



Association of Defense
Counsel of Northern
California and Nevada



January 25, 2024

VIA TRUEFILING

Acting Presiding Justice Carol D. Codrington
Associate Justice Frank J. Menetrez
Associate Justice Richard T. Fields
Court of Appeal of the State of California
Fourth Appellate District, Division Two
3389 Twelfth Street
Riverside, California 92501-3851

Re: ***Stani v. Shamrock Foods, Inc.***
Court of Appeal Case No. E079098
Request for Publication, Opinion filed January 5, 2024

Dear Acting Presiding Justice and Associate Justices:

Pursuant to rules 8.1105(c) and 8.1120(a) of the California Rules of Court, the Association of Southern California Defense Counsel (ASCDC) and the Association of Defense Counsel of Northern California and Nevada (ADCNCN) (together, the Associations) write jointly to request that the court certify for publication its opinion in *Stani v. Shamrock Foods, Inc.* (January 5, 2024, E079098) (*Stani*).

As explained below, publication of this court's opinion is warranted because the decision (1) provides a new application of the California Supreme Court's holding in *Vasilenko v. Grace Family Church* (2017) 3 Cal.5th 1077 (*Vasilenko*) and the Court of Appeal, Second District, Division Two's holding in *Issakhani v. Shadow Glen Homeowners Assn., Inc.* (2021) 63 Cal.App.5th 917 (*Issakhani*) concerning the standard for proving a landowner's duty of care to maintain a public roadway abutting its business, and (2) addresses an important issue of whether a landowner has a duty to prevent an injury on a public roadway when it neither created the injury-causing condition nor did anything to obscure or magnify an obvious danger on the public street. (See Cal. Rules of Court, rule 8.1105(c)(2) [opinion should be published when it applies a rule of law to "facts significantly different from those in other published opinions"], (3) [opinion should be published when it "[m]odifies, explains, or criticizes with reasons given, an existing rule of law"] & (6) [opinion should be published when it "involves a legal issue of continuing public interest"].)

Interest of the requesting organizations

ASCDC is the nation's largest and preeminent regional organization of lawyers who specialize in defending civil actions. It has over 1,100 attorneys in Central and Southern California, among whom are some of the leading trial and appellate lawyers of California's civil defense bar. The ASCDC is actively involved in assisting courts on issues of interest to its members. In addition to representation in appellate matters, the ASCDC provides its members with professional fellowship, specialized continuing legal education, representation in legislative matters, and multifaceted support, including a forum for the exchange of information and ideas.

ADCNCN numbers approximately 700 attorneys primarily engaged in the defense of civil actions. Members represent civil defendants of all stripes, including businesses, individuals, HOA's, schools and municipalities, and other public entities. Members have a strong interest in the development of substantive and procedural law in California, and extensive experience with civil matters generally. ADCNCN's Nevada members are also interested in the development of California law because Nevada courts often follow the law and rules adopted in California.

Although ASCDC and ADCNCN are separate organizations, they have some common members and coordinate from time to time on matters of shared interest, such as this letter. Together and separately, they have appeared as amicus curiae in many cases before both the California Supreme Court and Courts of Appeal across the state to express the interests of their members and their members' clients, a broad cross-section of California businesses and organizations.

The membership of ASCDC and ADCNCN includes attorneys who are retained by landowners, business proprietors, and insurers defending their policyholders. Members of these associations, therefore, have a direct interest in the law governing the resolution of claims against owners and occupiers of property and the standards for imposing a duty of care based on the manner in which they manage public property bordering their premises.

No party has paid for or drafted this letter.

Why the court should order publication

The general rule is that a landowner has no common law duty to protect invitees from offsite dangers the owner or occupier of land did not create and does not control, even if the risk of harm is foreseeable. (See *Sexton v. Brooks* (1952) 39 Cal.2d 153, 157–158; *Seaber v. Hotel Del Coronado* (1991) 1 Cal.App.4th 481, 493.) In particular, a landowner has no duty of care “to provide onsite parking to invitees.” (Typed opn. 13, citing *Vasilenko, supra*, 3 Cal.5th at p. 1090.) Furthermore, a

landowner does not have a common law duty to protect an invitee from “injuries incurred offsite due to an alleged deficiency on the landowner’s property.” (Typed opn. 12, quoting *Issakhani, supra*, 63 Cal.App.5th at p. 925.) Litigants advancing and defending premises liability claims often raise arguments about a purported duty of a landowner to exercise control over public property abutting its premises. The court’s decision in *Stani* helpfully addresses several such arguments.

As this court correctly recognized, *Vasilenko* and *Issakhani* are dispositive on a plaintiff’s claim of a common law duty of care. (See typed opn. 13.) In *Vasilenko*, a passing car hit plaintiff as he crossed a five-lane street separating the church and its offsite overflow parking lot. (*Vasilenko, supra*, 3 Cal.5th at p. 1082; typed opn. 10.) He sued the church, arguing that having located its overflow parking lot across the street, the church owed him a duty of care to ensure his safe return on foot. (*Vasilenko*, at pp. 1081–1082.) Following an exhaustive analysis, the Court concluded that the “most directly involved” parties—the pedestrian who lawfully or unlawfully crosses a street and the motorist who collides with the pedestrian—have the greatest ability to prevent the type of accident in question by exercising ordinary care. (*Id.* at pp. 1090, 1092.) The Court held that “a landowner who does no more than site and maintain a parking lot that requires invitees to cross a public street to reach the landowner’s premises does not owe a duty to protect those invitees from the obvious dangers of the public street.” (*Id.* at p. 1092.) In *Issakhani*, a pedestrian parked her car and jaywalked across a wide thoroughfare to reach her destination when a distracted motorist hit her. (*Issakhani, supra*, 63 Cal.App.5th at p. 922.) The court held that the issue whether “a duty of care exists is not a matter of plucking some immutable truth from the ether” and that “a landowner’s common law duty of care does not encompass a duty to provide onsite parking for invitees in order to protect them from traffic accidents occurring offsite as they travel to the premises.” (*Id.* at pp. 924–926; see typed opn. 12.)

Like in *Vasilenko* and *Issakhani*, this case addresses the question of whether a landowner has any duty to protect an invitee from the “obvious dangers of the public roadway.” (Typed opn. 10). However, in holding that a landowner has no such duty under the facts presented here (typed opn. 14), this court appropriately applied the principles of *Vasilenko* and *Issakhani* to expand on their rationale.

In both *Vasilenko* and *Issakhani* the defendant attempted to provide at least some onsite parking, but that parking lot was full when the plaintiff arrived. In *Vasilenko*, “a church member volunteering as a parking attendant informed [plaintiff] that the main lot was full and told him to park at the swim school lot across the street.” (*Vasilenko, supra*, 3 Cal.5th at p. 1082; typed opn. 10.) In *Issakhani*, plaintiff “attempted to park in the condominium complex’s parking lot but did not find an available parking spot.” (Typed opn. 12; *Issakhani, supra*, 63 Cal.App.5th at p. 922.)

In *Stani*, however, the defendant did not attempt to provide any onsite parking and required that all delivery drivers park offsite. Defendant displayed a sign at the check-in area requiring third-party carriers to “‘park[] on the street.’” (Typed opn. 4.) Nevertheless, this court correctly affirmed summary judgment because defendant did not require third-party truck drivers to park on any specific public street. (*Ibid.*) The court held that plaintiff’s injury did not result from defendant’s “lack of onsite parking for third party truck drivers or the instructions to park elsewhere” (typed opn. 14), but by plaintiff’s decision to park his truck on that specific street and ignore the obvious dangers inherent in any public street. The court reasoned that “the danger of being struck by a vehicle while standing in the street and visible to the car’s driver” is “an obvious danger inherent in any public street.” (*Ibid.*)

In this regard, this court provided a helpful analysis of a set of facts that are different from those in *Vasilenko* and *Issakhani*, but that warranted the same decision. Namely, even if a landowner *mandates* offsite parking for all invitees, it does not owe a common law duty of care to its invitees to “prevent injuries from the obvious dangers of the public roadway bordering its premises by providing onsite parking,” when there is “no evidence [the landowner] did anything to obscure or magnify that obvious danger of the public roadway.” (Typed opn. 14.) Publication of the decision would benefit litigants by providing greater certainty about what circumstances do give rise to a common law duty of care, and what circumstances do not. Such certainty would ensure judicial economy and will benefit the public by disposing of premises liability claims at inception.

Publication is also warranted because the decision “[i]nvolves a legal issue of continuing public interest” (Cal. Rules of Court, rule 8.1105(c)(6)), given the prevalence of premises liability claims in civil litigation and the importance of roadways and parking to our daily life.

According to statistics from the U.S. Department of Justice, Bureau of Justice Statistics, in 2019 alone “there were 26,928 real property, contract and tort trials in the United States and 60% were related to some form of personal injury.” (Fiore, *Common Issues and Defenses in Premises-Liability Cases* (Mar. 2022) Advocate <<http://tinyurl.com/advocatemag>> [as of Jan. 24, 2024].) Furthermore, the “remaining 28% covered ‘other’ cases, such as premises-liability cases.” (*Ibid.*) In California for the 2020–2021 fiscal year, there were about 23,377 unlimited civil filings statewide for other personal injury, property damage, and wrongful death. (Jud. Council of Cal., Court Statistics Report: Statewide Caseload Trends (2022) Civil Filings, Dispositions, and Caseload Clearance Rate, p. 79.)

In addition, according to the California Highway Patrol, there were 216,366 traffic accidents in California in 2022, 3,854 of which resulted in fatalities and 165,978 in injuries. (*Car Crash Statistics in California* (2023) Disrupt Magazine <<http://tinyurl.com/crashstatsca>> [as of Jan. 24, 2024].) And as some studies


recognized, “[o]ur buildings shape our behavior” and “parking spaces are ‘a fertility drug for cars.’” (Andersen, *Verified: More Parking Puts More Cars on the Road* (Jan. 28, 2021) Sightline Inst. <<http://tinyurl.com/sightlineinstitute>> [as of Jan. 24 2024].)

This court’s decision helps avoid the potentially harmful incentive to create ever-increasing parking set-asides, which could result in more cars on the streets and potentially more car accidents. In addition, with a steady increase in traffic, it is critical that landowners know the boundaries of their liability as they are often exposed to premises liability claims. Publication of this court’s opinion in *Stani* would provide authority that directly rejects meritless claims and will facilitate pretrial resolution of premises liability cases on reasonable terms.

The Associations request that this court order publication.

Respectfully submitted,

**ASSOCIATION OF SOUTHERN
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PROOF OF SERVICE

Stani v. Shamrock Foods
Case No. E079098

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Los Angeles, State of California. My business address is 3601 West Olive Avenue, 8th Floor, Burbank, CA 91505-4681.

On January 25, 2024, I served true copies of the following document(s) described as **REQUEST FOR PUBLICATION** on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY E-MAIL OR ELECTRONIC TRANSMISSION: Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission via Court's Electronic Filing System (EFS) operated by ImageSoft TrueFiling (TrueFiling) as indicated on the attached service list:

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 25, 2024, at Burbank, California.



Ryan McCarthy

SERVICE LIST
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Case No. E079098

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