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Please note:

This sample document is redacted from an actual research and writing project we did for a customer some time ago. It reflects the law as of the date we completed it. Because the law may have changed since that time, please use it solely to evaluate the scope and quality of our work.

If you have questions or comments, please contact Jim Schenkel at 415-553-4000, or email info@quojure.com.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LIMESTONE

JOHN K. LEE,

Plaintiff,

v.

ACME CORPORATION, et al.,

Defendants.

Case No. 54321

OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

Date:

Time:

Dept.

Complaint filed:

Trial date:

Defendant Acme Corporation’s motion for summary judgment is entirely without merit for three separate and distinct reasons. First and foremost, it is based exclusively on inadmissible evidence. Acme brought its motion before plaintiff John K. Lee had reviewed and signed his deposition transcript, and thus before that testimony was rendered admissible evidence. For this reason alone, the motion can be denied.

Second, defendant Acme failed to meet its initial burden of going forward, and of showing that there is no triable issue of material fact as to whether it met its duty of care. Acme’s moving papers incorrectly assume that Acme only had a duty to prevent plaintiff Lee from losing his balance. In fact, Acme also had a duty to protect plaintiff in the event he did lose his balance. The moving papers never even mention this aspect of Acme’s duty, let alone prove that Acme, in fact, acted reasonably toward plaintiff in this regard.

1 For this reason as well, the motion should be denied.

2 Third, plaintiff's evidence demonstrates that there are triable issues of material fact.
3 When plaintiff ultimately did read and sign his deposition transcript, he made a critical
4 addition that is sufficient to defeat this motion in its entirety. His deposition now reads
5 that the stairway hand railings were too short and that he was unable to use them to stop
6 his fall. Moreover, his expert witness likewise has determined that the railings were not up
7 to Code, as they were considerably shorter than required. Because there are triable issues
8 of material fact as to whether Acme maintained a defective condition on its property that
9 caused plaintiff's injuries, this motion should be denied.

10
11 **FACTS¹**

12 Plaintiff John Lee's complaint alleges that defendant Acme Corporation "owned,
13 operated, controlled, maintained, designed, built, manufactured, leased, let, sold and
14 occupied" the property located at 123 Elm Street, Aralia, CA. The complaint also alleges
15 that Acme negligently caused the premises to be dangerous and defective and that plaintiff
16 was injured as a proximate result of the property's condition.

17 In his responses to form interrogatories, dated February 6, 20__, plaintiff stated that
18 Acme violated certain statutes and ordinances with regard to the property. His responses
19 also referred Acme to his expert witness report for a list of the various code violations. In
20 his responses to special interrogatories, dated February 6, 20__, when asked to state why
21 Acme was negligent, plaintiff responded that there were Building Code violations. In his
22 response to a question as to how Acme's negligence caused the incident, he stated that, had
23 the condition of the stairway complied with the Building Code, and had the owner
24 addressed the problems with the stairway, the accident would not have occurred. Plaintiff
25 again referred Acme to his expert witness report for further details regarding the property's
26 condition, the Building Code violations, and Acme's negligence.

27 _____
28 ¹ In the interests of brevity, all references in this document to the parties' separate statements of fact have been deleted.

1 Plaintiff Lee was deposed on February 21, 20___. The parties stipulated that the
2 deposition transcript be forwarded to plaintiff's attorney for review, correction, and
3 signature, and that within 45 days of receipt of the transcript, plaintiff's counsel would
4 notify all parties of any changes to the deposition testimony. On February 23, 20___, the
5 court reporter signed the Certificate of Shorthand Report and forwarded the original
6 transcript to plaintiff's counsel per the stipulation.

7 Acme moved for summary judgment on March 2, 20___, before the 45 days expired
8 for plaintiff to correct his deposition. On receiving the deposition transcript during the
9 week following February 23, 20___, plaintiff made the following change to his deposition:
10 "also the handrails were too short and I could not grab them to stop my fall." Plaintiff Lee
11 served notice of the change to his deposition transcript on April 10, 20___.

12 13 **ARGUMENT**

14 **1. Acme's motion is based entirely on inadmissible evidence.**

15 A court reporter's records of questions and answers, which have not yet been signed
16 by the deponent, are not admissible in evidence as depositions. *Bennett v. Superior Court*
17 *of San Diego County* (1950) 99 Cal.App.2d 585. It is the deponent's reading and signing
18 of a deposition that renders it his testimony, rather than its mere recordation by a reporter.
19 *Reimel v. House* (1969) 268 Cal.App.2d 780.

20 Here, the parties stipulated that plaintiff would have 45 days from the date of the
21 transcript's receipt from the court reporter to review, correct, and sign the deposition. The
22 court reporter forwarded the deposition after February 23, 20___. Acme brought this
23 motion, based on the then-unsigned deposition transcript, on March 2, 2006. Not until
24 April 10, 20___, did plaintiff read, correct, and sign his deposition transcript. Thus, when
25 Acme brought this motion, plaintiff's deposition transcript was not his "testimony"; it was
26 merely a court reporter's perceived understanding of what his testimony was. As a result,
27 Acme's entire motion is based exclusively on evidence that was inadmissible when the
28 motion was prepared, filed, and served. The motion should therefore be denied.

1 **2. Acme failed to meet its initial burden of going forward.**

2 Even if the Court is inclined to admit the deposition transcript as evidence, Acme
3 here failed to meet its initial burden of going forward. Where the moving party on a
4 motion for summary judgment is the defendant, he has the burden of proving that the
5 action has no merit. Code Civ. Proc. §§ 437c(a), (f)(1) and (o)(2). A defendant has met
6 that burden if he has shown that one or more elements of the cause of action cannot be
7 established or that there is a complete defense to that cause of action. Code Civ. Proc.
8 § 437c(o)(2). The first step in analyzing any motion for summary judgment is to identify
9 issues framed by the pleadings. *Allyson v. Department of Transportation* (1997) 53
10 Cal.App.4th 1304. The motion must respond to these allegations by establishing a
11 complete defense or by otherwise showing that there is no factual basis for relief on any
12 theory reasonably contemplated by the opponent’s pleading. *Anderson v. Pacific Bell*
13 (1988) 204 Cal.App.3d 277.

14 Here, Acme has failed to show that there is no factual basis for relief on any theory
15 reasonably contemplated by his complaint. The entire gist of Acme’s argument on
16 summary judgment is: plaintiff admitted he fell because he lost his balance, and therefore
17 Acme is relieved of liability for his injuries. But many cases have held that a landowner
18 can be liable if there is evidence that a handrail was either too short, improperly
19 maintained, or non-existent, if the plaintiff can show that this condition proximately caused
20 his injuries. *See, Montijo v. Western Greyhound Lines* (1963) 219 Cal.App.2d 342, 346;
21 *Laird v. T.W. Mather, Inc.* (1958) 51 Cal.2d 210, 216. (Because Acme has artificially
22 truncated the scope of its duty to plaintiff, it has failed to meet its initial burden.)

23 The complaint alleges that Acme “owned, operated, controlled, maintained,
24 designed, built, manufactured, leased, let, sold and occupied” the premises and caused
25 them to be dangerous and defective. Plaintiff’s theory of the case was also described in
26 greater detail in his responses to discovery and the report of his expert witness, referenced
27 in those responses. He contends that the premises were defectively designed, built, and
28 maintained because, among other things, the stairway handrail was too short and did not

1 comply with the applicable Building Code. Acme's moving papers failed to even mention
2 this aspect of plaintiff's theory of liability, let alone show that there is no factual basis for
3 relief on this theory. Acme's motion should therefore be denied.

4
5 **3. Key material facts are in dispute.**

6 Even if the Court could overlook the fact that Acme has not addressed all the
7 necessary allegations in the complaint and has not shown that there is no factual basis for
8 any legal theory reasonably contemplated by plaintiff's complaint, Acme's motion should
9 nonetheless be denied because certain pivotal facts remain in dispute. For instance,
10 plaintiff contends, and testified in his changes to his deposition, that the handrail on the
11 stairs was too short and that he was unable to grab it as he fell, thus causing his injuries.
12 He contends that the handrail did not comply with applicable Building Code sections,
13 because it was far too short. His expert witness has corroborated this contention,
14 concluding that the Building Code requires the handrail to extend no less than 12 inches
15 beyond the bottom riser; the handrail here extended only 2½ inches beyond the bottom
16 riser. The presentation of this evidence is sufficient to raise a triable issue of fact as to
17 whether the stairway and handrail were defective, and whether that defective condition
18 caused plaintiff's injuries.

19
20 **CONCLUSION**

21 Plaintiff respectfully requests that this Court deny defendant's motion for summary
22 judgment. Defendant Acme relies entirely on inadmissible evidence and fails to meet its
23 initial burden of going forward. In any event, key material facts remain in dispute.

24
25 Dated:

Respectfully submitted,

Attorneys for Plaintiff