



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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Taxpayers Not on the Hook in ‘Zombie Walk’ Case

After woman was hit by a car outside Comic-Con, both she and the motorist sued the City

The City Attorney’s Office successfully prevented San Diego from being sued by individuals involved in a traffic accident that occurred during the “Zombie Walk” parade at San Diego International Comic-Con in 2014.

Superior Court Judge Judith F. Hayes ruled that the facts presented to the court were insufficient to support the plaintiffs’ claims that the City was negligent or created a dangerous condition that day. Judge Hayes sustained the City’s demurrers without leave to amend, meaning the complaints cannot proceed or be revised.

On July 26, 2014, Cynthia Campbell was injured by a vehicle driven by Matthew Pocci, who failed to yield to pedestrians and onlookers participating in the 8th annual “Zombie Walk” on public streets downtown. Campbell was there photographing the event; Pocci and his passengers were on their way home from Comic-Con.

Pocci was subsequently convicted of felony reckless driving.

Nonetheless, Campbell, Pocci and Pocci’s three passengers sued the City for damages, arguing that the City should have prevented Pocci’s reckless driving by closing roads and providing detours during “Zombie Walk.”

In her ruling (attached), Judge Hayes said the plaintiffs failed to state sufficient facts to support their theories of general negligence by the City. Moreover, she wrote, plaintiffs did not demonstrate that they can overcome authorities that grant the City immunity from their causes of action.

Judge Hayes agreed with the City’s position that for a public entity to be liable for a dangerous condition on public property that results in injury by a third party, there must be a defect in the condition of the public property, and the defect must have some causal relationship to the conduct that led to injury. In this case, no such defect was shown.

The case was argued for the City by Deputy City Attorney Kelly McGeehan.

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**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL**

MINUTE ORDER

DATE: 06/09/2016

TIME: 03:50:00 PM

DEPT: C-68

JUDICIAL OFFICER PRESIDING: Judith F. Hayes

CLERK: Richard Cersosimo

REPORTER/ERM: Not Reported

BAILIFF/COURT ATTENDANT:

CASE NO: **37-2015-00010980-CU-PO-CTL** CASE INIT.DATE: 04/01/2015

CASE TITLE: **Campbell vs. CITY OF SAN DIEGO [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

APPEARANCES

The Court, having taken the above-entitled matter under submission on 05/27/2016 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

The Demurrers of The City of San Diego to Plaintiff Cynthia Campbell's First Amended Complaint and Plaintiffs Matthew Pocci, Alexandria Antonio, April Antonio and Ryan Anthony Ayus' (Plaintiffs Antonio) First Amended Complaint are SUSTAINED, without leave to amend.

The Court finds for all the reasons raised in the demurrers, plaintiff Campbell's first amended complaint and plaintiffs Antonio's first amended complaint fail to state sufficient facts to constitute the claims asserted therein, and the City is otherwise immune.

The City is not liable for common law negligence. (*Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920) The first amended complaints of Campbell and Antonio fail to state sufficient facts that the City is liable in negligence. Plaintiffs failed to state any applicable statutory basis to support their respective negligence theories. (Government Code section 815, *Susman v. City of Los Angeles* (1969) 269 Cal.App.2d 803)

Plaintiffs seem to draw from Government Code section 835 to assert their theories of general negligence against the City. Even if plaintiffs' theories regarding a dangerous condition of public property applied to a negligence claim, they fail to demonstrate how any physical characteristic of the City's property caused plaintiffs' respective injuries.

Moreover, plaintiffs have not demonstrated they can overcome authorities that grant immunity to the City for their respective negligence causes of action. (Government Code sections 815, 845)

Both the first amended complaints fail to state sufficient facts to constitute a claim for dangerous condition of public property. (Government Code section 935, *Song X Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1187)

A public entity may be liable for a dangerous condition of public property even where the immediate cause of a plaintiff's injury is a third party's negligent or illegal act ... if some physical characteristic of the property exposes its users to increased danger from third party negligence or criminality. [Citation.] **But it is insufficient to show only harmful third party conduct, like the conduct of a motorist.** "[T]hird party conduct by itself, unrelated to the condition of the property, does not constitute a 'dangerous condition' for which a public entity may be held liable." [Citation.] **There must be a defect in the physical condition of the property and that defect must have some causal relationship to the third party conduct that injures the plaintiff.** [Citation.] '[P]ublic liability lies under [Government Code] section 835 only when a feature of the public property has "increased or intensified" the danger to users from third party conduct. (*Song X. Sun v. City of Oakland* (2008) 166 Cal.App.4th 1177, 1187, emphasis added)

Plaintiffs' first amended complaints fail to allege any physical characteristic of the City's property that caused plaintiffs' respective injuries. (*Song X. Sun, supra, see also, Pekarek v. City of San Diego* (1994) 30 Cal.App.4th 909, 916)

At oral argument plaintiffs reasserted their contention that *Constantinescu v. Conejo Valley Unified School Dist.* (1993) 16 Cal.App.4th 1466 stands for the proposition that Government Code section 835 needn't always implicate a physical characteristic in the property.

However, *Constantinescu* involved a school district and the court there specifically analyzed the facts of that case noting a special relationship existed between the district and the children injured. (*Constantinescu, supra* at 1472-73) Yet, plaintiffs here do not point to any special relationship between the City and the plaintiffs.

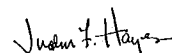
Constantinescu acknowledges that "[o]rdinarily, traffic congestion is not a dangerous condition invoking the application of section 835. (*Constantinescu, supra* at 1473) The matter before this Court is more analogous to "traffic congestion." There is no special relationship between plaintiffs and the City, and plaintiffs have not demonstrated that one exists. Therefore, the Court finds *Constantinescu* is inapplicable.

The Court will not entertain leave to amend. All Plaintiffs failed to sustain their burden on demurrer to demonstrate how reasonable amendment could cure the defects raised by the instant demurrer.

In fact, plaintiff Campbell was previously granted leave to amend to cure the same defects raised in the City's original demurrer. As evidence of her inability to do so, plaintiff's first amended complaint remains defective and she failed to properly allege viable claims against the City.

Plaintiffs Antonio failed to demonstrate in any meaningful way how their complaint could be amended to cure the defects raised by the demurrer.

As such, the City is hereby dismissed from both actions.



Judge Judith F. Hayes