Recreational Immunity: Protecting Property Owners

By: Barry Brown, Esq. Published: *The Recorder*

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Most people in this country are probably aware that landlords may be subject to liability for injuries sustained on their property. However, they may not be aware that there may be certain exceptions to that rule, depending on the circumstances of the injury.

Imagine, if you will, a not too uncommon scenario. One evening, a teenage boy, Billy, and his friends climb up an exterior roof access ladder on a 30-foot warehouse building in Santa Rosa, California. They plan to practice skateboard stunts on the rooftop. Billy decides to use the skylight curb as part of his stunt. Unfortunately, instead of this scenario ending the way he intended, Billy miscalculates, goes over the curb, and crashes through the skylight. He falls to the concrete floor 30 feet below, sustaining significant injuries to his arms and legs.

Billy, through his mother as guardian ad litem, sues the owner/landlord of the property and the tenant renting the warehouse. At the outset, these facts sound like a great premises liability case with a comparative fault component. The initial thought from both the plaintiffs' and defendants' attorneys would be that this is a case that will likely settle somewhere down the line, but it may not be that simple.

California Civil Code Section 846, California's recreational user statute, may provide immunity to the owner/landlord and tenant of the property. The statute states, in part, that:

> An owner of any estate or any other interest in real property, whether possessory or non-possessory, owes no duty of care to keep the premises safe for entry or use by others for any recreational purpose or to give any warning of hazardous conditions, uses of, structures, or activities on such premises to persons entering for such purpose, except as provided in this section.

The term "recreational purpose" is defined in the statute quite broadly and clearly would include activities such as Billy's.

California Civil Code Section 846 was enacted by the California legislature in 1963. The intent of the statute was to encourage landowners to allow the public to use their property for recreational purposes. In exchange, the property owners would be immunized from liability should the person using the property injure themselves due to a condition on the property. The immunity would apply only to persons coming onto the property for recreational purposes, not if the person was a contractor, employee, or invited guest who was injured on the property.

Initially, California courts looked to the land in question to determine if the land was "suitable" for recreational use. On that basis, many courts refused to grant immunity for injuries sustained on various types of property, such as construction sites.

However, a California Supreme Court case, *Ornelas vs. Randolph* (1993), 4 Cal. 4th 1095, broadened the reach of the immunity by focusing on the actual use of the property rather than the character of the property - if the property was used for a recreational purpose, then the property owner would be immune from liability. In Billy's case, regardless of whether the rooftop of a warehouse building would be considered to be suitable for recreational use, he was clearly using the property for a recreational purpose. Therefore, given the history of Section 846 and case law, it would follow that the owner of the building should receive recreational immunity.

Since the *Ornelas* case, the California appellate courts have continued to uphold a very broad reading of Section 846. In a 2000 court of appeal case, *Calhoon vs. Lewis* (2000), 81 Cal. App. 4th 108, the facts are eerily similar to Billy's rooftop skateboarding scenario. In *Calhoon*, while waiting for his friend, a young boy was skateboarding in his friend's parents driveway. He fell into a planter and was injured by a metal pipe in the planter. He sued his friend's parents who had placed the planter in the driveway.

The trial court found in favor of the parents based on the immunity set forth in Section 846. In affirming the trial court's determination, the court of appeal reasoned that the plaintiff had voluntarily assumed the risks inherent in skateboarding and the defendants owed no affirmative duty to the plaintiff to make the driveway safe for skateboarding activities.

In its opinion, the *Calhoon* court alluded to exceptions to Section 846, noting that "[w]hereas it would be reasonable to require a skateboarding park owner to take steps to minimize the risk of skateboarding injuries, it would not be reasonable to require the same steps of residential owners. . . ." Section 846 does not apply to invited guests, which includes individuals who have paid the landowner to participate in the recreational activity on the property. In the *Calhoon* case, the parents would have been liable for the skateboarding injuries had they been operating a skateboarding park or some other kind of business where money was accepted for use of the property for skateboarding.

More recently, in *Prince v. PG&E* (2009), 45 Cal. 4th 1151, the California Supreme Court discussed the invited guest exception to recreational immunity. In *Prince*, a boy was flying a kite in a friend's backyard when the kite flew into a neighbor's yard and became entangled in power lines. In his attempt to dislodge the kite using an aluminum pole he found in the neighbor's yard, the boy was seriously injured. The boy's family sued the neighbor, who in turn brought suit against the power company. After finding that the power company had recreational

immunity, the Supreme Court went on to say that the neighbor would similarly be immune if she could show that she did not expressly invite the boy onto her property, which was alleged in the complaint.

Thus, no matter which side of the issue parties find themselves on - injured party, property owner or the attorney for one of the parties - they must be aware of and consider the applicability of the immunity provided by Civil Code Section 846, as well as its exceptions. Armed with this knowledge, individuals considering recreational activities may think twice before doing so on private property, and landlords may be able to breathe a little easier.