

Carmichael v. Café Sevilla of Riverside, Inc.

(2025) Cal.App.4th

Court of Appeal, Fourth District, Division Three, California

Negligence per se claim failed because violation of a conditional use permit is not a “violation of a statute of ordinance.” Further, a rap concert is not an ultrahazardous activity. Such concerts, even ones with rival gang members performing and antagonizing each other, can be conducted safely with proper planning and security.

FACTS/PROCEDURE

Plaintiffs were injured during a nightclub shooting at a rap concert featuring performers from rival gangs. A total of seven people were wounded. Plaintiffs sued the nightclub's owner and operators for negligence per se and strict liability on an ultrahazardous activity theory, claiming inadequate event planning and security.¹ Defendants filed a motion for summary judgment and/or summary adjudication.

The trial court granted summary adjudication on the negligence per se claim, finding that Plaintiffs had failed to show “a conditional use permit is a statute, ordinance or regulation, which is one of the elements of a negligence per se action.” Additionally, the trial court treated the motion regarding the ultrahazardous activity claim as a motion for judgment on the pleadings and granted it without leave to amend, concluding that hosting a rap concert, even with performers from rival gangs, was not an ultrahazardous activity. Plaintiffs appealed, arguing there were triable issues of fact for both claims. The Court of Appeal for the Fourth Appellate District granted review.

HOLDING/DISCUSSION

The Court affirmed the trial court's judgment, holding that Plaintiffs failed to establish that the conditional use permit constituted a statute, ordinance, or regulation under the negligence per se doctrine. Furthermore, the Court found that the permit was not designed to prevent the specific type of harm suffered by Plaintiffs. Instead, the Court found that the primary purpose of the conditional use permit was to prevent the nightclub from becoming a detriment to general public health, a disturbance to the neighboring community, or a public nuisance. Regarding the ultrahazardous activity claim, the Court weighed several factors to determine whether a rap concert is ultrahazardous.² The Court concluded that hosting a rap concert, even with rival gang members, did not constitute an ultrahazardous activity as the risks could be mitigated with proper planning and security measures. Accordingly, the judgment in favor of Defendants was affirmed.

¹ Plaintiffs initially pled causes of action for premises liability, strict liability for ultrahazardous activity, negligence per se, and negligence. The parties do not explain what happened to the premises liability and negligence claims.

² Factors courts consider include, (a) existence of a high degree of risk of some harm to the person, land or chattels of others; (b) likelihood that the harm that results from it will be great; (c) inability to eliminate the risk by the exercise of reasonable care; (d) extent to which the activity is not a matter of common usage; (e) inappropriateness of the activity to the place where it is carried on; and (f) extent to which its value to the community is outweighed by its dangerous attributes.