***Safechuck v. MJJ Productions, Inc.* (2023) 94 Cal.App.5th 675**

A corporation that facilitates the sexual abuse of children by one of its employees is not excused from an affirmative duty to protect those children merely because it is solely owned by the perpetrator of abuse.

## FACTS/PROCEDURE

In 2013-2014, plaintiffs filed complaints against MJJ Productions, Inc. and MJJ Ventures, Inc. ("defendants") alleging the corporations had a legal duty to protect plaintiffs from the sexual abuse allegedly inflicted by the sole shareholder of both entitles, Michael Jackson, when they were children.

Jackson allegedly molested both plaintiffs in the course of their employment or representation by defendant entities in the entertainment industry. Both complaints allege graphic and repeated sexual abuse by Jackson for years.

The record indicates Jackson's reputation was known amongst defendants' employees. Defendant MJJ Productions' Executive Director warned multiple employees to never leave their children alone with Jackson. Plaintiffs allege Jackson acted with the full knowledge, consent, and cooperation of defendants, who the complaint characterized as his "co-conspirators, collaborators, facilitators and alter egos for the childhood sexual abuse alleged." *(Safechuck v. MJJ Productions, Inc.* (2023) 94 Cal.App.5th 675, 683.) Staff coached, trained, cleaned, prepared food, provided transportation services and coordinated scheduling for plaintiff and other minors. Plaintiff's parents were assured by at least two employees that their children would be taken care of and cared for while they were away on your or in contact with Jackson.

The lawsuits were filed in Los Angeles County Superior Court. The trial court sustained defendants' demurrer without leave to amend in Safechuck's case and granted summary judgment in Robson's case. In both cases, the trial courts concluded defendants did not exercise control over Jackson and therefore did not owe a legal duty to protect either plaintiff. Both plaintiffs appealed and the court consolidated their cases.

## HOLDING/DISCUSSION

The California Court of Appeal for the Second Appellate District reversed and remanded. The principal issue in these cases was whether two corporations, wholly owned by late entertainer Michael Jackson, had a legal duty to protect plaintiffs from the sexual abuse Jackson allegedly inflicted on them over the course of several years when they were children.

The California Supreme Court provides a two-step inquiry for how courts should determine whether a defendant has a legal duty to protect a plaintiff from injuries caused by a third party. (*Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 209.) First, the court must determine whether a special relationship between the parties, or some other circumstances exists that give rise to an affirmative duty to protect. Second, if so, the court must consult the *Rowland* factors to determine whether relevant policy considerations counsel limiting that duty.

A special relationship between the defendant and the victim is one that gives the victim a right to expect protection from the defendant. (*Brown, supra*, 11 Cal.5th at 216.) A typical setting where courts recognize a special relationship is where the plaintiff is particularly vulnerable and dependent on the defendant, who has some control over the plaintiff's welfare. (*Ibid.*) Here, plaintiffs were young children—by definition, vulnerable and

dependent on the adults who took care of and supervised them. Defendants employed Jackson, knowing he was a danger to young boys. Defendants employed the child victims and employed the staff who ran Jackson's residences, planned and facilitated plaintiffs' trips to visit Jackson, and adopted policies and operations enabling Jackson to be alone with plaintiffs. Thus, defendants' employees, officers and directors exercised some degree of control over and responsibility for plaintiffs' welfare and were on notice of the danger Jackson posed. *(Safechuck, supra,* 94 Cal.App.5th at 694.)

In *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 620, the Supreme Court held the defendant owed a duty to protect the plaintiff *without* deciding whether the defendant also had a duty to control the dangerous third party. As explained in *Musgrove v. Silver* (2022) 82 Cal.App.5th 694, 706, a defendant has a duty to protect another if there is a special relationship with *either* the third party who injures the plaintiff or the plaintiff herself. While the first type of special relationship runs between the defendant and the third party and obligates the defendant to *control the third party*, the second type of special relationship runs between the defendant and the plaintiff and obligates the defendant to *protect the plaintiff*. Thus, defendants' control over Jackson, the sole shareholder, was not dispositive. Here, plaintiffs had every right to expect defendants "protect them from the entirely foreseeable danger of being left alone with Jackson." (*Safechuck, supra,* at 694.)

Under the second step of the *Brown* inquiry, courts evaluate the "sum total" of the policy considerations at play in the given context. (*Rowland v. Christian* (1968) 69 Cal.2d 108, 113.) Factors include "the foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." (*Ibid.*)

Here, while defendants "scarcely" mention the foreseeability of sexual abuse where minors are both employed by corporations and frequently left alone with a known perpetrator, the Court of Appeal noted, "It is difficult to conceive a special relationship involving more foreseeable victims[.]" (*Safechuck, supra,* at 694.) Further, defendants blamed plaintiffs' families for allowing their children to sleep in Jackson's bedroom and attached no moral blame to their conduct. On balance, the court concluded the "sum total" of the *Rowland* policy considerations did not justify carving out solely owed corporations from the affirmative duty to protect and to warn that arises from the special relationships found in the cases at hand. Thus, the court concluded a corporation that facilitates the sexual abuse of children by one of its employees is not excused from an affirmative duty to protect those children merely because it is solely owned by the perpetrator of the abuse.