

University of Southern CA v. Superior Court (2018) 30 Cal.App. 5th 429

USC did not owe a duty of care to a guest who fell and sustained injuries at an off-campus fraternity party

FACTS/PROCEDURE

On Thursday, October 10, 2013, Carson Barenborg, a nineteen-year-old student at Loyola Marymount University, attended a party at a University of Southern California (USC) fraternity house hosted by the Cal. Gamma Fraternity house (Gamma). USC security made numerous trips to Gamma in response to complaints of alcohol consumption and loud noises but chose not to shut down the party. USC student knocked Barenborg off of a makeshift dancefloor that was approximately seven (7) feet off the ground. Barenborg, who was under the influence of cocaine and five (5) to seven (7) alcoholic beverages, fell face first into the concrete sustaining severe injuries including a traumatic brain injury, permanent hearing loss, and facial paralysis.

USC maintained strict policies on fraternal organizations' use of drugs and alcohol at social events. USC required prior authorization to serve alcohol and prohibited evening parties from Sunday through Thursday. Gamma had a verified history of violating these policies.

Barenborg filed a complaint alleging that USC violated their duty of care and negligently allowed the fraternity party to continue. The trial court denied USC's motion for summary judgment and found sufficient evidence that a jury could find USC owed and breached a duty of care to Plaintiff. USC disputed that it owed such a duty and filed a petition for a writ of mandate.

HOLDING/DISCUSSION

Petition granted. Although a person generally has no duty to protect another from a third party's conduct, an exception applies when the defendant maintains a "special relationship" with the third party or plaintiff. A special relationship between a defendant and an invitee can exist when a defendant maintains control over land or when a business hires security personnel. USC did not maintain or exercise control over Gamma. Although USC had policies that applied to Gamma, USC did not have a right to use the house, did not maintain the house, and did not have invitees use the house. USC did not possess, control, or hire security to protect the Gamma house specifically. USC did not have a special relationship, nor did it commit a negligent undertaking. By adopting policies regarding alcohol use and social events and providing a security patrol USC did not assume any duty to protect invitees from third party conduct and thus did not act negligent in any type of undertaking. Furthermore, the *Rowland* factors, on balance, weigh against imposing a duty on USC to protect a fraternity's invitees from the risk of harm at an off-campus party.

Thus, USC had no special relationship with Barenborg and owed her no duty. The trial court's denial of summary judgment was vacated.