

CALIFORNIA COURT OF APPEAL, FOURTH APPELLATE DISTRICT,
DIVISION THREE

Mitchell v. Hutchinson

No. G063331 (Cal. Ct. App. June 11, 2025), certified for publication July 10, 2025 · No. G063331 · Decided July 10, 2025

SUMMARY

The California Court of Appeal affirmed summary judgment for Gail B. Hutchinson, trustee of the Hutchinson Family Trust, in a negligence and premises-liability action arising from rocks that rolled onto a roadway and damaged a Ferrari. The court held that plaintiffs failed to create a triable issue regarding whether the rocks came from Hutchinson’s property or whether the property owners acted tortiously so as to invoke alternative liability under *Summers v. Tice*.

CASE DETAILS

COURT	California Court of Appeal, Fourth Appellate District, Division Three
WRITING FOR THE COURT	Gooding, J.; Sanchez, Acting P. J.; Delaney, J.
JURISDICTION	California Court of Appeal, Fourth Appellate District, Division Three
DECIDED	July 10, 2025
DOCKET	G063331
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from a judgment entered after the superior court granted Hutchinson's motion for summary judgment in a negligence and premises-liability action involving uncertainty about which adjacent property was the source of rocks that entered the roadway.
STANDARD OF REVIEW	The court independently reviews an order granting summary judgment, examining the facts presented to the trial court and determining their legal effect. It reviews the entire record, liberally construes evidence submitted in opposition to summary judgment, and resolves evidentiary doubts in favor of the opposing party.
PRECEDENTIAL VALUE	published
PARTIES	Anthony Mitchell, Scott Sieverts, other plaintiffs v. Gail B. Hutchinson, individually and as trustee of the Hutchinson Family Trust

TOPICS

premises liability

negligence

summary judgment

standard of review

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Hutchinson met her initial summary-judgment burden by showing that plaintiffs could not establish causation.
2. Whether plaintiffs produced admissible evidence creating a triable issue of material fact that the rocks came from Hutchinson's property.
3. Whether plaintiffs produced evidence that all defendants, including Hutchinson, acted tortiously so that the alternative-liability burden-shifting rule of *Summers v. Tice* could apply.
4. Whether the trial court properly granted summary judgment on plaintiffs' negligence and premises-liability claims.

HOLDINGS

1. Hutchinson satisfied her initial burden under Code of Civil Procedure section 437c, subdivision (p)(2), by showing that plaintiffs could not establish at least one element of their causes of action, specifically causation.
2. Plaintiffs did not produce admissible evidence creating a triable issue of material fact that the rocks originated on Hutchinson's property.
3. The alternative-liability theory does not shift the burden of proving causation unless the plaintiff first proves that all defendants acted tortiously; uncertainty about which defendant caused the injury, standing alone, is insufficient.
4. Summary judgment was properly granted for Hutchinson on both the negligence and premises-liability claims.

KEY QUOTATIONS

“The alternative liability theory acts only to shift the burden of proof from plaintiff to proven wrongdoers—plaintiff must still prove that all defendants acted tortiously.” (at 6)

“Summary judgment is appropriate only ‘where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.’” (at 5)

“All Hutchinson needed to do was show that one or more elements of the cause of action cannot be established, which she did.” (at 10)

FACTUAL BACKGROUND

While driving a Ferrari on a Dana Point street, Anthony Mitchell ran over and dragged one or more large rocks that had rolled onto the roadway from an adjacent slope, damaging the vehicle and allegedly causing personal

injuries to Mitchell and passenger Scott Sieverts. The precise property from which the rocks fell could not be determined, and plaintiffs sued multiple owners of portions of the slope. Plaintiffs' expert opined that the rocks likely came from one of three properties and that rain, lack of barriers, and hillside conditions contributed to the rocks entering the roadway, but plaintiffs did not provide admissible, non-speculative evidence tying the rocks, a prior geological report, or a tarp to Hutchinson's property or establishing that Hutchinson had notice of a dangerous rock-release condition.

PROCEDURAL HISTORY

Plaintiffs filed an operative first amended complaint on January 29, 2021, alleging negligence and premises liability against multiple owners of an adjacent hillside and asserting that one of the properties was the source of rocks that damaged Mitchell's Ferrari and caused unspecified personal injuries. After discovery on causation, Hutchinson moved for summary judgment. The Orange County Superior Court granted summary judgment for Hutchinson and the other hillside owners, concluding that plaintiffs could not establish that the rocks came from Hutchinson's property and had not shown that the defendants acted negligently so as to invoke alternative liability under *Summers v. Tice*. The Court of Appeal affirmed and awarded Hutchinson her costs on appeal.

DISPOSITION

affirmed

CASES CITED

- *Presta v. Tepper* (2009) 179 Cal.App.4th 909, 914
- *Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618
- *CDF Firefighters v. Maldonado* (2008) 158 Cal.App.4th 1226, 1237
- *Consumer Cause, Inc. v. SmileCare* (2001) 91 Cal.App.4th 454, 469
- *Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 767
- *Castellon v. U.S. Bancorp* (2013) 220 Cal.App.4th 994, 998
- *Rutherford v. Owens-Illinois, Inc.* (1997) 16 Cal.4th 953, 968, 970
- *Summers v. Tice* (1948) 33 Cal.2d 80, 84, 86-88
- *Dumin v. Owens-Corning Fiberglas Corp.* (1994) 28 Cal.App.4th 650, 657-658
- *Haft v. Lone Palm Hotel* (1970) 3 Cal.3d 756, 774 fn. 19
- *Sargon Enterprises, Inc. v. University of Southern California, Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747, 769
- *Sanchez v. Kern Emergency Medical Transportation Corp.* (2017) 8 Cal.App.5th 146, 155
- *Shiffer v. CBS Corp.* (2015) 240 Cal.App.4th 246, 253
- *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853