

DUARTE v. STATE

84 Cal. App. 3d 729, 148 Cal. Rptr 804 (1978).

STANIFORTH, Associate Justice.

Plaintiff Yvonne Duarte's complaint sought damages for wrongful death of her daughter, Tanya Gardini. Tanya was raped and murdered in the student residence hall owned and operated by the California State University at San Diego. Duarte's complaint tendered * * * negligence * * * and negligent misrepresentation as alternative theories of liability.

The trial court sustained demurrers to each * * *

* * * The * * * cause of action, * * * in negligence, charges the university with the failure to meet the duty to protect, care for, supervise, house, assist and otherwise exercise custodial responsibility towards her daughter. The fourth cause of action is for negligent misrepresentation concerning the safety of the university dormitory allegedly relied upon by plaintiff in placing her daughter in the dormitory rather than in a private security apartment.

* * *

Tanya Gardini entered the California State University at San Diego in September 1974 as a freshman. She had just graduated from high school. She arranged for living accommodations at the Zura Hall, a dormitory facility operated by the university on its campus. Duarte alleges the university expressly and impliedly represented that the housing facilities were reasonably safe and secure for their occupants; Mrs. Duarte relied upon such representations and by reason thereof took no steps to provide additional safety or security measures for her daughter.

On December 2, 1974, Tanya was raped and murdered in her room at Zura Hall by Lee Ellis Handy, Jr. * * *

The complaint alleges the campus of the California State University attracted many non-students who were interested in establishing social relationships with the many young women living on the campus. Before Tanya's murder the university was aware there was a chronic pattern of violent assaults, rapes and attacks on female members of the university community, and that this pattern was escalating.

Despite this knowledge, the university failed to take responsible precautions to reduce the hazard and to protect the residents in the university dormitories or to warn the students or to train the students to protect themselves. The complaint charges that defendants not only were aware of the increasing pattern of violence on the campus but engaged in a pattern of covering up these events so that the true extent of the violence on the campus was not generally known to Duarte or the university campus.

Tanya was living away from home for the first time; she was subjected to a danger for which she and others were totally unprepared and unwarned in living in the university dormitories; the complaint further alleges that in contracting for a room in Zura Hall, Tanya was required to submit herself to the control of the university far more extensively than does the university student not living in a resident dormitory; limitations are placed on the use or misuse of alcohol or possession of drugs. Dismissal may result from inappropriate behavior. Failure to abide by university residence hall standards could result in expulsion. The university could revoke Tanya's rental agreement on one day's notice. The university reserved the right to enter the students' rooms to inspect for purposes of management, health, safety, and maintenance of rules and regulations; it is alleged the rental agreement provides far greater control of the student than does the ordinary landlord and tenant relationship. Duarte asserted that there develops a "special relationship" between the students and the university arising out of the terms of the contract and that "a dangerous condition" existed on the premises under control of the university for which there is a legal responsibility.

* * *

Duarte contends the university has a duty to provide reasonable security from foreseeable criminal acts against student tenants by third party intruders.

At the threshold of our inquiry into this novel pleading, we search for the fundamental rules, the source of the duty of one person to control the conduct of another or respond in damages.

At the outset of the search we find the “indispensable factor to liability founded upon negligence is the existence of a duty of care owed by the alleged wrongdoer to the person injured, or to a class of which he is a member.” Further, a “duty of care” is merely a descriptive phrase, a conclusory statement that in a particular case one party will be adjudged liable for damages done another.

* * *

The sum total of those considerations giving rise to the duty of care is expressed in [the Civil Code]. Liability is to be imposed “for an injury occasioned to another by his want of ordinary care or skill.” And the most important of the considerations establishing want of ordinary care, *i.e.*, duty, is foreseeability.

As a general principle, a ‘defendant owes a duty of care to all persons who are foreseeably endangered by his conduct, with respect to all risks which make the conduct unreasonably dangerous.’ * * * [H]owever, when the avoidance of foreseeable harm requires a defendant to control the conduct of another person, or to warn of such conduct, the common law has traditionally imposed liability only if the defendant bears some special relationship to the dangerous person or to the potential victim.

Under the common law, as a general rule, one person owed no duty to control the conduct of another or to warn those endangered by such conduct. The courts have carved out exceptions (which may well have swallowed this rule) in cases where the defendant stands in some special relationship to either the person whose conduct needs to be controlled or in a relationship to the foreseeable victim of that conduct. At section 315 of the Restatement Second of Torts, a duty of care may arise from either “(a) a special relation * * * between the actor and the third person which imposes a duty upon the actor to control the third person’s conduct, or (b) a special relation * * * between the actor and the other which gives to the other a right of protection.”

The legal responsibility for the protection of another person from the criminal misconduct of a third party (absent a specific contractual undertaking) has been historically founded on some recognized relationship existing between the parties such as carrier and passenger, innkeeper and guest, invitor and business guest, school district and pupil, employer and employee, landlord and tenant. The list and the concept has a general elasticity, characteristic of tort law principles.

In keeping with this growth process, the California courts have determined that the entrepreneurial land occupier has the duty to exercise reasonable care to protect invitees, patrons on the premises from unlawful acts of third persons.

* * *

[I]n *Stockwell v. Board of Trustees*, a Stanford University student was struck in the eye by a pellet fired by an unknown party. The university had knowledge that guns had been used on the campus contrary to regulations. The duty of care owed to the student was determined as a matter of law. The court said[:]

Applying the foregoing legal rules to the factual situation presented, it becomes apparent not only that the question of whether under all the circumstances shown the university exercised reasonable care to protect its students from the perils of the pro-

miscuous use on the premises of BB guns was one of fact which plaintiff was entitled to have submitted to and determined by the jury, but also that if a verdict favorable to plaintiff had been returned, it would not have been lacking in evidentiary support; and that therefore the court was not justified in granting the nonsuit.

There is no disputing the legal principle upon which defendants seem strongly to rely, that a person invited upon the premises of another may recover damages from such owner for injuries received owing to the dangerous condition of the premises known to the owner and not known to the person so injured, but that such owner is not bound to keep his premises absolutely safe. (Citations.) However, there is nothing in the statement of such legal principle indicating that the question of the owner's knowledge of the dangerous condition is one of law. Here as pointed out the evidence affirmatively shows knowledge on the part of the university of the promiscuous use of BB guns on the premises, and it was doubtless a question of fact as to whether the promiscuous use thereof under the conditions shown by the evidence constituted a dangerous condition against which the university negligently failed to protect its invitees.

The duty of care arises in yet another fact matrix where the special circumstances arise because one person has the custody, control of another. This duty includes the duty to anticipate danger, * * *

* * *

In yet another area the courts, by the process of analogy to the innkeeper's liabilities (after cleaning away much legal underbrush), have held the landlord-tenant relationship in the urban, multiple residential dwelling context, gives rise to liability under circumstances where landlords have failed to take reasonable steps to protect tenants from criminal activity.

Kline v. 1500 Massachusetts Avenue Corp., the landmark case, holds a landlord liable both on negligence and contract principles in failing to protect a tenant against criminal conduct of third parties.

The *Kline* court based liability, found "duty" on these premises. First the court found the "logic of the situation" required the imposition of a duty of protection upon the landlord.

The landlord is no insurer of his tenants' safety, but he certainly is no bystander. And where, as here, the landlord has notice of repeated criminal assaults and robberies, has notice that these crimes occurred in the portion of the premises exclusively within his control, has every reason to expect like crimes to happen again, and has the exclusive power to take preventive action, it does not seem unfair to place upon the landlord a duty to take those steps which are within his power to minimize the predictable risk to his tenants."

Further, the *Kline* court said:

"[T]he ability of one of the parties to provide for his own protection has been limited in some way by his submission to the control of the other, a duty should be imposed upon the one possessing control (and thus the power to act) to take reasonable precautions to protect the other one from assaults by third parties which, at least, could reasonably have been anticipated. However, there is no liability normally imposed upon the one having the power to act if the violence is sudden and unexpected provided that the source of the violence is not an employee of the one in control."

* * *

[The court concluded that the facts of this case were closer to cases allowing recovery in analogous situation than to those that did not.]

Tanya was not the victim of a sudden unexpected outburst. She had a landlord-tenant

relationship-plus with the university. Tanya had in many substantial respects surrendered the control of her person, control of her own security to the university. The university, it is charged, failed to warn and concealed the true state of affairs concerning rapes and assaults upon students. The charge here is that no security devices were instituted, let alone minimal safety precautions such as warning of the degree of danger. The university allegedly has superior knowledge and also the means of instituting some reasonable protective measures. The university not only had control over the campus areas and the residential facilities but also many aspects of Tanya's personal activities. Tanya herself could not purchase and install security devices or hire a private police force. She could not possess a dog or a firearm.

Further the pleadings here allege the most important factor of liability foreseeability. It is asserted the university knew of past assaults and of the conditions inviting further assaults. By failure to institute reasonable means within their power of accomplishment the likelihood of Tanya becoming a rape victim was increased.

We conclude that the duty of care here arose not only from the factual situation in which the university was on notice of potential harm to a person or class of persons, a duty of care was owed under the traditional tort basis.

Duarte's fourth cause of action was for negligent misrepresentation. [The Civil Code] defines deceit in terms of a negligent misrepresentation, to-wit: "The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true." Duarte alleges that the university represented the "campus was reasonably safe and secure for the safety of female students, and that no unusual steps need be taken to insure safety from sexual and other violent assaults." Duarte's reliance upon these false representations and approximate dangers are appropriately alleged.

Judgment reversed.