis & Holding: Affirmed. The court found that the trial court correctly granted summary judgment on Plaintiff's discrimination claims, explaining that CSU established a legitimate reason for the termination. Moreover, the court held that Plaintiff failed to submit evidence that creates a dispute of material fact as to pretext. Similarly, the court explained that Plaintiff has not established a dispute of fact regarding whether CSU's internal investigation was pretextual. The court wrote that Plaintiff failed to produce substantial evidence of any bias in the E&D investigation, and his statistical evidence is not probative of discriminatory motive. Further, Plaintiff's evidence of CSU's commitment to diversity did not create a triable issue of discriminatory motive.

CLAIMS FILING REQUIREMENTS

Stronghold Engineering, Inc. v. City of Monterey

Docket: H050157 (Sixth Appellate District)

Opinion Date: 11/3/23

Judge: Grover

Applicable Law:

- *Gov. Code § 905 – requirement that “all claims for money or damages against local public entities” be presented to the responsible public entity before a lawsuit is filed.*
- *Gov. Code § 945.4 – “No suit for money or damages may be brought against a public entity on a cause of action for which a claim is required to be presented...until a written claim therefore has been presented to the public entity.”*

Facts: Stronghold Engineering, Inc. (Stronghold) entered into a contract to renovate the Monterey Conference Center. The contract required Stronghold to give written notice before seeking additional compensation. Changes required approval via written change orders. A dispute resolution procedure was specified for claims under \$375,000. The parties signed a change order in early 2016, and disagreements later arose over the interpretation of waiver language concerning project delays. Without first presenting a claim to the City, Plaintiff filed suit seeking declaratory relief regarding the interpretation of the contract, asserting the Act was inapplicable. Stronghold then presented three claims to the City from 2017-2019 based on its refusal to approve change orders necessitated by purportedly excusable delays. A fourth amended complaint was filed alleging breach of contract.

The trial court granted the City summary judgment, reasoning that the declaratory relief cause of action in the initial complaint was, in essence, a claim for money or damages, and that all claims in the operative complaint “lacked merit” because Plaintiff failed to timely present a claim before filing suit.

Analysis & Holding: The appellate court found that Stronghold's initial action seeking purely declaratory relief did *not* constitute a claim for money or damages, thus *not* triggering the claims presentation

requirement under Gov. Code §954.4. The trial court was incorrect in sustaining the demurrer and later granting summary judgment based on Stronghold's failure to present a claim before filing the initial complaint.

The initial complaint sought interpretation of the contract and change order, not a specific money judgment. Any subsequent claim for damages based on that interpretation would require a presented claim, but the initial declaratory relief did not. The presented claims before amending the complaint to add breach of contract actions were appropriate. However, these were separate from the initial declaratory relief action. The court determined that Stronghold's first claim exceeded \$375,000, thus not triggering the contract's mandatory pretrial dispute resolution procedure. The issue of attorney fees awarded to the city was not part of the appeal but was addressed in a separate matter. The judgment was reversed, and the matter remanded for further proceedings on all causes of action in the operative fourth amended complaint. Stronghold was awarded its appellate costs.

BROWN ACT

Mary's Kitchen v. City of Orange (anti-SLAPP motion / Brown Act)

Docket: G061693 (Fourth Appellate District; Third Div.)

Opinion Date: 10/25/23

Judge: Gastelum

Facts: Defendant City of Orange appealed an order denying an anti-SLAPP motion. The underlying lawsuit alleged a violation of the Brown Act. Plaintiff Mary's Kitchen provided homeless services in the City of Orange. Prior to the filing the lawsuit, the city manager terminated Plaintiff's license, citing safety concerns. Subsequently, the city council held a closed session to discuss potential unspecified litigation. Afterward, the city attorney exited the meeting and declared that the council had "unanimously confirmed" the termination of Mary's Kitchen's license.

The Brown Act required that any contemplated action or topic of discussion be posted in an agenda at least 72 hours prior to the meeting; the meeting agenda pertinent here did not mention anything about Mary's Kitchen's license. Plaintiffs Mary's Kitchen and Gloria Suess (CEO and president of Mary's Kitchen) filed a verified complaint/petition for writ of mandate against the City. The City then filed an anti-SLAPP motion, arguing that because the agenda described the meeting as discussing legal matters, the complaint/petition arose out of protected activity. The City took the position that no action was taken at the meeting, and that the unanimous approval described in the minutes simply reflected inaction—i.e., that the city council chose to do nothing to override the city manager's decision to terminate the license. The court denied the motion, concluding the complaint targeted the City's failure to provide adequate notice of the confirmation of the license termination rather than anything that was said at the meeting.

Analysis & Holding: The appellate court agreed with the lower court's assessment that the complaint targeted the City's failure to provide adequate notice of the confirmation of the license termination, not what was said during the meeting. The court further concluded that the City Council's "unanimous confirmation" was evidence of an action (i.e., ratification). This was relevant to the court's anti-SLAPP analysis, which centered on whether Plaintiff's complaint arose from an unprotected action or from protected speech. The court concluded that the action of ratifying the termination of the licensing agreement was not conduct in furtherance of free speech. Rather, the conduct was "ordinary business." As such, the court denied Plaintiff's anti-SLAPP motion, stating that the complaint did not arise from protected activity.

FIREFIGHTER'S RULE

Michael Rattary et al. v. Brian Favro

Docket: A164441 (First Appellate District; Fourth Div.)

Opinion Date: 11/29/23

Facts: Defendant crashed his car into a firetruck, after which Plaintiffs (two firefighters) began to provide aid. Plaintiffs' lawsuit alleges that Defendant was negligent in failing to comply with their directions, thereby causing them to be harmed by a subsequent vehicle collision.

Analysis & Holding: The Firefighter's Rule negates responsibility "by one whose negligence causes or contributes to the fire which in turn causes the death or injury of [the firefighter]," with exceptions. Under Civil Code 1714.9(a)(1), "any person is responsible, not only for the results of that person's willful acts causing injury" to a firefighter and "also for any injury occasioned to [the firefighter] by the want of ordinary care or skill in the management of the person's property or person," "where the conduct causing the injury occurs after the person knows or should have known of the presence of the firefighter."

The court instructed the jury on Assumption of Risk / Exception / Occupation. The Special Jury Verdict Form asked: Did Defendant increase the risks to [the firefighters] through conduct occurring after he knew or should have known of the presence of the firefighters? The presiding juror marked, "No." The court of appeal ordered a new trial.

Defendant's counsel committed misconduct by misrepresenting the applicable law to the jury, stating that Defendant could not be held liable unless he had increased the risk to the firefighters, "beyond the risk that's inherent to their job."

PUBLIC ENTITY IMMUNITIES

Renee Thomas v. The Regents of the University of California

Docket: A164550 (First Appellate District; Second Div.)

Opinion Date: 11/29/23

Judge: Markman

Applicable Law: Gov Code § 822.2 – "*A public employee acting in the scope of his employment is not liable for an injury caused by his misrepresentation, whether or not such misrepresentation be negligent or intentional, unless he is guilty of actual fraud, corruption, or actual malice.*"

Facts: Plaintiff, a soccer player, sued the University of California, Berkeley (UCB) and others after being released from the women's soccer team. She claimed sexual harassment by the head coach, Neil McGuire, and negligent behavior by Jim Knowlton, UCB's athletic director. Plaintiff alleged McGuire's conduct created a hostile, fear-driven environment involving derogatory remarks and psychological torment. She also alleged that Knowlton and UCB ignored complaints about McGuire's behavior.

Analysis & Holding: The court concluded that Plaintiff sufficiently pleaded a cause of action for sexual harassment under Civil Code § 51.9 against McGuire and UCB. Her complaint described pervasive bullying and abuse, which could be construed as harassment based on gender. However, her allegations against Knowlton were not sufficient for liability under § 51.9. The court noted that while Plaintiff might face challenges proving her claims were enough to state a cause of action at the demurrer stage.

Corruption Exception Analysis: Plaintiff argued that McGuire's actions were motivated by corruption, which would negate the immunity provided under Gov. Code § 822.2. She linked this to the broader

“Varsity Blues” scandal. The court also examined whether Plaintiff’s allegations sufficiently demonstrated a corrupt motive directly connected to the harm she sustained. The court noted that to fall under the corruption exception in § 822.2, it must be shown that the fraud was motivated by corruption or actual malice. Plaintiff’s allegations implied McGuire’s involvement in the admissions scandal and that he misrepresented her continued participation on the team. However, the court found that Plaintiff did not adequately allege facts connecting McGuire’s recruitment actions to the scandal or establish how this would lead to her unjustified release from the team. In conclusion, the court held that Plaintiff failed to establish a connection between McGuire’s alleged corrupt motives and her harm. Therefore, the trial court did not err in sustaining McGuire’s demurrer based on this immunity under § 822.2. The court emphasized the need for concrete facts to support claims of corruption negating statutory immunity.