

LIABILITY FOR SPIDER BITES



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1. STATEMENT OF FACTS:

Clmt was separated from her husband and has been staying with insd at her residence for 3-4 months. Clmt advised that she has seen spiders all over the residence, inside and out – including black widows “everywhere”. *Claimant contends she told her friend/insured that she even saw black widow spiders in the house* [Recorded Statement, page 2 “A: Oh my god. I kept telling her. I go, ‘Sharon, there’s huge wood spiders. And I go ‘And there’s black widows everywhere. You need to spray the house.’ ‘Oh, I will, I will. I said, “Sharon they’re everywhere.” And, “A: And then, you know, I told her, I said, ‘I’ve seen a couple of black widows in the house. You need to spray, ‘Ok, Ok, I’ll get it done. I’m like, ‘Well you really need to Sharon. ‘I said, ‘Somebody’s going to get hurt.’”]

She advised that she had asked insd on numerous occasions to have the residence sprayed for pest control. Insd has seen spiders in the house but never a black widow. She advised insd to get the house sprayed but she never did it. On the night of 7/5/2011 Clmt was in her bed asleep. She felt a pain in her leg and awoke to find a dead black widow spider dead in the bed, next to her leg.

Clmt lived there for two-three months and knew about the spiders and continued to stay there knowing the spider issue.

2. LIABILITY OF HOMEOWNER/LANDLORD FOR A “SPIDER BITE” WILL NOT BE IMPOSED UNLESS THE LANDLORD/OWNER WAS AWARE OF THE PRESENCE OF THAT PARTICULAR TYPE OF SPIDER:

In order for a plaintiff to succeed in a negligence action brought against a defendant, the plaintiff must demonstrate (1) the existence of a duty of due care owed by the defendant to the plaintiff, (2) defendant's breach of that duty, and (3) injury or damage to the plaintiff that is (4) legally caused by the defendant's breach. *Butcher v. Gay* (1994) 29 Cal.App.4th 388, 398-399.

In a negligence case the existence and scope of a defendant's duty is a legal question to be decided by the court. It is not a factual question to be decided by the trier of fact. *Butcher v. Gay* (1994) 29 Cal.App.4th 388, 400 [a homeowner was not liable to a guest who contracted Lyme disease after coming into contact with homeowner's dog allegedly infested with the disease-carrying tick. Homeowner had no knowledge that Lyme disease-carrying ticks were prevalent in the area and had never seen one on his property or on the dog (who was professionally groomed each month)].

The general rule in California is that all persons have a duty “ ‘to use ordinary care to prevent others being injured as a result of their conduct.’ [Citations.]” (*Rowland v. Christian* (1968) 69 Cal.2d 108, 112). *Brunelle v. Signore* (1989) 215 Cal.App.3d 122, 128.

A landlord must provide premises that are liveable. Civil Code §1941 provides, “The lessor of a building intended for the occupation of human beings must, in the absence of

an agreement to the contrary, put it into a condition fit for such occupation, and repair all subsequent dilapidations thereof, which render it untenable....” Section 1941.1 provides that a dwelling shall be deemed untenable unless “every part [is] clean, sanitary, and free from all accumulation of debris, filth, rubbish, garbage, rodents, and vermin.”

NO KNOWLEDGE OF TYPE OF SPIDER NO LIABILITY:

In *Brunelle v. Signore* (1989) 215 Cal.App.3d 122, the plaintiff spent a weekend at the defendant's vacation home in Cathedral City and was bitten by a “brown recluse spider.” (*Id.* at 125.) The spider's venom destroyed tissue in the plaintiff's right foot. The foot became swollen and infected and developed ulcerated lesions.

The plaintiff's complaint alleged the defendant negligently maintained his property and “failed to warn plaintiff regarding the property's safe use....” (*Id.* at p. 125.) The defendant moved for summary judgment and contended although he had a duty to use ordinary care to prevent others from being injured as a result of his conduct, that duty did not, as a matter of law, require him to take affirmative steps to protect against or to warn about the possibility of being bitten by a spider.

The Court of Appeal affirmed the trial court's grant of summary judgment and stated:

“Our consideration of the *Rowland* factors leads us to the conclusion in this case that an owner or occupier of a private residence does not have a duty to protect or prevent bites from harmful insects where:

- (1) it is not generally known that the specific insect is indigenous to the area;
- (2) the homeowner has no knowledge that a specific harmful insect is prevalent in the area where his residence is located;
- (3) the homeowner has on no occasion seen the specific type of harmful insect either outside or inside his home; and
- (4) neither the homeowner nor the injured guest has seen the specific insect that bit the guest either before or after the bite occurred.

To impose a duty under these circumstances, where the owner or occupier of the premises had no reason to anticipate or guard against such an occurrence would be unfair and against public policy. Imposition of a duty even in those cases where the homeowner shared general knowledge with the public at large that a specific harmful insect was prevalent in the area but the homeowner had not seen the specific harmful insect either outside or inside his home would impose a duty on the owner or occupier of the premises that would also be unfair and against public policy. In either of these instances, the burden on the landowner would be enormous and would border on establishing an absolute liability. Further, the task of defining the duty and the measures required of the owner or occupier of private residences to meet that duty would be difficult in the extreme.” (*Brunelle v. Signore, supra*, 215 Cal.App.3d at pp. 129–130, fns. omitted.)

As the court further provided in *Brunelle*:

Here plaintiff urges imposition of a duty because defendant had general knowledge of the prevalence of other harmful insects around his home and also urges that defendant

had a duty to use a professional exterminator and/or exterminate his house himself “more frequently” and also to hire a professional cleaning person or persons to clean defendant's home when he (defendant) was not in residence. However, that foreseeability which an owner or occupier of a residence shares with the public at large does not, per se, impose a duty on such owner or occupier to procure professional exterminators and/or cleaning crews to “de-bug” his residence, inside and out, on a periodic basis. An owner or occupier of property is not an insurer of the safety of persons on the premises. (*7735 Hollywood Blvd. Venture*, 116 Cal.App.3d at p. 905.) His responsibility is not absolute, or based on a duty to keep the premises absolutely safe. (*Coggins v. Hanchette* (1959) 52 Cal.2d 67, 74.)

The law does not impose a duty of extraordinary care. Imposition of such a duty here, as in *7735 Hollywood Blvd. Venture*, would impose an intolerable burden on homeowners and would in effect impose an absolute liability on the homeowner for injuries caused by insect or spider bites on their premises.

For the reasons stated, we conclude that defendant, as a matter of law, had no duty to protect against the risk that plaintiff would sustain injury as a result of a spider bite.”

Brunelle v. Signore (1989) 215 Cal.App.3d 122, 130-131.

A duty to warn arises only when the landowner's knowledge of the danger is superior to the business invitee's. A patient bitten by a black widow spider in a hospital presented no evidence that the hospital knew a black widow spider was on its premises. His own expert testified that the hospital records did not show a black widow spider infestation. In fact, the hospital's pest logs showed no sightings of such a spider. Nothing established that anyone else had ever been bitten by a black widow at the hospital. Therefore, the hospital had no duty to warn Plaintiff of a danger of which it had no knowledge. *St. Joseph's Hosp. v. Cowart*, 891 So.2d 1039, 1042 (Fla.App. 2 Dist.,2004).

See also: Maid sued owners of home in which she worked, seeking damages for spider bite. The court entered judgment for owners and appeal was taken. The Supreme Court, held that owners had not violated duty of ordinary care owed to maid, as invitee, by failing to take steps to rid area of spiders, even though maid stated she had told owners that she had seen evidence of insects in home, including spider webs. *Kay v. Kay*, 306 Ark. 322, 812 S.W.2d 685 (Ark.,1991). The fact that she had told the Kays of having seen evidence of insects, including spider webs, and the Kays' assurance that they would take care of the problem, do not, in our judgment, constitute the proof required in the *Brunelle* case or in the cases where liability to an invitee for an insect bite has been upheld. There was no showing that any kind of spider, much less a brown recluse, had been actually seen on the premises, nor was there evidence that such a harmful insect had ever been seen in the area in which the home was located. There was no evidence from which it could be determined how or, more importantly when, the spider came upon the premises. In these circumstances, we agree with the rationale of the California Court of Appeals that it would be unfair and a virtual declaration of absolute liability to hold the Kays responsible for Mary's injury. *Kay v. Kay*, 306 Ark. 322, 325, 812 S.W.2d 685, 687 (Ark., 1991)

LIABILITY FOR SPIDER BITE UPHELD:

In *CeBuzz, Inc. v Sniderman* (1970) 171 Colo 246, 466 P2d 457, the court affirmed a judgment in favor of a grocery store patron who was bitten by a spider concealed in a bunch of bananas which the patron bought, where a similar spider had been seen among the bananas offered for sale in the grocery 2 or 3 days before the occurrence and where the owner had not shown any effort to inspect the bananas to discover the insects and eliminate them. The court stated that a business host is liable to a business visitor for harm caused by a dangerous condition in the premises if he knows of, or by the exercise of reasonable care could discover, that condition, if he has no reason to believe the condition will be discovered by the visitor, and if he invites entry upon the premises without making the conditions safe or giving a warning. The court declared that there was no error in taking the issue of liability from the jury, as the evidence established the negligence of the defendant as a matter of law.

CONCLUSION:

In this instant case there appears to be some dispute as to whether or not black widow spiders had been seen on the premises – and particularly in the premises. The homeowner states she had not seen any – yet her guest claims that she saw black widow spiders in the premises and that she even told the landowner about the presence of black widow spiders and the landowner stated she would do something about it, but she never did.

Defendant will not prevail in a motion for summary judgment as there is a disputed and triable issue of fact as to whether or not black widow spiders had in fact been seen on the premises – and in the premises. The credibility of the Plaintiff cannot be challenged on summary judgment. Her expected testimony that she saw the black widow spiders in the house and on the premises and complained about them would be sufficient to get this case to a trial – and if Plaintiff is believed she could in fact prevail.