Appellate Reports and Cases in Brief

Assumption of Risk: If you go to a haunted house, expect to be scared (Griffin v. The Haunted Hotel, Inc.)

By Jeffrey Ehrlich

Torts; assumption of the risk: *Griffin v. The Haunted Hotel, Inc.* (2015) __ Cal.App.4th __ (4th Dist., Div. 1).

Griffin purchased a ticket to The Haunted Trail, an outdoor Halloween "haunted house" attraction set up in Balboa Park. The attraction featured actors who jumped out of dark spaces, often inches away from patrons, while holding prop knives, axes, chainsaws, or severed body parts. If a patron becomes frightened and runs away, the actors will often chase them. Accordingly, before patrons are admitted to the attraction they are given an orientation, in which they are told that they will not be grabbed, but that they might be bumped into, and if they run away they will be chased. The Haunted Trail's Website had "Frequently Asked Questions" that explained that "you will not be grabbed or pushed," and warned that "running is the main cause of minor injuries. Make sure to follow the rules and DON'T run and you should be fine." The advertising for the attraction showed actors wielding chainsaws.

The attraction is set up so that the patrons complete the trail and walk through an opening in a temporary fence covered with a dark screen that runs along the edge of the trail. That opening appears to be the "exit" for the attraction, but instead leads to a final scare. The patrons walk through the opening in the fence and regroup on an access road, leading them to think that the event is over. But the exit is fake, and a chainsaw-wielding actor appears and menaces the assembled group. (The chainsaws are real, but the chains have been removed.) Griffin became frightened and ran from the actor, who chased him. Griffin fell and hurt his wrist. He then sued the attraction operator. The trial court granted summary judgment against Griffin. Affirmed.

The trial court properly relied on the doctrine of primary assumption of the risk, which applies to recreational activities like the Haunted Trail. The whole point of the attraction is to scare the patrons, "and the risk that someone will become scared and react by running away cannot be eliminated without changing the basic character of the activity." The court rejected Griffin's attempt to create a triable issue of fact about the "type" of fear he experienced. He claimed his injuries were not caused by his reaction to "fun" fear, but rather by the "real, actual danger of physical injury that an irresponsible employee was creating by mishandling the chainsaw." In essence, Griffin fell prey to the "Carrie" type of false ending used in the attraction, and became scared when he thought that he was safely through the attraction, and was then subjected to one further "scare." The risk inherent in the Haunted Trail was exactly the risk that Griffin experienced. Moreover, Griffin's subjective mental state was not relevant to the operation of the primary assumption of risk doctrine, which turns on the nature of the activity involved.

Amendment of pleading as a matter of right; Fed.R.Civ. Proc. 15: *Casillas Ramirez v. County of San Bernardino* (9th Cir. 2015) __ F.3d __.

Casillas Ramirez sued the County for civil rights violations arising from his arrest. He filed suit in state court, and the County removed to federal court. After removal, the County stipulated to allow Casillas Ramirez to file a first-amended complaint, which he did. The district court approved the stipulation. The County then filed a 12(b)(6) motion. Casillas Ramirez did not file a timely opposition nor a statement of non-opposition. Two weeks before the scheduled hearing date, Casillas Ramirez filed a second-amended complaint. The filing was rejected because the leave of court had not been sought or given for the amendment. The district judge (the Hon. John Walter) then dismissed the lawsuit, with prejudice, based on the failure to oppose the motion to dismiss. Reversed.

The right to amend pleadings is governed by Fed. R. Civ. Proc. 15(a). Rule 15(a)(1) allows a party to amend a pleading once as a matter of *course* within 21 days after service, or after 21 days after a motion under Rules 12(b), (e), or (f) is served. Rule 15(a)(2) deals with "other amendments," and allows "in all other cases" (than those described in rule 15(a)(1)), a party may amend only with the opposing party's written consent or leave of court.

The district court held that because Casillas Ramirez had filed a first-amended complaint by stipulation, his right to file an amendment "as a matter of course" under rule 15(a)(1) had expired or been waived. The Ninth Circuit held that this was error. The rule is organized substantively, not chronologically. "It does not prescribe any particular sequence for the exercise of its provisions." As a result, the filing of the first-amended complaint by stipulation (which was both

with the consent of the County and approval of the district court) did not terminate Casillas Ramirez's right to amend once "as of course" under rule 15(a)(1). The district court therefore erred in rejecting the filing of the second-amended complaint. Since the filing of that complaint superseded the first-amended complaint, it mooted the motion to dismiss the first-amended complaint. There was therefore no basis for the district court to dismiss the lawsuit.

Jeffrey I. Ehrlich is the principal of the Ehrlich Law Firm, *with offices in Encino and Claremont, California. He is a cum laude graduate of the Harvard Law School, a certified appellate specialist by the California Board of Legal Specialization, and a member of the CAALA Board of Governors. He is the editor-in-chief of Advocate magazine.*


Ehrlich