

Sargenti v. City of Long Beach

(2026) DJDAR 3913

Court of Appeal, Second District, California

Inadmissible evidence could not create a triable issue of material fact at summary judgment stage, so plaintiff failed to show City had constructive knowledge of dangerous condition on its property.

FACTS/PROCEDURE

Edwin Sargenti sued the City of Long Beach after he struck a patch of asphalt (“blunt flat edge”) while riding a rental scooter, fell, and was injured. He had rented the scooter through a web-based app containing user agreements and had consumed 1.5 beers before riding. Sargenti alleged the City was negligent because it knew the asphalt patch was dangerous and either created or failed to maintain the condition properly.

The City moved for summary judgment on three grounds. The trial court rejected the first two: That Sargenti used the scooter in an unforeseeable manner and that the City lacked actual or constructive notice of a dangerous condition at the accident site. After supplemental briefing, however, the court granted summary judgment on the third ground, concluding that Sargenti had signed an enforceable, non-unconscionable agreement waving and releasing his claims against the City. Sargenti timely appealed.

HOLDING/DISCUSSION

The Second District Court of Appeal reviewed the case de novo, considering all evidence submitted in support of and opposition to the motion except evidence excluded by sustained objections. (*Hampton v. County of San Diego* (2015) 62 Cal.4th 347.) After allowing supplemental briefing under Code of Civil Procedure section 437c, subdivision (m)(2), which provides that before affirming summary judgment on a ground not relied on by the trial court the reviewing court must allow supplemental briefing,” the appellate court affirmed on the alternative ground that the City lacked notice of the dangerous condition.

In its original interrogatory responses, the City stated that it had placed the asphalt patch on October 7, 2014, suggesting actual notice. In amended responses, however, the City stated that it did not pour the patch, and Sargenti did not submit or disclose those amended responses in opposing summary judgment. Although Sargenti argued that the original responses remained admissible and created a triable issue of fact, section 2020.310, subdivision (a), permits a party to amend an interrogatory response without leave to correct mistaken information. Because the City presented evidence that its original response was mistaken, the court found no actual notice. The court also held that Sargenti forfeited this argument by failing to raise it in opposition to the motion. (*Kime v. Dignity Health, Inc.* (2024) 101 Cal.App.5th 708, 721.) To establish constructive notice, Sargenti relied on a 2015 Google Street View screenshot showing the patch. The court

found the image inadmissible for lack of authentication and foundation. Although inadmissible evidence may be considered in ruling on a motion for summary judgment if the defects can be cured at trial, (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931), Sargenti made no attempt to cure those defects. As a result, the image could not be considered.

Without admissible evidence showing actual or constructive notice, the appellate court concluded that the City lacked notice of the alleged dangerous condition. It also held that amended interrogatory responses alone do not automatically create a triable issue of material fact. The judgement is affirmed. The City is to recover its costs on appeal.