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Hacala v. Bird Rides, Inc.

Court of Appeal, Second District, Division 3, California - April 10, 2023 - Cal.Rptr.3d - 2023 WL 2851729

Pedestrian and her family members brought action against city and operator of electric motorized scooter rental business alleging negligence, negligent infliction of emotional distress, loss of consortium, and public nuisance arising from pedestrian's trip and fall on a dockless rental scooter that an unknown third party left partially sticking out from behind a trash can on sidewalk.

The Superior Court, Los Angeles County, sustained defendants' demurrer without leave to amend. Pedestrian appealed.

The Court of Appeal held that:

- City had immunity under Government Claims Act;
- City's alleged failure to remove improperly parked scooters was not a physical deficiency in public property;
- City's failure to create sidewalk markings for scooter parking did not increase danger from third-party negligence;
- Requisite special relationship for imposing a duty for harm relating to third-party conduct did not apply;
- Operator had a general duty to use ordinary care or skill in management of its property;
- Public policy did not support an exception to general duty of care; and
- Pedestrian alleged sufficient facts to assert a private action for public nuisance.

City had discretion, but was not under a mandatory duty, to remove improperly parked electric rental scooters or to revoke scooter rental company's permit for noncompliance, and therefore city was immune from liability under the Government Claims Act in pedestrian's negligence action arising from her alleged trip and fall on dockless rental scooter that an unknown third party left partially sticking out from behind a trash can on sidewalk, where permit reserved in city the right to amend, modify, or change the terms and conditions of the dockless scooter pilot program at its discretion, and permit did not specify ministerial steps for removing scooters and imposing fees for such removals.

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