

***Grotheer v. Escape Adventures Inc., California Courts of Appeal,***  
**No. E063449, (Aug. 31, 2017)**

Summary judgment properly granted in favor of balloon tour company and pilot, albeit on different ground, absolving them of liability for injuries from crash landing

**FACTS/PROCEDURE**

Erika Grotheer was a passenger in a hot air balloon piloted by Peter Gallagher for Escape Adventures Inc. that crash landed. Grotheer alleged Escape and Gallagher negligently or recklessly operated the balloon by (1) failing to properly slow its descent during landing and (2) failing to give the passengers safe landing instructions before the launch. Grotheer fractured her leg and sued Escape, Gallagher, and Wilson Creek Vineyards Inc. Grotheer contended, among other things, that Escape, as a common carrier, owed her a heightened duty of care and that Defendants were negligent in failing to issue safety landing instructions.

The trial court concluded her claim was barred by the primary assumption of risk and granted Defendants' motion for summary judgment.

**DISCUSSION/HOLDING**

Affirmed. The Court of Appeal found that the trial court properly granted summary judgment in favor of Defendants. In this issue of first impression, this court concluded that Escape was not a common carrier as a matter of law. A common carrier is "anyone who offers to the public to carry persons." However, a distinction must be made between operators that have a direct and precise control over the mode of transportation from those that do not. Unlike operators of trains, airplanes, ski lifts, and even rollercoasters, balloon pilots do not have direct and precise control over the balloon's speed and direction. Rather, the balloon pilots is entirely at the mercy of the wind speed and direction, turning ballooning into a risky activity.

Moreover, the dangers cannot be mitigated without altering the fundamental nature of the balloon experience. Even though the court agreed that Escape was not a common carrier, the Court of Appeal found that the trial court's primary assumption of the risk ruling was too broad. Although it found the trial court was correct in concluding that ballooning was an inherently risky activity, the doctrine did not completely absolve Escape of *any obligation* to protect their passengers' safety. Overall, however, judgment must be upheld because the lack of safety instructions was not a substantial factor in causing Grotheer's injury.