

Filed 11/27/24 Hernandez v. Taihan Electric CA2/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

MATTHEW HERNANDEZ,

Plaintiff and Appellant,

v.

TAIHAN ELECTRIC, USA, LTD.,

Defendant and Respondent.

B333793

(Los Angeles County  
Super. Ct. No. 21STCV01257)

APPEAL from a judgment of the Superior Court of  
Los Angeles County. Mark C. Kim, Judge. Affirmed.

Dordick Law Corporation, Gary A. Dordick and John M.  
Upton for Plaintiff and Appellant.

Wood, Smith, Henning & Berman and Steven R. Disharoon  
for Defendant and Respondent.

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In this negligence action, plaintiff and appellant Matthew Hernandez appeals from a summary judgment entered against him and in favor of defendant and respondent Taihan Electric, USA, Ltd. (Taihan). He principally argues that there are triable issues of material fact “as to Taihan’s vicarious liability under the peculiar risk doctrine.”

We affirm the judgment. Hernandez did not allege any theory of vicarious liability against Taihan, and therefore cannot defeat Taihan’s motion for summary judgment on that ground. All remaining arguments are moot.

### **FACTUAL BACKGROUND**

Sometime prior to October 31, 2019, Taihan purchased 102 steel coil reels from a company named Parkia. But Taihan did not possess the reels; they remained stored at Parkia’s construction yard. In order to ship the coil reels to South Korea, Taihan contracted with Silverstar Express, Inc. (Silverstar), a freight-forwarding company, to arrange for the shipment of the reels. While Taihan provided Silverstar with a packing list and its desired result, it left all transportation determinations to Silverstar.

After bringing the reels to its warehouse, Silverstar loaded them onto flat trailers for shipment to the Port of Long Beach (the port). Taihan had no control over or involvement with the loading and transportation of the reels and provided no direction to Silverstar in this regard. After Silverstar loaded the reels onto the trailers, it contracted with a third party trucking company, Kydo Enterprises, Inc., doing business as Portrans Systems (Portrans) to transport the reels to the port.

On October 31, 2019, Hernandez, a longshoreman, was operating a utility tractor rig (UTR), hauling one of the reels.

While making his way to the cargo ship, the UTR tipped onto its side, causing injury to Hernandez.

## **PROCEDURAL BACKGROUND**

### *The complaint*

On January 12, 2021, Hernandez brought this negligence action against Taihan and others. According to the complaint, the defendants “carelessly, recklessly and negligently hired, trained, monitored, supervised, screened and employed their employees.” In addition, the defendants “carelessly, recklessly and negligently owned, maintained and inspected their trailer/chassis” and “failed to properly load and secure the load onto the trailer/chassis,” leading to an “overturning” risk. The trailer did in fact overturn, causing Hernandez to suffer injuries.

The complaint does not allege a theory of vicarious liability against any of the defendants.

### *Motion for summary judgment*

On June 20, 2023, Taihan moved for summary judgment. It argued that Hernandez could not establish a negligence claim against Taihan because Taihan had a limited role in the events leading to Hernandez’s injuries: Taihan merely contracted with Silverstar for freight forwarding services—first from the Parkia warehouse and then to the port. It did not load or transport the reels and it did not provide any direction, control, or guidance regarding their loading and transport.

Based upon these facts, Taihan asserted, inter alia, that (1) it owed no legal duty to Hernandez, (2) the alleged harm was caused by independent contractors for whom Taihan was not liable, and (3) Taihan was not liable pursuant to the primary assumption of risk doctrine.

*Hernandez's opposition*

In opposition, Hernandez acknowledged that he was injured by the allegedly negligent acts of independent contractors, but argued that Taihan was liable to him pursuant to the peculiar risk doctrine. He further contended that Taihan breached its alleged duty to exercise reasonable care by failing to exercise control over Silverstar to ensure that it (and Portrans) performed the work appropriately. Finally, Hernandez asserted that the primary assumption of risk doctrine did not apply because Taihan contracted with Silverstar, not with Hernandez directly.

*Taihan's reply*

Taihan noted in reply that Hernandez's complaint did not allege a theory of liability based on peculiar risk.

*Trial court order*

After entertaining oral argument, the trial court granted Taihan's motion for summary judgment. It first determined that the peculiar risk doctrine was at issue given the "general and broad" nature of the complaint. Thereafter, it found the doctrine inapplicable, concluding that Hernandez failed "to raise a triable issue of material fact establishing the coil reel presented a peculiar risk, such that Taihan is liable for the shippers' negligence in failing to properly secure and load it."

*Judgment and appeal*

Judgment was entered, and Hernandez's timely appeal ensued.

## DISCUSSION

### I. *Standard of review*

We review the trial court's order granting summary judgment de novo, liberally construing the evidence in support of the party opposing summary judgment and resolving doubts concerning the evidence in that party's favor. (*Gonzalez v. Mathis* (2021) 12 Cal.5th 29, 39.)

"[W]e may affirm on any basis supported by the record and the law. [Citation.]" (*Vulk v. State Farm General Ins. Co.* (2021) 69 Cal.App.5th 243, 254.)

### II. *Relevant law*

#### A. Summary judgment principles

Summary judgment is properly granted where "all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (Code Civ. Proc., § 437c, subd. (c).) A defendant moving for summary judgment bears the burden of showing that at least one element of a cause of action "cannot be established, or that there is a complete defense to the cause of action." (*Id.*, § 437c, subd. (p)(2).) If the defendant meets this initial burden, the burden shifts to the plaintiff "to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto." (*Ibid.*)

"The pleadings frame the issues on a motion for summary judgment. (*Heritage Marketing & Ins. Services, Inc. v. Chrustawka* (2008) 160 Cal.App.4th 754, 764.) "[A] party cannot successfully resist [a motion for summary judgment] based on allegations that are not contained in the complaint. [Citations.]" (*Heritage, supra*, at p. 764.) While we must broadly construe the operative pleading when deciding whether facts presented at

summary judgment are within the issues framed by the complaint (*Cavalry SPV I, LLC v. Watkins* (2019) 36 Cal.App.5th 1070, 1084), we cannot rewrite the pleading.

B. Applicable principles of negligence

“To prevail on a negligence claim, a plaintiff must establish that the defendant had a duty of care that he or she breached, and that there is a causal connection between that breach and damages. [Citation.]” (*Minnegren v. Nozar* (2016) 4 Cal.App.5th 500, 507.) The existence of a duty of care is the threshold element of a cause of action for negligence. (*QDOS, Inc. v. Signature Financial, LLC* (2017) 17 Cal.App.5th 990, 998.)

California recognizes “the common law rule that an individual who hires an independent contractor generally is not liable for injuries to others caused by the contractor’s negligence in performing the hired work.” (*Toland v. Sunland Housing Group, Inc.* (1998) 18 Cal.4th 253, 258 (*Toland*)). After all, “[w]hen a person or organization hires an independent contractor, the hirer presumptively delegates to the contractor the responsibility to do the work safely. [Citations.]” (*Sandoval v. Qualcomm Incorporated* (2021) 12 Cal.5th 256, 269 (*Sandoval*)).

An exception to this rule is the peculiar risk doctrine. The peculiar risk doctrine, which is “a form of vicarious liability” (*Privette v. Superior Court* (1993) 5 Cal.4th 689, 695), “imposes liability on a party ‘*innocent of any personal wrongdoing*—the person who contracted for the work’ [citation, italics added], for the negligence of an independent contractor hired . . . to do inherently dangerous work. [Citation.]” (*Srithong v. Total Investment Co.* (1994) 23 Cal.App.4th 721, 727.)

III. *The trial court properly granted Taihan’s motion for summary judgment*

A. Hernandez did not plead any theory of vicarious liability against Taihan

Applying these legal principles, we agree with the trial court that Hernandez did not establish a triable issue of fact on his negligence claim against Taihan. Simply put, Hernandez cannot establish that Taihan owed him a duty of care or that that duty was breached. (*Biakanja v. Irving* (1958) 49 Cal.2d 647, 650; *Rowland v. Christian* (1968) 69 Cal.2d 108, 112–113, partially superseded by statute on a different issue as stated in *Moses v. Roger-McKeever* (2023) 91 Cal.App.5th 172, 187, fn. 6; *Toland, supra*, 18 Cal.4th at p. 258; *Sandoval, supra*, 12 Cal.5th at p. 269.)

Notably, Hernandez does not contend otherwise. Rather, he argues, as he did below, that “the summary judgment should be reversed to allow the jury to consider Taihan’s vicarious liability under the peculiar risk doctrine [CACI 3708].” In making this argument, Hernandez ignores an elementary rule of civil procedure: the pleadings frame the issues to be litigated, including the issues to be considered on a motion for summary judgment.<sup>1</sup> (See, e.g., *Lee v. Bank of America* (1994) 27 Cal.App.4th 197, 215–216; *Benedek v. PLC Santa Monica* (2002) 104 Cal.App.4th 1351, 1355; *Government Employees Ins. Co. v. Superior Court* (2000) 79 Cal.App.4th 95, 98, fn. 4.) The complaint here does not allege the peculiar risk theory of

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<sup>1</sup> It follows that we reject Hernandez’s contention that “Taihan had the burden to negate all possible [bases] for liability.” It only had the burden to address the bases for liability alleged in the complaint.

liability. In fact, it does not allege any theory of vicarious liability. Even when we broadly construe Hernandez’s complaint, nothing suggests a theory of vicarious liability against Taihan. Under these circumstances, “[i]t would be patently unfair to allow [Hernandez] to defeat [Taihan’s] summary judgment motion by allowing [him] to present a ‘moving target’ unbounded by the pleadings.” (*Melican v. Regents of University of California* (2007) 151 Cal.App.4th 168, 176.)

Urging us to conclude otherwise, Hernandez argues that “Taihan acknowledged that vicarious liability was an issue within the pleadings by raising the issue in its motion. Accordingly, there was no reason for Hernandez to seek leave to amend.” But, Hernandez fails to direct us to the portion of the appellate record where Taihan purportedly makes this argument (Cal. Rules of Court, rule 8.204(a)(1)(C))—presumably because he cannot do so. After carefully reviewing Taihan’s motion for summary judgment, we did not see this argument. In fact, in its reply to Hernandez’s opposition, Taihan specifically objected to Hernandez’s reliance upon the peculiar risk doctrine to avoid summary judgment.

The fact that “the [t]rial [c]ourt found that peculiar risk had been sufficiently raised” does not compel us to do the same. Because our review of summary judgment is de novo, we may affirm the trial court’s judgment if it is correct on any ground, “regardless of the trial court’s stated reasons.” (*Truck Ins. Exchange v. County of Los Angeles* (2002) 95 Cal.App.4th 13, 20; see also *Jimenez v. County of Los Angeles* (2005) 130 Cal.App.4th 133, 144 [trial court’s reasoning is irrelevant; because the appellate court exercises its independent judgment, we “must” affirm on any ground supported by the record].) In other words,



we review the judgment, not the trial court's rationale. (*Townley v. BJ's Restaurants, Inc.* (2019) 37 Cal.App.5th 179, 184.)

In sum, Taihan satisfied its burden on summary judgment by “negat[ing] plaintiff's theories of liability *as alleged in the complaint.*” (*Hutton v. Fidelity National Title Co.* (2013) 213 Cal.App.4th 486, 493.)<sup>2</sup>

In light of this conclusion, we need not address the parties' dispute over whether the primary assumption of risk doctrine applies to this case. We also need not consider whether the trial court erred in sustaining Taihan's evidentiary objections to certain deposition excerpts offered by Hernandez in support of his opposition. Absent a viable theory of liability, the question of whether this evidence should have been admitted is irrelevant.

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<sup>2</sup> If Hernandez wanted to defeat Taihan's motion by relying upon an unpleaded theory of vicarious liability, he should have moved to amend the complaint before the hearing. (*Oakland Raiders v. National Football League* (2005) 131 Cal.App.4th 621, 648.) He failed to do so.

**DISPOSITION**

The judgment is affirmed. Taihan is entitled to costs on appeal.

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\_\_\_\_\_, J.  
ASHMANN-GERST

We concur:

\_\_\_\_\_, P. J.  
LUI

\_\_\_\_\_, J.  
CHAVEZ