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Request To Publish Opinion
Cal. Rules of Court, rule 8.1120

November 12, 2015

Hon. Judith McConnell
Hon. Richard D. Huffman
Hon. Gilbert Nares
California Court of Appeal
Fourth Appellate District, Division 1
750 B Street, Suite 300
San Diego, CA 92101

RE: *Garcia et al. v. Holt et al.*, 4d Civil No. D066393

Honorable Justices:

We represent respondents Michele Holt and Niel Mamerto. We write to respectfully request, under California Rules of Court, rule 8.1120, that this Court order published its recent unpublished opinion in *Garcia et al. v. Holt et al.* (Oct. 27, 2015, No. D066393) (the "Opinion").

The Opinion holds that where residential landlords have no actual knowledge of their tenants' dangerous activities being conducted at their rental property, they owe no duty to third parties to inspect the unit for such activities while the tenants are in exclusive possession. (Opn. at pp. 5-7.) The Opinion properly applies a settled bright-line rule, normally applied in the dangerous dog context, to a new circumstance – domestic terrorist activities – which no prior published California opinion addresses. More generally, the Opinion applies a rule that has heretofore been associated with dangerous animals as well as more broadly to categories of tenants' unknown, dangerous conduct.

An opinion "should be certified for publication in the Official Reports" if it meets *any* of the nine separately listed criteria in California Rules of Court, rule 8.1105(c). As set forth below, this Court's Opinion squarely meets at least two criteria: It (1) "[a]pplies an existing rule of law to a set of facts significantly different from those stated in published opinions"; and (2) "[i]nvolves a legal issue of continuing public interest." (Cal. Rules of Court, rule 8.1105(c)(2), (6).)

The Opinion applied an existing rule of law to a different set of facts (rule 8.1105(c)(2)). As correctly stated in the Opinion, there is an existing "'bright line' rule" in residential landlord/tenant law limiting landlords' duty of care where they have "'relinquished control of property to a tenant'": In such cases, landlords owe *no* duty to third parties who are injured on the land due to a dangerous condition absent proof that the landlords had actual knowledge of the dangerous condition in question plus the right and ability to eliminate it. (Opn. at p. 5, quoting *Salinas v. Martin* (2008) 166 Cal.App.4th 404, 412.) Published opinions have generally applied this rule in the context of dangerous dogs. (See, e.g., *Uccello v. Laudenslayer* (1975) 44 Cal.App.3d 504, 512.)

But here, that rule of law was applied to a significantly different set of facts. Namely, the tenant here was manufacturing and storing the largest collection of homemade explosive material ever found in a private residence in the United States – so much bombmaking material that the plaintiff gardener triggered an explosion outside of the house when he walked across some loose gravel on the property.

The issue raised by this set of facts was whether this type of dangerous terrorist activity – occurring without the landlord's knowledge – triggered a duty for the landlords to periodically inspect the property during the month-to-month tenancy. While the facts here are unique, the legal principles apply to a long list of hidden, dangerous activities that conceivably could be occurring in rental properties rented on a month-to-month basis, including gang activity, drug dealing, homemade methamphetamine cooking, child exploitation, possession of exotic dangerous animals, or even lawful activities that could be potentially dangerous, such as smoking or barbequing.

The absence of published precedent means that injuries involving these various dangerous conditions will be repeatedly litigated and analyzed. On the other hand, publication of this Court's analysis would guide landlords and tenants alike. It will make the legal process and the resolution of premises-liability claims more efficient. This alone is sufficient to warrant publication of the Opinion.

The Opinion involves a legal issue of continuing public interest (rule 8.1105(c)(6)). There is a continuing issue of public interest in having a published opinion on the books that, once and for all, confirms that landlords owe no duty to periodically inspect properties of month-to-month tenants no matter what is going inside the premises – even terrorist activities – unless they have actual knowledge that the dangerous activities are occurring. This rule of law will apply to all residential landlords. And it will affect numerous circumstances beyond this particular case. As discussed above, the rule in the Opinion is a generic one, applicable to a variety of unknown, dangerous conduct of residential tenants.

Although the underlying principle in the Opinion – i.e., requiring actual knowledge to impose a duty of care on landlords – is not new, property-owner landlords and California courts will continue to litigate the duty issue outside the dangerous dog context unless and until a published opinion puts the issue to rest. Publication is especially warranted on this ground.

* * * * *

In short, publication will benefit both the bench and bar in future cases. This Court's comprehensive and thoughtful Opinion provides a clear rule applied to a unique set of circumstances not previously addressed in a published opinion. And, it is clear that the issue of whether a landlord has a duty to inspect its tenants' units for dangerous conditions and activities remains current and important in today's dangerous world. If published, this Court's Opinion will help flush many cases out of the system sooner rather than later, thereby preventing unnecessary litigation.

Accordingly, respondents respectfully urge this Court to publish its Opinion in this matter.

Respectfully submitted,

GREINES, MARTIN, STEIN & RICHLAND LLP

By: _____
Gary J. Wax

Attorneys for Defendants and Respondents
MICHELE HOLT and NIEL MAMERTO

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5900 Wilshire Boulevard, 12th Floor, Los Angeles, California 90036.

On **November 12, 2015**, I served the foregoing document described as: **REQUEST TO PUBLISH OPINION [Cal. Rules of Court, rule 8.1120]** on the parties in this action by serving:

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Brett Richard Parkinson, Esq.
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[Attorneys for Plaintiffs and Defendants: Mario Garcia and Esperanza Garcia]

(X) BY MAIL: As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

Executed on **November 12, 2015**, at Los Angeles, California.

(X) (State): I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Leslie Barela