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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

KAREN TELLIER,

Plaintiff and Appellant,

v.

GREG HENDEL et al.,

Defendants and Respondents.

E062580

(Super.Ct.No. INC1300747)

OPINION

APPEAL from the Superior Court of Riverside County. Daniel A. Ottolia,  
Judge. Affirmed.

Karen Tellier, in pro. per., for Plaintiff and Appellant.

Lewis Brisbois Bisgaard & Smith, Michael Magloff, Jeffrey A. Miller, Arezoo  
Jamshidi and Catherine M. Asuncion for Defendants and Respondents.

Plaintiff and appellant Karen Tellier sued defendants and respondents Greg  
Hendel and Ronda Lyman, who do business as Guilty Tans (the Salon). Hendel and  
Lyman were sued in their individual and business capacities. The lawsuit concerned  
causes of action for negligence and premises liability. After a bench trial, the trial court

entered a judgment in favor of Hendel, Lymann, and the Salon (collectively, defendants). Tellier contends the trial court's findings are not supported by substantial evidence. We affirm the judgment.

## **FACTUAL AND PROCEDURAL HISTORY**

### **A. INCIDENT**

The Salon is located in La Quinta. On September 18, 2012, Tellier went to the Salon. Tellier had used a tanning salon several years prior. It was her first visit to the Salon. Tammy Leonard (Employee) was working alone in the Salon when Tellier was at the Salon.

Tellier approached Employee, who was at a desk. Employee asked if Tellier had previously tanned in a tanning bed. Tellier said she had previously used a tanning bed. Tellier paged through a binder on the desk, which provided information about the different types of tanning beds in the Salon. Tellier selected the least expensive tanning bed option, which emits B-rays. B-rays are more likely to burn one's skin. Employee encouraged Tellier to use the high-pressure bed, which emits A-rays that are gentler on skin. Employee explained to Tellier that the high-pressure bed would be less likely to burn her. Tellier decided to use the B-ray option because it was less expensive.

Tellier asked what the maximum tanning time is for the bed. Employee said, "20 minutes." Tellier requested the maximum time. Employee told Tellier that the manufacturer's recommended exposure time for the first use of the bed is four minutes. Employee also showed Tellier the manufacturer's recommended exposure times for each consecutive visit.

Employee “highly recommended” to Tellier that Tellier follow the manufacturer’s recommended exposure times. Tellier said she wanted the maximum time. Employee told Tellier ““If you go more than 10 minutes you’re more likely to burn. I would recommend if you’re going to go more than the four, no more than 10.” Tellier told Employee, ““Honey, I ain’t never burned a day in my life.””

Employee gave Tellier a “Tan Release” form. Tellier signed the form. Employee later filled in the blanks on the form, reflecting Tellier selected a 20-minute tanning session in a B-ray bed. Tellier saw a leg tanner that was located in the lobby. Employee told Tellier that Tellier could use the leg tanner after a full body tan. Tellier paid to use the tanning bed and leg tanner.

Employee walked Tellier to Room 5. The tanning bed was open. Employee showed Tellier goggles, a towel, a blue start button, a red shut-off button, a green fan button, and a yellow facial button. The shut-off button was located inside the tanning bed. The bed was connected to a timer, which Employee set at the front desk. The timer had a four-minute delay before the tanning lights started. The start button on the bed allowed a client to start the lights earlier, if the client did not need the full four minutes to disrobe. The bed does not lock while the timer is running. A person can exit the bed at any time. Employee did not show Tellier how to exit the tanning bed.

Tellier began disrobing while Employee was in Room 5. As Tellier entered the tanning bed, Employee exited the room. Employee returned to the front desk and set the tanning bed timer for 20 minutes. Employee went to Room 1 to clean it, which took

approximately seven minutes, and then returned to the front desk. Employee did not exit the Salon while Tellier was tanning.

Tellier laid on her back and pulled the top down on the tanning bed. The tanning lights started. After eight to 10 minutes, Tellier heard a clicking sound. After the clicking sound, Tellier felt hotter. Tellier was perspiring profusely.

Tellier tried to exit the tanning bed but was unable to raise the lid. Tellier pushed on the lid with both hands, but it did not move. Tellier did not press the shut-off button. Tellier shouted, ““It’s kind of hot in here, you know. I need some help. I can’t get out. Hello.” Tellier did not receive a response. Tellier panicked. Tellier began kicking the lid and yelling, ““Hello? Where are you? I need help. I can’t get out. It’s hot in here.”” Employee did not hear Tellier yell. There are no radios, televisions, or computer media programs at the front desk. Tellier used all her strength, and the lid lifted. The lid stayed raised. Tellier exited the bed and dressed herself.

As Tellier approached Employee, Tellier said, ““Whew, that’s the hottest bed I’ve ever been in.”” Tellier looked in the mirror, and then went to the leg tanner, located in the lobby. Tellier went into Room 1 or 2 to remove her leggings and put on a sarong. Tellier entered the leg tanner. Employee explained to Tellier how the leg tanner worked. Tellier used the leg tanner. Tellier talked to other clients. Tellier put her leggings on, and then left the Salon.

Tellier went to a store in the same shopping center as the Salon. While in the store, Tellier went into a dressing room and disrobed. Tellier looked in a mirror and saw that her skin was red and burned. Tellier returned to the Salon, but it was closed.

Tellier went home, soaked in an ice bath, and took ibuprofen. Tellier suffered a 104-degree fever, vomiting, and pain.

On September 24, Tellier went to a physician's assistant. The physician's assistant diagnosed Tellier as suffering first and second degree burns on 60 to 80 percent of her body. The physician's assistant prescribed an antibiotic and pain reliever. The physician's assistant placed bandages on the blistered portions of Tellier's burns.

Employees of the Salon would contact Hendel, one of the owners of the Salon, whenever clients reported problems with any of the tanning equipment. Hendel was not contacted on September 18 about a problem with the tanning bed in Room 5. A Salon activity log reflected that, on September 17, the bed in Room 5 was used five times.

The log reflected two people used the tanning bed in Room 5 on September 18, prior to Tellier. Tellier used the tanning bed in Room 5 on September 18 at 5:14 p.m. At 6:06 p.m. another client used the tanning bed in Room 5. The 6:06 p.m. client was physically challenged and "can barely walk." The 6:06 p.m. client did not complain about the tanning bed in Room 5. On September 19, three people used the tanning bed in Room 5.

The tanning bed in Room 5 opened by placing one's hand on a handle and pushing up on the lid. There were no hinges on the tanning bed in Room 5. Rather, there were two 900-PSI pneumatic pistons that allowed the lid to move up and down. Hendel, who had been in the tanning salon business since 1987 or 1988, testified that (1) if a person kicked the tanning bed lid, then the acrylic would break; and (2) if the pistons failed, then the lid could not be lifted "period."

## B. TELLIER'S COMPLAINT AND TESTIMONY

### 1. *COMPLAINT*

In Tellier's complaint, in the first cause of action, she alleged defendants were negligent in owning, operating, staffing, maintaining, repairing, servicing, preparing, recommending, instructing, and renting the tanning bed. Tellier further alleged the tanning bed was kept "in a dangerous and defective condition due to a broken hinge such that [Tellier] could not exit the tanning bed on command nor turn it off resulting in [Tellier] being a hostage to the tanning bed and directly and proximately causing a severe burn."

In the second cause of action, Tellier alleged defendants negligently "owned, operated, maintained, serviced, staffed and rented a tanning bed to [Tellier] which was in a dangerous and defective condition such that it constituted a dangerous condition of the premises as it was dangerous when used in the manner recommended. Defendants, and each of them neither warned plaintiff of said dangerous condition nor corrected said condition resulting in the injuries complained of herein." Tellier sought general and special damages.

### 2. *TELLIER'S TESTIMONY*

In this subsection, we present Tellier's version of the events. Tellier told Employee that she wanted a non-UV tan in a bed that was open and a cool temperature. Employee told Tellier that the Salon did not have such a tanning bed. Employee gave Tellier a booklet of different bed options. Tellier responded, "I wouldn't even know what to look at." Employee selected the tanning bed for Tellier.

Employee handed Tellier the manufacturer's recommended exposure times, but Tellier did not look at the information. Employee gave Tellier the release form. Tellier signed the form without the blank spaces being completed. Tellier told Employee to complete the form. Tellier did not discuss her skin type with Employee. Tellier told Employee she wanted no more than 10 minutes of tanning. Tellier did not request a 20-minute tanning session.

Employee did not instruct Tellier on how to use the tanning bed. Employee told Tellier, "Touch nothing," because Employee "controlled everything at the front desk." Tellier believed she would be receiving a 10-minute tan.

After the bed became hot and Tellier yelled and received no response, and Tellier pushed and kicked the lid open, Tellier exited the room. Tellier saw Employee reentering the Salon from outside. Tellier said, "Where the hell were you? Did you not hear me calling for help?" Employee replied, "Sorry."

Tellier was leaving the Salon when Employee reminded her that she had paid for use of the leg tanner. Tellier said she could not feel her skin and felt "rubbery." Employee said, "It's normal." Tellier used the leg tanner because she trusted Employee. Tellier left the Salon after using the leg tanner.

#### C. EMPLOYEE'S TESTIMONY

In this subsection, we present Employee's version of the events related to the Tan Release form. According to Employee, Tellier completed the blanks on the Tan Release form. Tellier was given five options as to how well she tans, with option five being "tans profusely." Tellier selected option four, reflecting she "tans well." Tellier wrote

on the form, “The manufacturer’s recommended exposure time in the above unit, untanned areas with my skin type, is four minutes the first week.” Tellier also wrote, “I’ve decided to use it for 20 minutes.”

**D. JUDGMENT**

The trial court issued a statement of decision. The trial court found defendants owed a duty of care to Tellier because she was a paying customer. In regard to causation, the trial court found no evidence was presented “of any alleged malfunction or defect in the actual lid mechanism of the bed. To the contrary, circumstantial evidence points to the opposite conclusion, that the bed was in proper working condition at all times relevant to this lawsuit.” The court concluded Tellier failed to prove premises liability.

The court found Employee, not Tellier, completed the blanks on the release form. The court found Tellier requested a 20-minute tanning session. The court determined that Tellier failed to prove a breach of defendants’ duty of care and that Tellier “assumed the risk for overexposure by requesting the 20 minutes in the bed.” The court concluded Tellier failed to prove negligence. The trial court entered judgment in favor of defendants.

**DISCUSSION**

**A. CONTENTION**

Tellier contends substantial evidence does not support the trial court’s finding that defendants were not negligent.



B. STANDARD OF REVIEW

“When a finding is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence in the record, contradicted or uncontradicted, that will support the finding. When two or more inferences can be reasonably deduced from those facts, the reviewing court has no power to substitute its deductions for those of the fact finder.” (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 374.)

C. NEGLIGENCE LAW

“Everyone is responsible . . . for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself.” (Civ. Code, § 1714, subd. (a).) ““The elements of a negligence cause of action are the existence of a legal duty of care, breach of that duty, and proximate cause resulting in injury.”” (*McIntyre v. Colonies-Pacific, LLC* (2014) 228 Cal.App.4th 664, 671.)

““California law establishes the general duty of each person to exercise, in his or her activities, reasonable care for the safety of others. (Civ. Code, § 1714, subd. (a).)”” (*Kesner v. Superior Court* (2016) 1 Cal.5th 1132, 1142.) “What constitutes ‘ordinary care’ under the facts of any particular case is usually a question for the [trier of fact], wh[o] must view the conduct as a whole in the light of all the circumstances. Thus, it is common practice for the [trier of fact] to determine the standard of conduct to be

applied within the compass of the broad rule that the prescribed conduct must conform to that of a ‘reasonably prudent [person] under the circumstances.’ [Citations.] In the absence of legislatively or judicially declared standards, the question whether or not the conduct of a party conformed to that of a ‘reasonably prudent [person]’ is left to the [trier of fact]’s determination.” (*Laird v. T.W. Mather, Inc.* (1958) 51 Cal.2d 210, 215-216.)

D. ANALYSIS

Employee asked about Tellier’s experience with tanning beds, and found Tellier had previously used a tanning bed. Employee encouraged Tellier to use a tanning bed that was less likely to burn Tellier.

Employee told Tellier that the manufacturer’s recommended exposure time for the first use of the B-ray bed was four minutes. Employee also showed Tellier the manufacturer’s recommended exposure times for each consecutive visit. Employee “highly recommended” to Tellier that Tellier follow the manufacturer’s recommended exposure times. Employee told Tellier, “‘If you go more than 10 minutes you’re more likely to burn. I would recommend if you’re going to go more than the four, no more than 10.”

Tellier insisted on a 20-minute tanning session. Employee showed Tellier the shut-off button located inside the bed. A person can exit the bed anytime. Employee stayed inside the Salon, at the front desk and cleaning Room 1 during Tellier’s tanning session.

This evidence reflects Employee (1) learned about Tellier's experience with tanning beds; (2) recommended a safer tanning bed option (an A-ray bed); (3) recommended the safest tanning time (four minutes); (4) recommended a safer tanning time (10 minutes); (5) showed Tellier where to shut off the tanning lights; and (6) stayed in the Salon during Tellier's tanning session.

This evidence reflects Employee acted in the manner of a reasonably prudent person under the circumstances because Employee made multiple suggestions that would have given Tellier a safer tanning session, but Tellier declined all of the suggestions. Then, after Tellier insisted on the 20-minute tanning session, Employee again acted as a reasonably prudent person would by showing Tellier how to shut off the tanning bed. This evidence supports the trial court's finding that Employee acted as a reasonably prudent person would under the circumstances, and, therefore, defendants did not breach their duty of care.

E. MONITORING

Tellier contends a reasonably prudent person would have monitored Tellier's tanning session by intermittently checking on Tellier's status while she was tanning. Contrary to Tellier's position, the evidence supports a finding that a reasonably prudent person would not have monitored Tellier's tanning session. Looking at the evidence in the light most favorable to the judgment, Tellier failed to shut off the tanning bed because Tellier panicked when she felt overheated. There was no basis for a reasonably prudent person to know Tellier was unable to use the shut-off button and therefore needed to be monitored. In these circumstances, the evidence supports the trial court's

finding that Employee acted in the manner of a reasonably prudent person by showing Tellier the shut-off button located inside the tanning bed.

F. CONFLICTING EVIDENCE

Tellier asserts there is not substantial evidence supporting the trial court's finding because the evidence is conflicting. On appeal, under the substantial evidence standard, any conflicts in the evidence are resolved in favor of the judgment. (*Eidsmore v. RBB, Inc.* (1994) 25 Cal.App.4th 189, 195.) Therefore, Tellier's reliance on conflicts in the evidence is unpersuasive because we must resolve those conflicts in favor of the judgment.

G. CREDIBILITY

Tellier asserts substantial evidence does not support the finding that Employee testified truthfully about Tellier selecting a 20-minute tanning session. Tellier contends Employee "was not a trustworthy witness." For example, the trial court found Employee lied when Employee said Tellier filled in the blanks on the release form.

"[T]he trier of fact is entitled to accept or reject all or any part of the testimony of any witness." (*Kelly-Zurian v. Wohl Shoe Co.* (1994) 22 Cal.App.4th 397, 409.) "[A] trial court's credibility findings cannot be reversed on appeal unless that testimony is incredible on its face or inherently improbable." (*Consolidated Irr. Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 201.)

Employee's testimony that Tellier insisted upon a 20-minute tanning session is not incredible on its face or inherently improbable. Therefore, we cannot reverse the trial court's credibility determination. The trial court's finding that Employee was

untruthful when she testified that Tellier completed the blanks on the release form did not require the trial court to disbelieve the entirety of Employee's testimony. Accordingly, we find Tellier's assertion concerning Employee's credibility to be unpersuasive.

#### H. VIDEO RECORDING

Tellier contends Hendel (one of the owners of the Salon) testified falsely about preserving a video recording of Tellier's transaction. Hendel said the recording had been lost due to the recording having a one-week loop; the September 18 recording was recorded over when Hendel went to retrieve it on October 5. There is nothing incredible on its face or inherently improbable about the recording having been recorded over between September 18 and October 5. Therefore, we cannot reverse the trial court's credibility determination.

Tellier contends it is incredible that Hendel would not have retrieved the video recording prior to October 5 because Hendel knew, prior to October 5, that Tellier alleged she was injured in the Salon.

The record reflects that, on October 5, Hendel received a letter from Tellier's attorney. Upon receiving the letter, Hendel told his partner to retrieve the recording. The partner informed Hendel the recording had a one-week loop and therefore had already been lost due to rerecording. Hendel told his partner to review the recording, rather than trying to review it himself, because Hendel did not have the code/password to access the recordings. Hendel explained he had never turned the recording device on or off.

This evidence reflects Hendel did not have access to the recordings. Hendel was also unaware that the recording was on a one-week loop until he spoke to his partner upon receiving the October 5 letter. Therefore, it is reasonable that Hendel did not attempt to retrieve the recording until he received the letter from Tellier's attorney because (1) Hendel did not realize the recording would be lost after one week, and (2) Hendel needed help in accessing the recording.

**DISPOSITION**

The judgment is affirmed. Respondents are awarded their costs on appeal.

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MILLER  
J.

We concur:

McKINSTER  
Acting P. J.

FIELDS  
J.