CASENOTE: HOMEOWNERS NOT PRESENT WHEN CHILDREN AGAINST PARENTS' ORDERS ALLOWED ALCOHOL AND DRINKING ON THEIR PREMISES NOT LIABLE FOR FATAL ACCIDENT BY A PARTY GUEST. HOMEOWNERS DID NOT FURNISH ALCOHOL TO UNDERAGE MINOR

LAWATYOURFINGERTIPS ®
BY JAMES GRAFTON RANDALL

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

HUGO VIDALES et al., Plaintiffs and Appellants, v. FAYAD SOUDAH et al., Defendants and Respondents.	B263227 (Los Angeles County Super. Ct. No. BC498142)

APPEAL from a judgment of the Superior Court of Los Angeles County. Teresa A. Beaudet, Judge. Affirmed.

Wilheim & Wilheim, Steven C. Wilheim; Law Offices of Al Lustgarten and Alfred Lustgarten for Plaintiffs and Appellants.

Procter & Shyer and James N. Procter for Defendants and Respondents.

Plaintiffs Hugo Vidales, Isidro Lopez, Darlene Sixtos, and Crystal Sixtos appeal from the summary judgment entered for defendants Fayad and Rima Soudah and their daughter Grace Soudah. Plaintiffs filed this suit alleging that the Soudahs were liable for wrongful death and personal injuries arising from an automobile collision caused by an underage party guest who had been drinking alcohol at the Soudah home before the accident. We affirm because: (1) the Soudahs did not furnish alcohol to the guest and are therefore immune from liability; and (2) the daughter was not acting as the parents' agent.

FACTS AND PROCEDURAL HISTORY

At around 2:30 a.m. on September 4, 2011, 18-year-old Justin Blake Robinson drove his car into a disabled vehicle stopped along the shoulder of the southbound 110 freeway, killing Hugo Sixtos and seriously injuring Hugo Vidales and Isidro Lopez. Robinson had consumed one alcoholic beverage at a party thrown by 19-year-old Grace Soudah at the home of her parents, Fayad and Rima Soudah. Robinson's blood alcohol level was somewhere between 0.04 and 0.07 percent, which was below the legal limit for an adult.

Siblings Darlene and Crystal Sixtos sued Robinson and the Soudahs for the wrongful death of their father, Hugo Sixtos. Vidales and Lopez sued for the injuries they

sustained.[1] The Soudahs moved for summary judgment, contending that the undisputed evidence showed they were immune from liability under Civil Code section 1714, subdivisions (c) and (d) because they did not knowingly furnish alcohol to Robinson.[2]

The undisputed evidence submitted by the parties both in support of and opposition to the summary judgment motion showed the following: The Soudah parents had gone away for the Labor Day weekend and left Grace and her older sister in charge of the house. Grace was instructed not to have friends over while the parents were away. Having a party where alcohol was available was against the parents' rules. Grace supplied only snacks, juice, and soft drinks for her guests. She did not buy any alcohol for the party and did not ask anyone to bring alcohol. Grace knew that some of her guests had brought alcohol to the party, and was aware that some were drinking alcohol. Bottles of alcohol were on top of tables. However, no one was serving as a bartender or pouring or bringing drinks to the guests. Robinson, who had been acting as a DJ at the party, complained of being tired. Someone brought him a drink, which he assumed was a soft drink, but instead contained alcohol. Robinson, who had never before had alcohol, finished the drink, but had no others. When Robinson was preparing to leave the party, some of Grace's friends told her that Robinson might be intoxicated. Grace approached Robinson, who appeared sleepy to her, and asked if he wanted to stay the night. Robinson chose to leave and eventually caused the crash that resulted in Sixtos's death and injuries to Vidales and Lopez.

The trial court granted summary judgment for the Soudahs because they had not furnished the alcohol, which had been brought by party guests, and were therefore immune from liability under section 1714, subdivision (d). The trial court agreed and also

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[1] Also named as a defendant was Maurice Anderson, the owner of the car Robinson was driving. Anderson is not a party to this appeal. We will sometimes refer to Darlene and Crystal Sixtos and Hugo Vidales and Isidro Lopez as plaintiffs.

[2] All further undesignated section references are to the Civil Code.

rejected plaintiffs' contention that the parents were liable because Grace acted as their agent.

STANDARD OF REVIEW AND STATUTORY CONSTRUCTION

Summary judgment is granted when a moving party establishes the right to the entry of judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) In reviewing an order granting summary judgment, we must assume the role of the trial court and re-determine the merits of the motion. In doing so, we must strictly scrutinize the moving party's papers. The declarations of the party opposing summary judgment, however, are liberally construed to determine the existence of triable issues of fact. All doubts as to whether any material, triable issues of fact exist are to be resolved in favor of the party opposing summary judgment. While the appellate court must review a summary judgment motion by the same standards as the trial court, it must independently determine as a matter of law the construction and effect of the facts presented. (*Dominguez v. Washington Mutual Bank* (2008) 168 Cal.App.4th 714, 719-720.)

The pleadings determine the issues to be addressed by a summary judgment motion and the declarations filed in support of such a motion must be directed to the issues raised by the pleadings. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84.) A defendant moving for summary judgment meets its burden of showing that there is no merit to a cause of action if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subds. (o)(2), (p)(2).) If the defendant does so, the burden shifts back to the plaintiff to show that a triable issue of fact exists as to that cause of action or defense. In doing so, the plaintiff cannot rely on the mere allegations or denials of his pleadings, "but, instead, shall set forth the specific facts showing that a triable issue of material fact exists . . . ." (Code Civ. Proc., § 437c, subd. (p)(2).) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find

the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof." (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

However, to the extent that resolution of the case turns on the interpretation of a statute, an issue of law is presented that calls for application of the rules of statutory construction. (*Committee to Save Beverly Highlands Homes Assn. v. Beverly Highlands Homes Assn.* (2001) 92 Cal.App.4th 1247, 1261.)

The fundamental rule of statutory construction is to ascertain the Legislature's intent in order to give effect to the purpose of the law. (*Pasadena Metro Blue Line Construction Authority v. Pacific Bell Telephone Co.* (2006) 140 Cal.App.4th 658, 663-664 (*Pasadena Metro Blue Line*).) We first examine the words of the statute and try to give effect to the usual, ordinary import of the language while not rendering any language surplusage. The words must be construed in context and in light of the statute's obvious nature and purpose. The terms of the statute must be given a reasonable and commonsense interpretation that is consistent with the Legislature's apparent purpose and intention. (*Id.* at p. 664.) Our interpretation should be practical, not technical, and should also result in wise policy, not mischief or absurdity. (*Ibid.*) We do not interpret statutes in isolation. Instead, we read every statute with reference to the entire scheme of law of which it is a part in order to harmonize the whole. (*20th Century Ins. Co. v. Superior Court* (2001) 90 Cal.App.4th 1247, 1275.)

If the statutory language is clear, we should not change it to accomplish a purpose that does not appear on the face of the statute or from its legislative history. (*Pasadena Metro Blue Line, supra,* 140 Cal.App.4th at p. 664.) If there is more than one reasonable interpretation of a statute, then it is ambiguous. (*Joannou v. City of Rancho Palos Verdes* (2013) 219 Cal.App.4th 746, 752.) If so, we turn to secondary rules of construction, including maxims of construction, the legislative history, and the wider historical circumstances of a statute's enactment. (*Ibid.*)

DISCUSSION

1. *The Immunity Exception for Furnishing Alcohol to Underage Persons Does Not Apply*

The Legislature has declared a broad rule of immunity from civil liability for businesses or individuals who sell, provide, or furnish alcoholic beverages to persons who then go on to injure themselves or others as a result of their intoxication. Section 1714 provides that everyone is responsible for their own willful or negligent conduct, and that "no social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person resulting from the consumption of those beverages." (§ 1714, subds. (a), (c).) However, in 2010 the Legislature amended the statute by adding subdivision (d), which provides that subdivision (c) does not "preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person whom he or she knows, or should have known, to be under 21 years of age, in which case, . . . the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death." (§ 1714, subd. (d)(1); Stats. 2010, c. 154, § 1.)

The Soudahs contend they do not fall within the immunity exception of section 1714, subdivision (d) because: (1) the parents were not home, had no knowledge of the party, and had no role in procuring alcohol for the party; and (2) the only alcohol at the party came from some of the guests, meaning that Grace did not furnish the alcohol either. Plaintiffs acknowledge that Grace did not buy or ask anyone to buy or bring alcohol, but contend that by providing a venue where her guests brought alcohol and made it accessible to underage persons, she furnished the alcohol.

The parties each rely on *Allen v. Liberman* (2014) 227 Cal.App.4th 46 (*Allen*) to support their respective contentions. We fail to see how *Allen* is of any assistance to

plaintiffs and conclude that the Soudahs' interpretation of *Allen* is correct. The plaintiffs in *Allen* were the parents of 17-year-old Shelby Allen, who died from alcohol poisoning after consuming 15 shots of vodka during a sleepover at the home of her friend, Kayli Liberman. The Liberman parents allowed their underage daughters to drink, and they did so in the presence of Allen. Before going to bed, the parents told Allen that she was not allowed to drink because that was a matter requiring her parents' consent. After the Libermans went to bed, Allen announced she would drink 15 shots of vodka, and passed out in her friend's room after doing so. She died the next morning from alcohol poisoning.

The Allens sued the Libermans for negligence, but lost a summary judgment motion on the ground that the Libermans were immune under section 1714. On appeal, the parties agreed that the 2010 subdivision (d) immunity exception for social hosts who furnish alcohol to underage persons did not apply because the incident occurred before that provision took effect. The Allens contended that their action fell outside the parameters of the earlier version of section 1714 because the Libermans had *not* furnished alcohol to Allen and instead owed and breached an independent duty to safeguard the alcohol in their home and supervise their daughter to prevent her from obtaining access to it.

In affirming the summary judgment, the *Allen* court agreed that the Libermans had not furnished alcohol to Allen. Even so, that did not qualify as an exception to immunity under section 1714: "It would not make sense to interpret the statute in a manner that gives a person immunity for directly handing a drink to a minor, but affords no similar protection to a person who fails to lock up the liquor cabinet to prevent the minor from helping herself to alcohol." (*Allen, supra,* 227 Cal.App.4th at p. 56.)

The *Allen* court then cited two appellate court decisions holding that statutory immunity applied with even greater force as to social hosts who did not furnish alcohol and who "simply permit the consumption of alcohol on their premises . . . ." (*Allen, supra,* 227 Cal.App.4th at p. 56 citing *Leong v. San Francisco Parking, Inc.* (1991)

235 Cal.App.3d 827, 833-834 (*Leong*) [interpreting Bus. & Prof. Code, § 25602, which makes it a misdemeanor to sell or furnish alcohol to obviously intoxicated persons, but provides tort immunity for the same conduct]; *Andre v. Ingram* (1985) 164 Cal.App.3d 206, 208 (*Andre*) [Civil Code section 1714 immunity applied to social hosts who allowed guests to drink alcohol that the guests had brought to their house, and were sued by one guest injured when the other caused an auto collision on the drive home; holding that Civil Code § 1714 "applies with even greater force" where the host did not furnish the alcohol].)

The upshot of *Allen* and the two decisions it cites is this: furnishing alcohol under the social host immunity provisions requires some affirmative act, and a host does not furnish alcohol that his guests bring and consume. This was so as to section 1714 at least as far back as *Andre, supra,* 164 Cal.App.3d in 1985 and as to Business and Professions Code section 25602 at least since *Leong*, *supra*, 235 Cal.App.3d 827 was decided in 1991. The *Leong* court's interpretation of Business and Professions Code section 25602 is significant because it relates to the same subject and has the same purpose and object as Civil Code section 1714. As a result, both statutes should be construed together in order to give effect to all parts of the statutory scheme. (*Lexin v. Superior Court* (2010) 47 Cal.4th 1050, 1090-1091.)

Furthermore, the Legislature has amended section 1714 five times since *Andre* was decided in 1985 and *Leong* was decided in 1991, but has never changed their interpretation of the term "furnished."[3] As a result, we conclude the Legislature was aware of and acquiesced in the courts' construction of that term. (*Moore v. State Board of Control* (2003) 112 Cal.App.4th 371, 383.)

In short, the Soudahs did not furnish alcohol to Robinson. The parents were not at home and were unaware of the party, while Grace did nothing more than let her guests

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[3] The five amendments were: Stats. 2002, ch. 906, § 1; Stats. 2002, ch. 913, § 1; Stats. 2003, ch. 62, § 15; Stats. 2010, ch. 154, § 1; and Stats. 2011, ch. 410.

consume the alcohol they brought. As a result, both Grace and her parents are immune from liability under section 1714, subdivision (d).

2. *Agency Theory Does Not Revive Plaintiffs' Claims*

Plaintiffs contend that the Soudah parents are liable because Grace was acting as their agent. This contention suffers from three fatal defects.

First, aside from a passing reference to section 2332, which provides that principals and agents each have notice of whatever the other has notice of or should communicate to the other, plaintiffs cite no authority and offer no analysis or discussion regarding the existence of an agency relationship between the Soudah parents and their daughter. Second, plaintiffs also fail to mention the undisputed evidence that the daughter was not allowed to have a party or alcohol at the house; and third, plaintiffs do not address whether the daughter was an ostensible agent for purposes of the party or exceeded the scope of her supposed authority. (See § 2334 and *Mejia v. Community Hospital of San Bernardino* (2002) 99 Cal.App.4th 1448, 1456-1457 [proof of an ostensible agency requires the existence of three elements: (1) the person dealing with the agent must do so with belief in the agent's authority, and this belief must be a reasonable one; (2) the belief must be generated by some act or neglect of the principal; and (3) the third person relying on the agent's apparent authority must not be guilty of negligence]; *Montgomery v. Bank of America* (1948) 85 Cal.App.2d 559, 564 [principal not bound by agent's unauthorized act unless he knew the agent exceeded his authority].) Because plaintiffs did not properly address these issues, we deem their agency argument waived. (*In re C.R.* (2008) 168 Cal.App.4th 1387, 1393.)

We alternatively conclude that an agency theory has no application here for two reasons. First, Grace's conduct was not actionable, so even if an agency relationship exists, there is no wrongdoing for which the parents can be held liable. Second, it would undermine the social host immunity provision by permitting liability here, where Grace

did not furnish alcohol to Robinson and her parents were away and had no knowledge of the party or the presence of alcohol.

DISPOSITION

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

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.