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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

COFFEE HOUSE,

Petitioner,

v.

THE SUPERIOR COURT OF LOS  
ANGELES COUNTY,

Respondent;

BIHN THAI TRAN et al.,

Real Parties in Interest.

No. B234545

(L.A. Super. Ct. No. GC044903)

ORIGINAL PROCEEDINGS; petition for writ of mandate. C. Edward Simpson,  
Judge. Writ granted.

Early, Maslach & Van Dueck, James G. Randall, John C. Notti, Paul A. Carron;  
Greines, Martin, Stein & Richland, Robert A. Olson and Alana H. Rotter for Petitioner.

Law Offices of Robert H. London, Robert H. London and Robert Brock for Real  
Parties in Interest.

No appearance for Respondent.

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On February 5, 2009, two unidentified men entered the premises of petitioner Coffee House and fatally shot a patron named Hung. Real parties in interest Bihn Thai Tran, Dan Cao, and Frank Luong, patrons of Coffee House at that time, were also shot and injured. Two months before the shooting, a man identified as Viet had entered Coffee House, verbally accosted Hung for “bad-mouthing” him, and displayed a firearm in a threatening manner.

Real parties’ first amended complaint against Coffee House alleged two causes of action. In the first cause of action for premises liability, real parties alleged there was a special relationship between them and Coffee House as business invitees, which created a duty to maintain the premises in a safe condition. The second cause of action, for negligence, alleged Coffee House had a duty to exercise reasonable care to prevent injuries to real parties. Both causes of action alleged that Coffee House breached its duties by failing to hire one or more security guards, call 911 to report the prior incident, and warn real parties of the risks resulting from the prior incident.

Coffee House filed a motion for summary judgment or summary adjudication, arguing it had no duty to real parties, it did not breach a duty to them, and real parties failed to establish the element of causation. Respondent court denied the motion for summary judgment. Coffee House filed a petition for writ of mandate in this court. We issued an alternative writ of mandate, directing respondent court to vacate its ruling and enter a new order granting the motion for summary judgment, or show cause why a peremptory writ should not issue. Respondent court elected not to comply with the alternative writ. We grant the relief prayed for in the petition, as real parties cannot establish the essential element of causation in both causes of action. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763 (*Saelzler*).

## **The Motion for Summary Judgment**

### ***A. Coffee House's Moving Papers***

Coffee House argued it owed no duty of care to real parties, it did not breach a duty of care, the shooting of real parties was not foreseeable, and breach of any duty was not a substantial factor causing real parties' injuries. Coffee House relied on the following undisputed facts.

Two men, wearing bandanas and dark clothing, committed the February 5 shooting. The event happened quickly, and the assailants have not been identified. Real parties were shot and injured; Hung was killed. Luong was present and witnessed the prior incident at Coffee House. A man entered Coffee House and yelled that Hung had "bad-mouthed" him. The man pulled out a gun and slammed it on a table, breaking the glass top. Luong did not hear the man say anything about coming back.

### ***B. Real Parties' Opposition***

Real parties identified the person who had confronted Hung in the earlier incident as Viet. Viet and Hung were gang members. The first incident was not reported to the police. Although Luong was present at the first incident, Tran and Cao were not and had not heard about the confrontation. Coffee House took no steps to contact the police, warn patrons, exclude the involved parties of the first incident from the premises, hire a doorman or security guard, or take other measures to protect real parties.

Coffee House owed a duty to its patrons based on its special relationship with business invitees. Foreseeability of future crimes can be established by prior similar incidents. Coffee House owed a duty to hire a security guard or undertake a similar burdensome measure in order to protect its patrons from violent criminal attack. Coffee House's breach of duty was a substantial factor in causing real parties' injuries. Tran

and Cao would not have gone to Coffee House had they been warned of the prior incident. Luong knew of the prior incident, as he was present at the time it occurred, but he had seen Viet and Hung in Coffee House after that and assumed the matter had been settled.

Real parties relied on two expert declarations. Kimberly Ponce, an investigator with the Los Angeles County Sheriff's Major Crimes Bureau, had 16 years' experience as a peace officer and extensive investigative experience. She reviewed the records and reports in this case and concluded the owners/management of Coffee House had knowledge of a dangerous situation and had a duty to act to protect its patrons. Coffee House acted unreasonably, allowing its fear of these gang members to affect their duty to act reasonably, resulting in injuries to real parties.<sup>1</sup>

Ban Nguyen, a background investigator for the sheriff's department, filed a declaration establishing his training and 15 years experience in law enforcement. Based on his review of the case records, he opined that Coffee House should have warned patrons of an armed threat, taken steps to exclude the offender from the premises, maintained an operating sound and video monitoring system, created signage advising patrons of monitoring, trained its employees on what to do in an emergency, consulted with a security expert, placed panic alarms throughout the location, employed a doorman to assess individuals, and hired or requested the landlord to provide a private armed or unarmed security service. Coffee House failed to reasonably minimize the risk of further criminal activities, making the February 5 shooting more likely to occur.<sup>2</sup>

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<sup>1</sup> The trial court sustained objections to those portions of Ponce's declaration in which she stated: (1) the owners/management of Coffee House had knowledge of a dangerous situation that would escalate into a possibly deadly incident; and (2) Coffee House had a duty to protect its patrons, but it acted unreasonably due to fear of gang members and potential loss of revenue, resulting in real parties' injuries.

<sup>2</sup> An objection was sustained to the last sentence in Nguyen's declaration, in which he stated that Coffee House failed to take reasonable steps to minimize the risk of further criminal activity, but actually multiplied that risk making the injuries to real parties more likely. Other evidentiary objections were overruled.

### ***C. Ruling of Respondent Court***

Respondent court denied the motion for summary judgment. Coffee House, “under the allegations of this case,” owed a duty to protect real parties from criminal acts of third parties. Real parties’ proposed measures are neither burdensome financially or socially, and it is reasonably probable that if these measures had been taken the incident would not have occurred. There are triable issues as to whether Coffee House conduct was a substantial cause of the injuries to real parties.

## **DISCUSSION**

### **Standard of Review**

Coffee House, as a defendant moving for summary judgment, was entitled to summary judgment if it established a complete defense to real parties’ causes of action, or showed that one or more elements of the cause of action could not be established. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849 (*Aguilar*)). “The moving party bears the burden of persuasion that there is no triable issue of material fact. Additionally, the moving party bears the initial burden of production to make a prima facie showing that no triable issue of material fact exists. Once the initial burden of production is met, the burden shifts to the responding party to demonstrate the existence of a triable issue of material fact.” (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1250, citing *Aguilar, supra*, at pp. 850–851.) “On appeal after a motion for summary judgment has been granted, we review the record de novo, considering all the evidence set forth in the moving and opposing papers except that to which objections have been made and sustained.” (*Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317, 334 (*Guz*)).

## Causation

In order to prevail, real parties must establish that Coffee House owed a duty of care, that duty was breached, and the breach was a proximate or legal cause of their injuries. (*Saelzler, supra*, 25 Cal.4th at p. 767, citing *Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1188.) To demonstrate causation, a plaintiff must do more than speculate through testimony of security experts that the injury was caused by the failure to provide greater security measures. (*Nola M. v. University of Southern California* (1993) 16 Cal.App.4th 421, 435 (*Nola M.*)). Where there is no evidence of the identity of the assailants or whether they were gang members, and even if the premises had been the location of frequent recurring criminal activity, causation is not established by an expert's declaration that the presence of security guards would have prevented an attack. (*Saelzler, supra*, at pp. 776.)

To demonstrate actual or legal causation, a plaintiff must show that the defendant's act was a substantial factor in bringing about the injury, meaning the "plaintiff must show some substantial link or nexus between omission and injury." (*Saelzler, supra*, 25 Cal.4th at p. 778.) A significant increase in security will not prevent all crime or a particular crime. (*Id.* at p. 779; *Nola M., supra*, 16 Cal.App.4th at pp. 436-437.) "No matter how inexcusable a defendant's act or omission might appear, the plaintiff must nonetheless show the act or omission caused, or substantially contributed to, her injury." (*Saelzler, supra*, at p. 780.)

In *Noble v. Los Angeles Dodgers, Inc.* (1985) 168 Cal.App.3d 912, 915-918 (*Noble*), the plaintiff was assaulted in a parking lot at Dodger Stadium and sued the stadium owner on the theory it failed to provide adequate security for its patrons. The plaintiff's expert witness opined at trial that the owner should have employed more security guards to patrol the area. The jury awarded the plaintiff substantial damages. The Court of Appeal reversed, holding that "abstract negligence," without proof of a causal connection between the defendant's breach and the plaintiff's injury, is insufficient to sustain the award. (*Id.* at pp. 916, 918.)

Respondent court erred in denying the motion for summary judgment. Real parties failed to present any nonspeculative evidence on the issue of causation. The attackers in the shooting have not been identified and there is no evidence of gang affiliation. The prior incident occurred two months before real parties were injured. There is no evidence the two incidents were related. Following the first incident, Viet was seen at Coffee House in the presence of Hung, with no apparent difficulties.

There is no competent evidence that the absence of the security measures suggested by real parties' expert Nguyen played any role in the attack. Luong described a sudden attack by two men, and it is entirely speculative that the assault would not "occur despite the maintenance of the highest level of security." (*Saelzler, supra*, 25 Cal.4th at p. 777.) Case law does not make a landowner an insurer against unexpected violent attacks. (*Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1222-1223 [the presence of security guards would not have been able to stop the quickly developing late night confrontation in which plaintiff was injured]; *Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472, 489; *Noble, supra*, 168 Cal.App.3d at p. 914.) Nguyen's expert declaration is indistinguishable from that found insufficient to establish causation in *Saelzler, supra*, at page 777. (See also *Thai v. Stang* (1989) 214 Cal.App.3d 1264, 1275-1276.)

Because we resolve the petition on the issue of causation, we need not discuss Coffee House's arguments that summary judgment should have been granted on the issues of duty and breach of duty.

## DISPOSITION

Let a peremptory writ of mandate issue directing respondent superior court to vacate its order denying Coffee House's motion for summary judgment and enter a new order granting summary judgment. Costs are awarded to Coffee House.

KRIEGLER, J.

We concur:

ARMSTRONG, Acting P. J.

KUMAR, 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.