

Honorable Tani Cantil-Sakauye, Chief Justice and the Associate Justices
Re: *Garcia v. American Golf Corporation*
June 28, 2017
Page 4

Garcia was struck by a golf ball while in a stroller pushed by his mom on a public recreational path adjacent to a golf course. (*Garcia, supra*, 11 Cal.App.5th at p. 537.) The same question was ultimately at issue in both *Leyva* and *Garcia*: Where a path and a golf course are adjacent, does section 831.4 immunize a public entity for injuries to one using the path as a result of getting struck by a golf ball leaving the golf course? *Leyva* answered “yes.” *Garcia* answered “no.” The two decisions cannot be reconciled.

Given *Leyva* and *Garcia* are in conflict and they are the only cases specifically addressing paths adjacent to golf courses and, more generally, distinct adjacent recreational areas, the conflict needs immediate resolution by this Court.

Contrary to What *Garcia* Holds, Immunity Under Section 831.4 Is Not Dependent On Whether Adjacent Property Generates Revenue

Justifying its rejection of 831.4 immunity, *Garcia* said “it is not likely that liability will cause the City to close the trail given that the golf course generates revenues that can pay for maintenance and judgments.” (*Garcia, supra*, 11 Cal.App.4th at p. 545.) Not only is the conclusion speculative, the reasoning conflicts with existing case law and with the Legislature's intent in enacting section 831.4.

Under *Garcia's* reasoning, section 831.4 would not immunize a public entity from liability for injuries a person sustained on a trail located within a recreational area if a fee was charged to enter the recreational area because the public entity could use the revenue generated from admission fees to pay for maintenance and judgments. This is contrary to existing case law. (See *Astenius, supra*, 126 Cal.App.4th at p. 476.) *Garcia's* reasoning is also contrary to the Legislature's intent. The Legislature intended section 831.4 immunity to apply even if recreational areas generated revenue. (5 Cal. Law Revision Com. Rep. (1963) pp. 490; *Treweek v. City of Napa* (2000) 85 Cal. App. 4th 221, 233.) Section 831.4 immunity exists so public entities do not have to expend money to maintain trails but it does not cease to exist simply because a recreational area or an adjacent publically owned golf course, or some other recreational area, generates revenue that could be used by a public entity in some manner to make paths and trails safer.

Public Entities Are Impacted By The *Leyva-Garcia* Conflict

Public entities need clarity and consistency in the law to properly evaluate risk and liability. This is especially true when it comes to recreational paths and trails on public land, whether that land is located in rural or urban areas.

Honorable Tani Cantil-Sakauye, Chief Justice and the Associate Justices
Re: *Garcia v. American Golf Corporation*
June 28, 2017
Page 5

Because of the *Leyva-Garcia* conflict, neither clarity nor consistency exists. And since any trial court located anywhere in the state can choose to follow *Leyva* or *Garcia* (or any other future appellate court decision), neither clarity nor consistency can exist until this Court resolves the conflict. (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal. 2d 450, 456 ("[W]here there is more than one appellate court decision, and such appellate decisions are in conflict . . . the court exercising inferior jurisdiction can and must make a choice between the conflicting decisions.").)

Without clarity and consistency in the law, public entities cannot properly evaluate risk and potential liability exposure. The uncertainty and inconsistency caused by the *Leyva-Garcia* conflict may necessitate closing existing paths and trails on public land simply because the paths and trails are adjacent to a golf course or other revenue producing operation, recreational or otherwise. The uncertainty and inconsistency that now exists negatively impacts the societal benefits gained when public entities open up public land for recreational use because the uncertainty and inconsistency will likely result in a hesitancy to develop new recreational areas, particularly those in urban areas where space limitations may necessarily require locating paths and trails adjacent to a variety of other revenue generating recreational operations.

CONCLUSION

While it is Amici's position that *Garcia* was wrongfully decided, this Court's resolution of the *Leyva-Garcia* conflict – whichever way it turns out – will provide public entities with the clarity and consistency needed to make informed decisions about allowing citizens to use public property for recreational purposes. This Court should grant review.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Lee H. Roistacher', written over a horizontal line.

Lee H. Roistacher

LHR/mek

Jacobo G. Garcia, et al. v. American Golf Corporation, et al.
Court of Appeals Case No. B267613
Superior Court Case No. GC050056

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I, the undersigned, whose address is 462 Stevens Avenue, Suite 201, Solana Beach, CA 92075, certify:

That I am, and at all times hereinafter mentioned was, more than 18 years of age and not a party to this action;

That on June 28, 2017, I served the within:

CORRESPONDENCE TO HONORABLE TANI CANTIL-SAKAUYE, CHIEF JUSTICE AND THE ASSOCIATE JUSTICES DATED JUNE 28, 2017

on all interested parties in said action: **SEE ATTACHED SERVICE LIST**

(VIA U.S. MAIL) I placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

(VIA OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses listed below. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

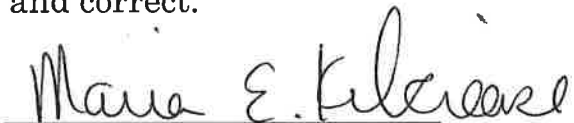
(BY CERTIFIED MAIL) I placed a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list and placing such envelope(s), certified mail, return receipt requested

postage thereon fully prepaid, in the United States Mail at San Diego on this date following ordinary business practices.

- [] (BY ELECTRONIC MAIL TRANSMISSION) I transmitted a true copy thereof via electronic mail transmission on all interested parties to the action for immediate delivery to SEE ATTACHED SERVICE LIST.
- [] (BY FACSIMILE TRANSMISSION) I transmitted a true copy thereof via facsimile on all interested parties to the action for immediate delivery to SEE ATTACHED SERVICE LIST.

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

Dated: June 28, 2017


Maria E. Kilcrease

