2003 WL 21380916

Court of Appeal, First District, Division 3, California.

Andre JONES, Plaintiff and Appellant,
v.
AVIS RENT A CAR SYSTEM, INC., et al.,
Defendants and Appellants.

No. A098603.
|
(Alameda County Super. Ct. No. C827039).
|
June 16, 2003.

Attorneys and Law Firms

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Opinion

PARRILLI, J.

Andre Jones appeals from a judgment in favor of Avis Rent a Car System, Inc. and Guardsmark, Inc. Jones was badly injured when the driver of a car stolen from Avis's lot at the Oakland Airport struck either a telephone pole or a traffic sign, causing a fragment to fly through the air, puncture the wall of a house, and hit Jones in the face as he sat in the house. Guardsmark provided security services for the Avis lot at the time of the accident. Jones sued Avis and Guardsmark to recover for his injuries. The trial court granted motions for summary judgment filed by Avis and Guardsmark. We affirm. Our disposition moots the protective cross-appeals filed by Avis and Guardsmark. We will discuss the relevant facts in connection with the parties' arguments.

As the trial court recognized, this case is controlled by *Avis Rent a Car System, Inc. v. Superior Court* (1993) 12 Cal.App.4th 221. There, a motorist sued Avis for injuries sustained when her car was rammed by a stolen Avis vehicle. The evidence presented on Avis's summary judgment motion showed it kept its cars in an unfenced lot at the San Francisco Airport with keys in the ignitions for as long as 45 minutes during the check-in process. There were no guards posted at the exit to the lot. While Avis did hire security guards, they were inadequate. Avis had been warned about its security problems, and other cars had been stolen. In fact, the driver of the car that injured the plaintiff had been committed to the California Youth Authority after she stole a car from the check-in lot on an earlier occasion. Avis did not report the theft of the car involved in the accident during the week between the time it was missing on Avis's computer records and the day the plaintiff was hurt. (*Id.* at pp. 222-223.)

This court issued a writ of mandate directing the trial court to grant Avis's summary judgment motion. (*Avis Rent a Car System, Inc. v. Superior Court, supra*, 12 Cal.App.4th at p. 233.) We extensively reviewed the California cases developing the "special circumstances" doctrine governing the liability of vehicle owners for damages caused by thieves. (*Id.* at pp. 224-232.) We concluded: "Avis's conduct of parking its cars in a negligently attended lot with keys in the ignitions did not create a duty to control the conduct of a thief. It is true that the risk of theft increases when more cars are involved and when they are in a fixed location. Thieves may learn about the target cars and may find ways to defeat the security provided. But this increase in the risk of theft due to negligence of an owner of a fleet of cars is much like the increased risk associated with leaving keys in the ignition of a car left unattended on the street. It is not equivalent to inviting or enticing an incompetent driver to tamper with a vehicle. These actions are not the 'special circumstances' which create a special relationship between or among the parties. Thus, they do not impose on the car owner the duty to control the actions of the thief." (*Id.* at p. 233.)

Jones criticizes the *Avis* opinion, and attempts to distinguish it. We are not persuaded. The trial court correctly recognized that the circumstances in this case were less egregious than those detailed in *Avis*, precluding any recovery by Jones despite the severity of his injuries. The lot in this case was fenced and guarded.[1] Avis did not leave keys in the ignitions, unlike some of the other rental companies using the same lot. Avis did not fail to report the theft for an unduly extended period of time. The car was checked in at 11:14 a.m. and the accident occurred the next day at 10:20 p.m., the same day Avis noted the car was missing.

[1] Avis used two lots at the Oakland Airport, one shared by five other car rental companies and one used by Avis alone to clean and refuel returned vehicles. Jones

> conceded below that Avis's own lot was "especially secure," and it was highly unlikely that the car that injured him was taken from this lot.

Jones makes much of the evidence that many cars were being stolen from the Oakland Airport lot by juveniles who used them for criminal activity. However, the evidence showed the great majority of those cars were stolen from other rental companies. Avis's security measures were far superior to those we discussed in *Avis Rent a Car System, Inc. v. Superior Court, supra,* 12 Cal.App.4th at pp. 222-223.) We agree with the trial court that Jones could not establish the "special circumstances" required to hold Avis liable for his injuries.

Jones contends a different analysis applies to Guardsmark's liability, since it was not the owner of the vehicle and was retained specifically to guard against theft. Nevertheless, Jones must still establish a "special relationship" between himself and Guardsmark sufficient to justify holding Guardsmark responsible for the consequences of criminal conduct by third parties. (*Marois v. Royal Investigation & Patrol, Inc.* (1984) 162 Cal.App.3d 193, 199; *Balard v. Bassman Event Security, Inc.* (1989) 210 Cal.App.3d 243, 247.) California cases have recognized that companies providing security guards do stand in a special relationship with their clients' patrons. "[T]he relationship between a business and its customers is a special one requiring the business 'to take affirmative action to control the wrongful acts of third persons which threaten invitees where [it] has reasonable cause to anticipate such acts and the probability of injury resulting therefrom.' [Citation.]" (*Marois v. Royal Investigation & Patrol, Inc., supra,* 162 Cal.App.3d at p. 199.) "[A] security guard hired by the business should be liable to an injured customer where the guard fails to act as would a reasonable security guard under similar circumstances and that failure causes the customer's injury. By contracting with the business to provide security services, the security guard creates a special relationship between himself and the business's customers. This relationship, in and of itself, is sufficient to impose on the guard the obligation to act affirmatively to protect such customers while they are on the business premises." (*Id.* at pp. 199-200; see also *Trujillo v.. G.A. Enterprises, Inc.* (1995) 36 Cal.App.4th 1105, 1108-1109.)

However, security companies do not owe a general duty to the public that extends beyond the premises the company was hired to protect. (*Balard v. Bassman Event Security, Inc., supra,* 210 Cal.App.3d at pp. 249-250.) And "[a] security company hired to protect business premises owes no greater duty toward the patrons of that business than is owed by the business owner under relevant principles of premises liability law." (*Id.* at p. 247.) Of course, Jones was neither an Avis customer nor was he on Avis's premises when he was injured. Jones presented evidence that Guardsmark's guards were guilty of misfeasance including sleeping in the shack, abandoning their post, and allowing cars to depart unchecked. However, he also presented evidence that Avis was well aware of these deficiencies. Under these circumstances, we conclude Guardsmark's duty to protect members of the public from being injured by car thieves was no greater than Avis's was under the "special circumstances" doctrine.

We have reviewed Jones's procedural and evidentiary arguments, and they are meritless. Jones's own evidentiary showing was sufficient to establish his inability to recover. He had a full and fair opportunity to argue his case, both at the summary judgment motion and on his motion for a new trial.

DISPOSITION

The judgment is affirmed. Respondents shall recover their costs on appeal. The cross-appeals are dismissed as moot.

We concur: CORRIGAN, Acting P.J., and POLLAK, J.