SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN LUIS OBISPO

PASO ROBLES BRANCH

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| OSWALDO PONCE and JAMIE PONCE,<br><br>Plaintiffs,<br><br>vs.<br><br>TRACY MATICH, and DOES 1 through 10,<br><br>Defendants. | **CASE NO. 14CVP-0132**<br><br>**RULING AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** |

## I. INTRODUCTION AND FACTUAL SUMMARY

Plaintiff Oswaldo Ponce ("Oswaldo") was seriously injured when he was thrown from a horse named "Stellar" while deciding whether to purchase the horse from Defendant Tracy Matich ("Matich"). Oswaldo and his wife (hereafter "Plaintiffs") now bring suit against Matich for general negligence.

Plaintiffs' complaint alleges that Matich advertised Stellar for sale on Craigslist. After Plaintiffs inquired about the horse, they traveled to see it at Matich's property, accompanied by their two children. Upon their arrival, Matich was riding the horse in a corral. Matich dismounted and spoke with Oswaldo, reassuring him that the horse was broke, ready for the trail, safe, calm, and healthy.

After mounting Stellar in the corral area, Oswaldo rode the horse at a walk in Figure 8s, noting that the horse was slow to obey commands and had to be told twice with the reins to turn. He then rode Stellar for about five more minutes before the horse broke into a run, Oswaldo being unable to stop her. In halting abruptly near the corral boundary, Stellar threw Oswaldo onto the fence, causing him significant injuries.

Plaintiffs claim that Matich knew or should have known that Stellar was not properly trained to obey basic commands and that the horse was unsafe to be ridden. They assert that Oswaldo would not have ridden the horse but for the misrepresentations made by Matich.

On May 20, 2015, after hearing oral argument, the Court took the matter under submission for purposes of re-reviewing the deposition transcripts and legal authorities.

## II. DISCUSSION

Matich's motion for summary judgment claims that Plaintiffs' complaint is barred by the doctrine of primary assumption of the risk, which is succinctly summarized in *Guido v. Koopman* (1991) 1 Cal.App.4th 837, 842 as follows:

> Horseback riding is a dangerous sporting activity; "being thrown off a horse [i]s an inherent risk of horseback riding, [indeed] ... it is one of the most obvious risks of that activity, and readily apparent to anyone about to climb on a horse."

In support of her motion, Matich principally relies upon two cases that apply the primary assumption of the risk doctrine to horse accidents. In *Harrold v. Rolling J Ranch* (1993) 19 Cal.App.4th 578, plaintiff and her friends rented horses from the Rolling J stables and went on a trail ride, escorted by employees of the Rolling J. The riders were told the basics of riding and were warned not to run the horses. One of the riders complained of being cold.

Having had no problems with the horse, plaintiff removed her jacket. Notwithstanding, the horse spooked and bucked plaintiff off while her arms were still in her jacket sleeves. The horse had apparently spooked on a previous ride when that rider took off

and waved a hat, but plaintiff had not been warned of this fact. Plaintiff alleged that defendant failed to warn plaintiff of the horse's unstable temperament and failed to provide her with a safe horse to ride.

Observing that the "the scope of the legal duty owed by a defendant frequently will also depend on the defendant's role in, or relationship to, the sport" (19 Cal.App.4th at 585), the Court of Appeal affirmed the trial court's issuance of summary judgment. It found only a limited duty on the part of a commercial operator to warn of a horse's dangerous propensity, and that a single event of bolting did not give rise to such a duty to warn:

> However, in this case we stop short of imposing a duty on stable owners to provide "ideal" riding horses such that they never buck, bite, break into a trot, stumble or "spook" when confronted by a frightening event on the trail such as a shadow or snake or react to peculiar movements of a rider such as excessive spurring or waving of a coat as in this case. We view sudden movements of a horse just as inherent in horseback riding as the presence of moguls on a ski slope are to skiers.
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> Public policy supports not imposing a duty on commercial operators of horse-renting facilities which provide supervised trail rides, to supply "ideal" horses, but we stop short of eliminating any duty such as a duty to warn of a dangerous propensity in a given horse. However, the one prior incident of the subject horse having spooked does not rise to the level of a dangerous propensity, in our opinion. It does rise to the level of a "horse behaving as a horse" with no incumbent duty on the part of the stable operator. In our opinion, to impose some sort of duty on a lessor of horses when a "horse acts as a horse" is to tell the commercial world that strict liability is imposed for any action of a horse inherent in horseback riding, with the concomitant result that in all probability all commercial horseback riding will cease because of the risk involved to those that are self-insured or by reason of the prohibitive expense to obtain liability insurance for such an enterprise. *Harrold v. Rolling J Ranch* (1993) 19 Cal.App.4th 578, 588.

In *Levinson v. Owens* (2009) 176 Cal.App.4th 1534, *as modified on denial of reh'g (Sept. 25, 2009)*, plaintiff, a social guest at a ranch, was injured after falling off a horse while attending a party. In rejecting plaintiff's claim for negligence against ranch owners, the Court of Appeal affirmed the trial court's entry of summary judgment with a comprehensive discussion of precedent:

> Applying the aforesaid principles of primary assumption of the risk to horseback riding leads to the following general conclusions: The rider generally assumes the risk of injury inherent in the sport. Another person does not owe a duty to protect the rider from injury by discouraging the rider's vigorous participation in the sport or by requiring that an integral part of horseback riding be abandoned. And the person has no duty to protect the rider from the careless conduct of others participating in the sport. The person owes the horseback rider only two duties: (1) to not "intentionally" injure the rider; and (2) to not "increase the risk of harm beyond what is inherent in [horseback riding]" (*Kahn, supra,* 31 Cal.4th at p. 1004, 4 Cal.Rptr.3d 103, 75 P.3d 30) by "engag[ing] in conduct that is so reckless as to be totally outside the range of the ordinary activity involved in the sport." (*Knight, supra,* 3 Cal.4th at p. 320, 11 Cal.Rptr.2d 2, 834 P.2d 696.) With respect to increasing the risk of harm, the duty "may vary according to the *role* played by particular [persons] involved in the sport" (*Kahn, supra,* 31 Cal.4th at p. 1004, 4 Cal.Rptr.3d 103, 75 P.3d 30, italic in original) and the nature of the particular riding activity at issue. *Levinson v. Owens* (2009) 176 Cal.App.4th 1534, 1546, *as modified on denial of reh'g (Sept. 25, 2009).*

In opposing summary judgment, Plaintiffs focus on *Eriksson v. Nunnink* (2011) 191 Cal.App.4th 826, which involved the tragic death of a young rider during a three-day riding event. The Court of Appeal reversed the trial court's issuance of summary judgment in favor of a trainer who was in charge of a young but experienced rider.

The Court of Appeal concluded that the key factors warranting reversal of summary judgment were the relationship of the trainer to the rider (i.e., the nature of the duty held by the defendant), the defendant's knowledge of the horse's prior injury, the trainer's established knowledge of the horse's unfitness for a demanding and dangerous event, and significant misrepresentations made to the rider's mother about the capability of the horse.

Relying on *Rolling J Ranch* and *Levinson*, Matich presents 20 undisputed material facts ("UMF") in an effort to establish that the action is barred by Plaintiffs' primary assumption of the risk. In response, Plaintiffs concede that the following ten material facts are undisputed:

- Matich does not operate a commercial riding facility (UMF 7).
- There was no defect in the premises (UMF 9).

- Matich never had difficulty with Stellar prior to the time Oswaldo rode her (UMF 11).
- Matich trained and rode Stellar and had never been thrown from her (UMF 12).
- Matich's children had ridden Stellar and had never been thrown from her (UMF 13).
- Other people had come to look at Stellar for sale and their children had ridden the horse without incident (UMF 14).
- Plaintiffs were both experienced horse riders and owners (UMF 16).
- Stellar was never trained to be a race horse, had never ridden at a gallop (UMF 7), and had never before thrown a rider (UMF 19).
- Matich is an experienced horse owner and rider and had previously sold only one other horse.

Notwithstanding these candid and significant concessions,[1] Plaintiffs attempt to raise a factual dispute with respect to several of the proffered UMFs. In particular, Plaintiffs assert that UMFs 3, 4, 5, 6, 8, 10, 15, and 18 are disputed.

All told, the evidence presented by Plaintiffs merely amplifies, but does not materially contradict, Defendant's undisputed material facts. For example, Plaintiffs provide additional detail regarding: (1) the initial communications between Plaintiffs and Matich; (2) Oswaldo's inspection of Stellar's feet, saddle, and reins; and (3) Oswaldo's short and unfortunate journey in the corral, including his notation that the horse was slow to obey commands, that Stellar had to be told twice with the reins to turn, that he rode the horse for about five minutes before the horse broke into a run, and that Stellar did not obey his command to halt. None of this additional detail raises a material factual dispute with respect to the claim of negligence.

Although Plaintiffs attempt to dispute UMF 8 regarding the safety of the tack, saddle, or equipment, Plaintiffs have not alleged, and cannot reasonably rely upon, a theory that

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[1] At a Case Management Conference on October 6, 2014, the Court cautioned counsel for Matich about the disutility of filing a motion for summary judgment if significant factual disputes existed. The pleadings reflect that both parties took the Court's admonition to heart. Where possible, the parties agreed upon the facts that could not reasonably be disputed, and they are to be commended for cogently presenting the legal and factual issues for the Court's review and determination.

there was some defect or failure in the reins, tack, saddle, or equipment that increased the risk or caused the harm. While Plaintiffs reference almost 20 pages of Oswaldo's deposition testimony related to the facts of the accident, there is no evidence supporting any defect in equipment. And, while Oswaldo may not have observed Matich actually saddle the horse, he himself inspected the horse's hooves, grabbed her face, inspected the reins and saddle, and checked for head shyness.

Distilled to its essence, the basic thrust of Plaintiffs' opposition is grounded upon Matich's statements to Oswaldo that the horse was safe and "broke" before he mounted the horse. The implication is that, somehow, Matich was either untrue or negligent in making her statements, and that Oswaldo would not have mounted the horse had he known the true circumstances.

Yet there is simply no objective evidence before the Court to support the assertion that Matich misrepresented anything. To the contrary, the important and undisputed facts surrounding this unfortunate incident support Matich's claim that she had no knowledge of any unsafe propensities. In particular, it is stipulated that: (1) Stellar had never before thrown a rider; (2) Matich herself had never had any difficulty riding the horse and had never been thrown from her; (3) Matich's children had ridden Stellar without incident; and (4) other people had come to look at Stellar and had had their children ride Stellar without incident.[2]

In totality, the undisputed material facts present a stronger case for summary judgment than was present in either *Rolling J Ranch* or *Levinson*. Among other important

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[2] In attempting to contradict UMFs 10, 15 and 18, Plaintiffs focus on the terms "broke" and "trail ready." They contend that a dispute exists as to whether Stellar was really "broke" because the horse continued to buck after throwing Oswaldo and because the horse took an extra step when given the command to stop. As an initial matter, these terms are irrelevant in that they are undefined anywhere in the record. Relatedly, the evidence is insufficient to raise a factual dispute. Plaintiffs proffer only their own opinions in opposition to UMFs 10, 15 and 18. While both Plaintiffs are stipulated to be experienced riders, such experience by itself does not suffice as foundation for opining about whether a horse is "broke." As a practical matter, the terms "broke" and "trail ready" seem to imply that a horse can be saddled, bridled, and will follow a rider's commands to walk, trot, canter, or halt. However, they cannot reasonably be construed to encompass a guarantee that a horse will never buck or disobey commands. To do so would essentially impose strict liability and eviscerate the doctrine of primary assumption of the risk, i.e., that "being thrown off a horse [i]s an inherent risk of horseback riding, [indeed] ... it is one of the most obvious risks of that activity, and readily apparent to anyone about to climb on a horse." (*Guido v. Koopman*, 1 Cal.App.4th at 842.)

differences, the incident here did not take place at a commercial riding facility, there was no defect in the premises, and Oswaldo and Matich are both experienced horse riders and owners. The analysis in *Eriksson* is inapposite because it focuses upon an issue entirely absent in this case, i.e., the policy implications of holding coaches and trainers liable for accidents suffered by their students.

## III. CONCLUSION

There is no indication in the record that Plaintiffs were prevented from taking discovery or investigating Stellar's behavioral history in order to test the validity of Matich's representations. Having been given the opportunity to do so, there is an absence of evidence supporting Plaintiffs' assertion that Matich misrepresented anything about the condition of Stellar, or that she knew anything about the horse's propensity to be unsafe. Relatedly, there is no evidence that Matich increased the risk to the rider, or that the horse engaged in behavior that was unusual for a horse.

Accordingly, Plaintiffs have not established a triable issue of material fact as to any of Matich's proffered UMFs. The motion for summary judgment is GRANTED. It is so ORDERED.

*Evidentiary Objections*

In their filing dated May 8, 2015, Plaintiffs object to evidence supporting UMFs 11-14, 17 and 19, more particularly their experience with Stellar. However, each of those facts was declared by Plaintiffs as *undisputed* in the separate statement of facts. Moreover, the evidence in support of those UMFs relates to *Matich's* experience with Stellar, the extent of *Matich's* knowledge, and her state of mind. Plaintiffs' evidentiary objections filed May 8, 2015 are overruled.

Plaintiffs' evidentiary objections filed May 14, 2015 are directed to portions of Matich's deposition testimony included with the reply brief. Plaintiffs claim that the proffered deposition testimony is irrelevant because it describes Matich's experience with riding horses as opposed to training horses. However, Matich's overall experience with horses is relevant. She also testified that, alongside her parents, she trained approximately 10 horses in her youth. The objections based upon relevance, vagueness, lack of foundation, and hearsay are overruled.

Dated: June 24, 2015

CHARLES S. CRANDALL
Judge of the Superior Court

# STATE OF CALIFORNIA, COUNTY OF SAN LUIS OBISPO
# CERTIFICATE OF MAILING

| Oswaldo Ponce vs. Tracy Matich | 14CVP-0132 |
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Jordan Cunningham
Adamski Moroski Madden
Cumberland
1948 Spring Street
Paso Robles CA 93446

James W Gates
LAW OFFICES OF WOLF &
OCONNOR
21650 Oxnard Street Ste 550
Woodland Hills CA 91367

I, Lynne Tetley, Deputy Clerk of the Superior Court of the State of California, County of San Luis Obispo, do hereby certify that I am over the age of 18 and not a party to this action. Under penalty of perjury, I hereby certify that on **06/24/2015** I deposited in the United States mail at Paso Robles, California, first class postage prepaid, in a sealed envelope, a copy of the attached **Ruling and Order Granting Defendant's Motion for Summary Judgment.** The foregoing document was addressed to each of the above parties.

OR

If counsel has a pickup box in the Courthouse a copy was placed in said pickup box this date.

Dated: 6/24/2015 Susan Matherly, Clerk of the Court

By: Lynne W Tetley Deputy Clerk
Lynne Tetley