



**ALFONSO ELIZARRARAS et al., Plaintiffs and Appellants, v. L.A. PRIVATE
SECURITY SERVICES, INC., et al., Defendants and Respondents.**

No. B159435.

**COURT OF APPEAL OF CALIFORNIA, SECOND APPELLATE DISTRICT,
DIVISION SIX**

***108 Cal. App. 4th 237; 133 Cal. Rptr. 2d 302; 2003 Cal. App. LEXIS 627; 2003 Cal.
Daily Op. Service 3629; 2003 Daily Journal DAR 4711***

**April 29, 2003, Decided
April 29, 2003, Filed**

PRIOR HISTORY: [***1] Superior Court of
Ventura County, No. 196080, Barbara A. Lane, Judge.

DISPOSITION: The judgment is affirmed.
Respondents shall recover costs on appeal.

CASE SUMMARY:

PROCEDURAL POSTURE: In a tort action,
appellants, the parents and heirs of minors involved in a
fatal accident, appealed the order of the Superior Court of
Ventura County (California), granting summary judgment
in favor of respondent security company.

OVERVIEW: A restaurant that served alcoholic
beverages hired a company to provide security for a
dance party one evening on its premises. Two intoxicated
minors attended the party and, after an altercation, left.
The minors drove away and, shortly thereafter, were
involved in a fatal accident. The parents and heirs
brought an action for wrongful death, survival action, and
negligence, among other causes of action, against the
restaurant and the security company. The court concluded
the security company did not breach a duty to the minors
and it had statutory immunity under *Cal. Bus. & Prof.
Code* § 25602 for failing to prevent the minors from
consuming alcoholic beverages. The action against the

security company was dismissed.

OUTCOME: The judgment was affirmed.

LexisNexis(R) Headnotes

***Civil Procedure > Summary Judgment > Appellate
Review > Standards of Review***

[HN1] In reviewing a summary judgment, the appellate
court independently reviews the record before the trial
court to determine if there is a triable issue of material
fact.

***Civil Procedure > Summary Judgment > Burdens of
Production & Proof > General Overview***

[HN2] A defendant may be entitled to summary judgment
if he establishes that a complete defense exists to a cause
of action. *Cal. Code Civ. Proc.* § 437c (o), (p). A
defendant meets his burden of showing a cause of action
has no merit if he establishes that one or more elements
of the cause of action cannot be established.

Torts > Negligence > Duty > General Overview

Torts > Premises Liability & Property > General

Premises Liability > Premises > Stores

[HN3] The threshold element of a negligence cause of action is the existence of a duty of reasonable care. Whether a duty of care exists is a question of law to be determined on a case-by-case basis.

Torts > Negligence > Duty > Alcohol Providers > General Overview

[HN4] See *Cal. Bus. & Prof. Code* § 25602(b).

Torts > Negligence > Duty > Alcohol Providers > Dram Shop Statutes

[HN5] See *Cal. Bus. & Prof. Code* § 25602(c).

Criminal Law & Procedure > Criminal Offenses > Intoxicating Liquors > Distribution & Sale > General Overview

Torts > Negligence > Duty > Alcohol Providers > General Overview

[HN6] *Cal. Bus. & Prof. Code* § 25602.1 provides an exception to the "sweeping civil immunity" of *Cal. Bus. & Prof. Code* § 25602 if alcoholic beverages are sold to an obviously intoxicated minor.

Torts > Negligence > Duty > Alcohol Providers > General Overview

[HN7] See *Cal. Bus. & Prof. Code* § 25602.1.

Criminal Law & Procedure > Criminal Offenses > Intoxicating Liquors > Distribution & Sale > General Overview

Governments > Legislation > Interpretation

Torts > Negligence > Duty > Alcohol Providers > General Overview

[HN8] The statutory exception of *Cal. Bus. & Prof. Code* § 25602.1 is a narrow one that is construed strictly. The phrase "causes to be sold" requires malfeasance, not acquiescence or mere inaction. *Section 25602.1* requires an affirmative act directly related to the sale of alcohol, which necessarily brings about the furnishing of alcohol to an obviously intoxicated minor. *Section 25602.1* sets forth no duty to act affirmatively to prevent others, over whom one has no control, from selling alcohol to an obviously intoxicated minor.

Torts > Negligence > Duty > Alcohol Providers >

General Overview

[HN9] Although a security guard may have a special relationship with a business patron under some circumstances, *Cal. Bus. & Prof. Code* §§ 25602, 25602.1 restrict liability concerning the sale or furnishing of alcohol. *Section 25602* provides a sweeping immunity with one exception, that is, the sale or furnishing of alcohol to an obviously intoxicated minor. § 25602.1.

Civil Procedure > Summary Judgment > Appellate Review > Standards of Review

[HN10] Upon summary judgment, once the defendant shows that the plaintiff's cause of action cannot be established or that a complete defense exists, the burden shifts to the plaintiff to show the existence of a triable issue of material fact.

SUMMARY:

CALIFORNIA OFFICIAL REPORTS SUMMARY

The trial court granted summary judgment for a private security company in an action for wrongful death, negligence, and other causes of action brought against the company by the parents and heirs of a minor killed in an auto accident after leaving a nightclub. The nightclub had hired the company to provide extra security for a dance party, and after leaving the party, the minor, who was intoxicated, died in a car crash. The court found that defendant did not have a duty of care to the minor and that its acts or omissions were not the proximate cause of her death. (Superior Court of Ventura County, No. 196080, Barbara A. Lane, Judge.)

The Court of Appeal affirmed. The court held that the company had not breached a duty of reasonable care to the minor. Defendant was not a licensed seller of alcoholic beverages and did not sell, furnish, or cause alcohol to be sold at the nightclub. Thus, it was immune from liability under *Bus. & Prof. Code*, §§ 25602 and 25602.1 (sale of alcohol to intoxicated persons; sale to minors), for failing to prevent the minor from consuming alcoholic beverages. Further, plaintiffs had not demonstrated a triable issue of material fact regarding the company's duty to prevent an altercation involving the minor, to provide medical assistance for her, or to prevent her minor companion from driving. (Opinion by Gilbert, P. J., with Yegan and Coffee, JJ., concurring.)

HEADNOTES

CALIFORNIA OFFICIAL REPORTS HEADNOTES
 Classified to California Digest of Official Reports

(1a) (1b) (1c) Alcoholic Beverages § 25--Alcoholic Beverage Control Act--Liabilities--Sale to Minors--Liability of Security Company. --In an action for wrongful death brought against a security company by the parents and heirs of a minor killed in an auto accident after leaving a nightclub while intoxicated, the trial court did not err in granting the company summary judgment. Defendant had not breached a duty of reasonable care to the minor. Defendant was not a licensed seller of alcoholic beverages and did not sell, furnish, or cause alcohol to be sold at the nightclub. Thus, it was immune from liability under *Bus. & Prof. Code*, §§ 25602 and 25602.1 (sale of alcohol to intoxicated persons; sale to minors), for failing to prevent the minor from consuming alcoholic beverages. The exception for immunity for sale to intoxicated minors is limited to providers of alcohol; it does not extend to security guards even though guards may have a special relationship with business patrons in some circumstances. Also, although the nightclub may have hired defendant to ensure that minors were not consuming alcohol, that job responsibility was not the equivalent of a legal duty of care. Further, plaintiffs had not demonstrated a triable issue of material fact regarding the company's duty to prevent an altercation involving the minor, to provide medical assistance for her, or to prevent her minor companion from driving.

[See 6 Witkin, Summary of Cal. Law (9th ed. 1988) Torts, § 884.]

(2) Summary Judgment § 26--Appellate Review--Scope of Review. --In reviewing a summary judgment, an appellate court independently reviews the record before the trial court to determine if there is a triable issue of material fact.

(3) Negligence § 9--Elements--Duty of Care. --The threshold element of a negligence cause of action is the existence of a duty of reasonable care. Whether a duty of care exists is a question of law to be determined on a case-by-case basis.

(4) Alcoholic Beverages § 25--Alcoholic Beverage Control Act--Liabilities--Sale to Minors--Exception to Immunity. --*Bus. & Prof. Code*, § 25602.1, which provides an exception to the broad civil immunity for liability for sellers of alcoholic beverages (*Bus. & Prof. Code*, § 25602) when alcoholic beverages are sold to an

obviously intoxicated minor, is a narrow exception to be strictly construed. The phrase "causes to be sold" requires malfeasance, not acquiescence or mere inaction. The statute requires an affirmative act directly related to the sale of alcohol, one that necessarily occasions the furnishing of alcohol to an obviously intoxicated minor. The statute sets forth no duty to act affirmatively to prevent others, over whom one has no control, from selling alcohol to an obviously intoxicated minor.

COUNSEL: Law Office of Earnest C.S. Bell and Earnest C.S. Bell for Plaintiffs and Appellants.

Lewis Brisbois Bisgaard & Smith, Raul L. Martinez and Larry A. Schwartz for Defendants and Respondents.

JUDGES: (Opinion by Gilbert, P. J., with Yegan and Coffee, JJ., concurring.)

OPINION BY: GILBERT

OPINION

[*239] [**303] **GILBERT, P. J.**

A restaurant that serves alcoholic beverages hires a company to provide security for a dance party one evening on its premises. Two intoxicated minors attend the party and after an altercation, leave. The [**304] minors drive away and shortly thereafter are involved in a fatal accident.

Here we conclude the private security company did not breach a duty to the minors and it has statutory immunity under *Business and Professions Code* section 25602 for failing to prevent a minor from consuming alcoholic beverages.

Plaintiffs Alfonso and Beatriz Elizarraras appeal summary judgment in favor of L.A. Private Security Services, Inc., Jose Angel Bretado, and Federico Amezquita (collectively [***2] LAPSS). We affirm.

FACTS

During the late evening of April 6, 2000, Sophia Elizarraras, age 15, and Patricia Yvette Castro, age 18, entered Leonardo's, an Oxnard bar, dance club, and restaurant. Between 400 and 500 patrons were at Leonardo's that evening for a party. The owners of Leonardo's engaged LAPSS to supplement the security

provided by Leonardo's employee-security guards.

Sophia and Patricia had been drinking when they entered the club, and during the evening, they consumed alcohol. Near midnight, another female patron hit Sophia with a bottle or glass, causing her head to bleed. Leonardo's employees intervened and offered Sophia medical assistance. She refused and she and Patricia either left or were escorted from the club. A Leonardo's employee assisted Sophia in entering Patricia's automobile and in securing her seat belt.

Shortly thereafter, Patricia drove northbound on the 101 Freeway at a speed of 100 miles an hour or more. She collided with a light pole near the [*240] Seaward Avenue exit and the automobile rolled down an embankment, struck a tree and chain link fence, and overturned. Sophia was ejected. The girls died immediately from head and chest injuries. Patricia's [***3] blood-alcohol level was 0.21 percent at the time.

The parents and heirs of Sophia brought an action for wrongful death, survival action, and negligence, among other causes of action, against Leonardo's and LAPSS. In a fourth amended complaint, they allege that LAPSS, as an agent or employee of Leonardo's, "sold and served alcoholic beverages" to Sophia and Patricia despite knowledge that the girls were minors and were intoxicated. They also allege that LAPSS rendered no medical assistance to Sophia and "escorted [her] out the back entrance of the tavern" where she entered an automobile driven by an intoxicated minor.

LAPSS answered the fourth amended complaint and then moved for summary judgment. It contended that under the circumstances, it owed no duty of care to the girls and that any failure to act was not the proximate cause of their injuries and deaths.

Declarations, deposition excerpts, and other evidence established this:

Jose Bretado, the president of LAPSS, declared that Leonardo's requested LAPSS to provide "excess security" the evening of April 6, 2000. Bretado stated that LAPSS is a security business and not a licensed seller of alcoholic beverages.

Federico Amezcuita [***4] declared that he and two other LAPSS security guards worked at Leonardo's that evening. ¹ Amezcuita "work[ed] security" outside the

front door, searching patrons for weapons and drugs and preventing intoxicated persons from entering the club. The other LAPSS security guards were "stationed" near the bathrooms. Amezcuita stated [***305] that he did not sell or furnish alcohol to anyone that evening nor did he observe any altercations or injuries to patrons.

1 The two security guards, Ruben Hernandez and Rutilio Ortiz, have not been served with the summons and complaint in this lawsuit, nor have they entered an appearance.

Armando Lopez, an owner of Leonardo's, testified that Leonardo's security guards and the LAPSS security guards were instructed to circulate throughout the premises to ensure that minors were not consuming alcohol. Lopez stated that the LAPSS security guards were not assigned to a particular post that evening.

The former assistant manager of Leonardo's, Armando Carrera, testified that he sought [***5] to break up an altercation between Sophia and another patron, [*241] but "the fight . . . already was apart." Leonardo's bartender and an employee-security guard broke up the fight. Carrera saw that Sophia was bleeding and he offered assistance. Sophia refused help and stated that she was leaving. She went out the back door of Leonardo's, accompanied by other girls.

Victor Rubio, a Leonardo's security guard stationed in the parking lot, testified that Sophia and Patricia were "very, very angry" when they walked from the back door of Leonardo's to their automobile. Rubio offered to summon an ambulance but Sophia refused. Patricia "use[d] bad language" to deter Rubio from calling the police. She stated that she would take Sophia to a hospital. Rubio assisted Sophia into Patricia's automobile and with her seat belt. Patricia left "burning rubber, very fast."

Cindy Ramirez, Sophia's friend, testified that a Leonardo's security guard pushed Sophia out the back door. Ramirez saw the girls arrive at Leonardo's and she believed that they had been drinking. They were "too happy" and "their eyes were kind of glossy." Rubio saw the girls when they arrived at the Leonardo's parking lot and he also believed [***6] the girls had been drinking.

Sophia's sister, Lupe Elizarraras, declared that she saw Sophia and Patricia consuming beer and tequila at Leonardo's that evening. The girls appeared "really

drunk."

The trial court granted summary adjudication of six issues raised by LAPSS. In its ruling, the trial judge reasoned that as a matter of law, LAPSS had no duty of care to Sophia or Patricia and its acts or omissions were not the proximate cause of the girls' deaths. The heirs then dismissed the remaining cause of action against LAPSS, and the trial court entered summary judgment.

The heirs appeal and contend that LAPSS had a duty of care to the girls similar or identical to the duty of care owed by Leonardo's.

DISCUSSION

I

(1a) The heirs argue that LAPSS breached a duty of care to Sophia and Patricia by not acting as reasonable security guards under the circumstances. (*Marois v. Royal Investigation & Patrol, Inc.* (1984) 162 Cal.App.3d 193, 200 [208 Cal.Rptr. 384] ["By contracting with the business to provide security services, the security guard creates a special relationship [to] the [*242] business's customers. This relationship, in and of itself, is sufficient to impose [***7] on the guard the obligation to act affirmatively to protect such customers while they are on the business premises."].) They assert that a business owner as well as a security company retained by the business have the duty to protect patrons from reasonably foreseeable criminal acts. (*Balard v. Bassman Event Security, Inc.* (1989) 210 Cal.App.3d 243, 249 [258 Cal.Rptr. 343] ["[T]he relationships are essentially identical in that from each there arises a [***306] duty to protect the customer from third party criminal activity occurring on the business's premises."].) The heirs therefore contend that LAPSS has a duty identical to that of the alcohol licensee (Leonardo's) to prevent minors from consuming alcohol on the licensed premises. They add that breach of duty and causation are factual issues to be resolved by the trier of fact.

In sum, they contend that LAPSS breached its duty of reasonable care by not preventing minors or intoxicated patrons from entering Leonardo's, not preventing minors who have entered from consuming alcohol there, not summoning medical assistance for Sophia, and not preventing Patricia from driving away.

(2) [HN1] In reviewing a summary judgment, we

independently [***8] review the record before the trial court to determine if there is a triable issue of material fact. (*Paz v. State of California* (2000) 22 Cal.4th 550, 557 [93 Cal.Rptr.2d 703, 994 P.2d 975]; *Buss v. Superior Court* (1997) 16 Cal.4th 35, 60 [65 Cal.Rptr.2d 366, 939 P.2d 766].) [HN2] A defendant may be entitled to summary judgment if he establishes that a complete defense exists to a cause of action. (*Code Civ. Proc.*, § 437c, subds. (o) & (p); *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 849 [107 Cal.Rptr.2d 841, 24 P.3d 493] [defendant meets his burden of showing a cause of action has no merit if he establishes that one or more elements of the cause of action cannot be established].)

II

(3) [HN3] The threshold element of a negligence cause of action is the existence of a duty of reasonable care. (*Paz v. State of California*, *supra*, 22 Cal.4th 550, 559.) Whether a duty of care exists is a question of law to be determined on a case-by-case basis. (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 674 [25 Cal.Rptr.2d 137, 863 P.2d 207].)

(1b) For several reasons, the trial court did not err by granting summary judgment.

First, undisputed evidence establishes that [***9] LAPSS is not a licensed seller of alcoholic beverages and it did not sell alcoholic beverages to Leonardo's [*243] patrons that evening. Pursuant to *Business and Professions Code* section 25602, subdivisions (b) and (c), and section 25602.1, LAPSS has statutory immunity for failing to prevent a minor from consuming alcoholic beverages.²

2 All further statutory references are to the *Business and Professions Code*.

Section 25602, subdivision (b), provides: [HN4] "No person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage pursuant to *subdivision (a)* of this section [to an "obviously intoxicated person"] shall be civilly liable to any injured person or the estate of such person for injuries inflicted on that person as a result of intoxication by the consumer of such alcoholic beverage." *Subdivision (c)* states the legislative intent that [HN5] "the consumption of alcoholic beverages rather than the serving of alcoholic beverages [is] the proximate [***10]

cause of injuries inflicted upon another by an intoxicated person."

(4) [HN6] *Section 25602.1* provides an exception to the "sweeping civil immunity" of *section 25602* if alcoholic beverages are sold to an obviously intoxicated minor. (*Strang v. Cabrol* (1984) 37 Cal.3d 720, 724 [209 Cal.Rptr. 347, 691 P.2d 1013] [sections 25602 and 25602.1 provide "sweeping civil immunity" for the sale of alcoholic beverages except where the sale is to an obviously intoxicated minor].) *Section 25602.1* provides: [HN7] "Notwithstanding subdivision (b) of *section 25602*, a cause of action may be [**307] brought by or on behalf of any person who has suffered injury or death against any person licensed, or required to be licensed, pursuant to *Section 23300* . . . and any other person who sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person."

[HN8] The statutory exception of *section 25602.1* is a narrow one that is construed strictly. (*Hernandez v. Modesto Portuguese Pentecost Assn.* (1995) 40 Cal.App.4th 1274, 1281 [48 Cal. Rptr. 2d 229].) The phrase [***11] "causes to be sold" requires malfeasance, not acquiescence or mere inaction. (*Id. at pp. 1276-1277*.) The statute requires "an affirmative act directly related to the sale of alcohol, which necessarily brings about . . . the furnishing of alcohol to an obviously intoxicated minor." (*Ibid.*) Moreover, the statute sets forth no duty "to act affirmatively to prevent others, over whom one has no control, from selling alcohol to an obviously intoxicated minor." (*Id. at p. 1282*.) (1c) As a matter of law, the statutory exception does not apply to LAPSS because the undisputed evidence establishes that it did not sell, furnish, or cause alcohol to be sold or furnished to Sophia and Patricia.

Second, [HN9] although a security guard may have "a special relationship" with a business patron under some circumstances, *sections 25602* and *25602.1* [*244] restrict liability concerning the sale or furnishing of alcohol. (*Balard v. Bassman Event Security, Inc.*, *supra*, 210 Cal.App.3d 243, 249 [security guard company and business owner have "essentially identical" duty to protect customers on the business premises]; *Marois v. Royal Investigation & Patrol, Inc.*, *supra*, 162 Cal.App.3d 193, 200 [***12] [a security guard has a

special relationship with a business patron that obligates the guard to protect the patron while on the business premises].) *Section 25602* provides a "sweeping immunity" with but one exception--the sale or furnishing of alcohol to an obviously intoxicated minor. (§ 25602.1; *Strang v. Cabrol*, *supra*, 37 Cal.3d 720, 725.)

The decisions upon which the heirs rely, *Balard v. Bassman Event Security, Inc.*, *supra*, 210 Cal.App.3d 243, and *Marois v. Royal Investigation & Patrol, Inc.*, *supra*, 162 Cal.App.3d 193, concern the liability of a security guard company for failing to protect a business patron from the criminal acts of third persons. In *Marois*, a customer of a fast-food restaurant was assaulted in the parking lot. In *Balard*, a female customer was sexually assaulted by men parked in an automobile near the business premises. Neither decision involved the sale or furnishing of alcohol to minors or *sections 25602* and *25602.1*.

Although Leonardo's may have employed LAPSS in part to ensure that minors were not consuming alcoholic beverages, that job responsibility is not equivalent to a legal [***13] duty of care to underage patrons to prevent them from drinking or driving while intoxicated. (*Jackson v. Clements* (1983) 146 Cal.App.3d 983, 988 [194 Cal.Rptr. 553] [police officers who investigated party at which minors were consuming alcoholic beverages had no duty to prevent intoxicated minors from driving].)

Third, the heirs have not set forth specific facts showing a triable issue of material fact regarding causation and breach of an alleged duty to prevent the altercation between Sophia and the other patron, to provide medical assistance to Sophia, or to prevent Patricia from driving. [**308] (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768 [107 Cal.Rptr.2d 617, 23 P.3d 1143] [HN10] [once defendant shows that plaintiff's cause of action cannot be established or that a complete defense exists, the burden shifts to plaintiff to show the existence of a triable issue of material fact]; *Chaknova v. Wilbur-Ellis Co.* (1999) 69 Cal.App.4th 962, 974 [81 Cal.Rptr.2d 871] [same].) LAPSS security guard Amezcuita declared that he did not see Sophia or Patricia that evening and therefore did not know if they were served alcoholic beverages or were intoxicated. He also did not see the altercation [***14] or the assault on Sophia. The assistant manager, the bartender, and a Leonardo's security guard quickly broke up the

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altercation and offered Sophia medical [*245] assistance which she refused. The Leonardo's parking lot security guard also offered Sophia medical assistance. The heirs have not set forth specific facts to the contrary. (*Saelzler*, at p. 777 [plaintiff cannot show that roving security guards would have encountered her assailants or prevented the attack]; compare with *Trujillo v. G.A. Enterprises, Inc.* (1995) 36 Cal.App.4th 1105, 1108-1109 [43 Cal.Rptr.2d 36] [security guard saw youths surround and threaten business patron but did not quell disturbance

or summon police].)

In view of our discussion, it is not necessary to discuss the remaining arguments advanced by LAPSS.

The judgment is affirmed. Respondents shall recover costs on appeal.

Yegan, J., and Coffee, J., concurred.