

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

Estate of FRANCES L. CREAMER,
Deceased.

ATTITUDES HAIR AND
NAIL SALON et al.,

Petitioners,

v.

THE SUPERIOR COURT OF
RIVERSIDE COUNTY,

Respondent;

SHAREN ESKRIDGE, as Personal
Representative, etc., et al.,

Real Parties in Interest.

E052260

(Super.Ct.No. INC075836)

OPINION

ORIGINAL PROCEEDINGS; petition for writ of mandate. Harold W. Hopp, Judge.

Petition granted.

Horvitz & Levy, David S. Ettinger, Bradley S. Pauley; Vail, Bevins & Glauser and
Douglas K. Glauser for Petitioners.

No appearance for Respondent.

Berman & Riedel, William M. Berman, Harlan J. Zaback; Niddrie, Fish, & Addams and John S. Addams for Real Parties in Interest.

INTRODUCTION

In this matter, we have reviewed the petition, real parties in interest's return, and petitioners' reply. We have determined that resolution of the matter involves the application of settled principles of law, and that issuance of a peremptory writ in the first instance is therefore appropriate. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 178.)

DISCUSSION

The narrow issue raised by this petition is whether petitioners can be held liable for a means of entry into the multi-office/space building as a whole that was allegedly either dangerous and/or constructed and maintained in violation of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. § 12101 et seq.) and/or the Unruh Civil Rights Act (Civ. Code, § 51 et seq.). We conclude without difficulty that the answer is "no." We do not, of course, consider the potential liability of other parties to the litigation below.

Petitioner Lucero rendered hairstyling services to the decedent. Even if we were to agree that this created a duty to see that decedent safely exited the building, in fact, Lucero *offered to assist decedent and the offer was rejected*. Lucero is entitled to summary judgment.

As for petitioner Attitudes Hair and Nail Salon (Attitudes), the evidence was undisputed that it *leased* the salon premises from one of the co-owners of the building. Thus, the *only* area that Attitudes controlled was the salon premises. The stairway or steps on which decedent fell were part of the building's common area. We agree that under the

ADA, a landlord who leases space is liable for conditions in the common areas and may also be jointly liable with the tenant for noncomplying conditions in the leased premises. (See *Botosan v. Paul McNally Realty* (9th Cir. 2000) 216 F.3d 827.) However, real parties in interest have not cited, and we have not found, any case holding that the reverse is also true. Crucial is the element of control, and Attitudes simply did not have control over the stairway. It had no power to “fix” the situation, even if it had wished to do so.

Real parties in interest suggest that Attitudes could have asked the management company to take action or could have employed some unspecified “alternative methods” (42 U.S.C. § 12182 (b)(2)(A)(v)) to avoid the problem. They also suggest that Attitudes could simply have closed down during the repaving project that apparently led decedent to use the stairway access. But Attitudes simply had no duty to decedent in this respect and was not obliged to take any of these or any other steps. The duty to ensure safe and ADA-compliant access lay with the owner of the building.

DISPOSITION

Accordingly, the trial court erred in denying petitioners’ motion for summary judgment against real parties in interest. As for petitioners’ motion on the cross-complaint of cross-complainant Valley Date Palm (the property owners’ association), for the reasons discussed above, petitioners can have no duty for indemnification or contribution in favor of Valley Date Palm. (We note that Valley Date Palm did not respond to the petition.) Petitioners were entitled to summary judgment on that cross-complaint as well.

Let a peremptory writ of mandate issue directing the Superior Court of Riverside County to vacate its order denying petitioners' motions for summary judgment, and to enter a new order granting said motions.

Petitioners to recover their costs from real parties in interest.

Petitioners are directed to prepare and have the peremptory writ of mandate issued, copies served, and the original filed with the clerk of this court, together with proof of service on all parties.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAMIREZ

P. J.

We concur:

McKINSTER

J.

RICHLI

J.