

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - December 06, 2012

EVENT DATE: 12/07/2012 EVENT TIME: 08:30:00 AM DEPT.: C-65
JUDICIAL OFFICER: Joan M. Lewis

CASE NO.: 37-2011-00097687-CU-PO-CTL

CASE TITLE: GUTIERREZ VS. CITY OF SAN DIEGO

CASE CATEGORY: Civil - Unlimited CASE TYPE: PI/PD/WD - Other

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 09/21/2012

Defendant San Ysidro School District ("District") seeks summary judgment of Plaintiff's complaint.

The motion is denied.

Plaintiff's Second Amended Complaint ("SAC") alleges in pertinent part that "[t]he depression [in the sidewalk where Plaintiff's accident occurred] proved to be approximately eight inches deep, with a sharply sloping entrance ramp, created by a collapsed segment of sidewalk, and an abrupt exit ramp formed by a second portion of collapsed sidewalk[;]" "that the settlement and cracking occurred because of negligent use of improper fills, negligent failure to properly compact fills and resulting loss of support for the sidewalk, created at the time of original construction of the sidewalk, and/or as a result of installation of a sewer line or other improvements by Defendants, and each of them[;]" and "[t]he design, construction and installation of the sewer line, associated improvements and sidewalk were negligently performed by Defendants, and each of them, either directly or by their respective agents and employees, by use of dangerous and defective fill materials, failure to reasonably compact the fill to prevent settlement and subsidence, or by other unreasonable acts and omissions which led to loss of support of the sidewalk and its ultimate collapse." SAC, Paras. 20-22.

There is no dispute that the District is a public entity. Gov. Code Sec. 835 sets forth the elements for a claim for injury resulting from a dangerous condition of public property.

Specifically, Sec. 835 provides:

"Except as provided by statute, a public entity is liable for injury caused by a dangerous condition of its property if the plaintiff establishes that the property was in a dangerous condition at the time of the injury, that the injury was proximately caused by the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred, and that either:

"(a) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition; or

"(b) The public entity had actual or constructive notice of the dangerous condition under Section 835.2 a sufficient time prior to the injury to have taken measures to protect against the dangerous condition.

The District submitted evidence in support of its motion that it believes demonstrates that at the time of

the accident it neither owned nor controlled the property and/or that it had no actual or constructive notice of the existence of the condition.

In the alternative to being liable for a dangerous condition under Sec. 835(b), a public entity defendant may be liable under 835(a) if it created the dangerous condition. Creation of the alleged dangerous condition is clearly pled in the SAC. However, although the District argued it did not create the dangerous condition, the District offered no evidence or assertion in its Separate Statement to support this. As a result, the Court concludes that the District did not meet its initial burden on this motion and the burden never shifted to Plaintiff (or the City) to create a triable issue of fact. For that reason the motion is denied.

In ruling on this motion the Court took judicial notice as requested.