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Laprocina v. Lourie, 250 A.3d 1281 (R.I. 2021)

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Tort Law. *Laprocina v. Lourie*, 250 A.3d 1281 (R.I. 2021). The Rhode Island Supreme Court decided an issue of first impression on the question of whether a utility owes a duty to private individuals to maintain streetlights. In Rhode Island, a public utility generally owes no common law duty to individual third parties who are allegedly injured, at least in part, as a result of inoperable streetlights.

FACTS AND TRAVEL

On December 30, 2010, a motor vehicle owned by Christine Lourie and driven by Nicole Lourie struck a pedestrian, George Laprocina (Laprocina), while he was attempting to cross Allens Avenue at Toronto Avenue in Providence, Rhode Island.¹ Laprocina suffered multiple bodily fractures, severe head trauma, and permanent brain damage from the collision.²

In 2013, Laprocina’s estate, plaintiff, commenced a negligence action in Superior Court against Narragansett Electric Company (Narragansett), arguing that the place of the collision was not properly lit at the time because Narragansett allowed a “rolling blackout” to occur, or failed to repair, replace, and maintain the streetlights in the area of the collision.³

Narragansett argued to the contrary that it owed no duty of care to Laprocina because a tariff approved by the R.I. Public Utilities Commission (PUC streetlight tariff) governed its duty to maintain the streetlights at the intersection, which limited any duty owed by Narragansett solely to its customer, the City of Providence (City).⁴ In 2014, Narragansett moved for summary judgment on

1. *Laprocina v. Lourie*, 250 A.3d 1281, 1283 (R.I. 2021).

2. *Id.*

3. *Id.* at 1284.

4. *Id.* See R.I.P.U.C. No. 2031-A: Narragansett’s “duties and obligations under this tariff extend only to the city, and not to any third parties.”

the basis that it was immune from liability pursuant to the liability disclaimer contained in the tariff.⁵

A hearing on Narragansett's first motion for summary judgment was held on February 9, 2016.⁶ The trial justice denied Narragansett's motion, finding that the liability disclaimer contained in the tariff was unenforceable because it was overly broad and contrary to public policy by allowing coverage even for cases of willful or wanton misconduct.⁷

In 2018, Narragansett filed a second motion for summary judgment, arguing that under principles of common law negligence and contract law, it had no duty to Laprocina to maintain the streetlight at the intersection.⁸ A new trial justice heard the motion and applied the factors outlined in *Banks v. Bowen's Landing Corp.*⁹ for whether a common law duty exists.¹⁰ The trial justice concluded that under the *Banks* test, Narragansett did not owe a duty of care to Laprocina.¹¹ Laprocina's estate timely appealed from the judgment.¹²

ANALYSIS AND HOLDING

The Court divided its analysis into three parts: (1) whether the judgment violated the law of the case doctrine, (2) whether a duty existed under the PUC streetlight tariff, and (3) whether a duty existed under common law.¹³ Under the law of the case doctrine, "after a judge has decided an interlocutory matter in a pending suit, a second judge, confronted at a later stage of the suit with the same question in the identical manner, should refrain from disturbing

5. *Laprocina*, 250 A.3d at 1284.

6. *Id.*

7. *Id.*

8. *Id.*

9. 522 A.2d 1222 (R.I. 1987).

10. *Laprocina*, 250 A.3d at 1284. The *Banks* factors are "(1) the foreseeability of harm to the plaintiff; (2) the degree of certainty that the plaintiff suffered an injury; (3) the closeness of connection between the defendant's conduct and the injury suffered; (4) the policy of preventing future harm; and (5) the extent of the burden to the defendant and the consequences to the community for imposing a duty to exercise care with resulting liability for breach." See *Banks*, 522 A.2d at 1225.

11. *Laprocina*, 250 A.3d at 1284.

12. *Id.*

13. *Laprocina*, 250 A.3d at 1283–90.

the first ruling.”¹⁴ The Court held that Narragansett’s second motion for summary judgment was based on different grounds from the first motion because the second motion relied upon a common law duty whereas the first relied upon a liability disclaimer in the PUC streetlight tariff.¹⁵ Therefore, the second justice was not confronted with “the same question in the identical manner” and the law of the case doctrine did not apply.¹⁶

With regard to the question of Narragansett’s duty under the PUC streetlight tariff, the Court found that its duty to repair streetlights only extended to the City and not to the general public.¹⁷ The plaintiff asserted that the PUC streetlight tariff and the City’s ordinances created a duty and claimed that there was a “concerted partnership” between the City and Narragansett to report and repair streetlights.¹⁸ However, the Court found that the tariff does not impose any affirmative duty upon Narragansett to conduct inspections in order to ensure the functionality of streetlights.¹⁹ Rather, the tariff placed the responsibility on the City to notify Narragansett of any inoperable streetlights.²⁰ The Court found that the City has the duty to inspect the streetlights, and not Narragansett.²¹ Therefore, the Court held that Narragansett owes no duty under the PUC streetlight tariff to individual third parties who are allegedly injured as a result of inoperable streetlights.²²

With respect to the question of duty under common law, the Court found that Narragansett owed no duty to Laprocina.²³ The Court found that a majority of jurisdictions have held that “pedestrians injured in motor vehicle accidents allegedly caused, at least in part, by inoperative streetlights could not recover from the utilities that maintained the streetlights.”²⁴ The Court cited the

14. *Id.* at 1285. See *Lynch v. Spirit Rent-A-Car Inc.*, 965 A.2d 417, 424 (R.I. 2009) (quoting *Chavers v. Fleet Bank (RI)*, 844 A.2d 666, 677 (R.I. 2004)).

15. *Laprocina*, 250 A.3d at 1285.

16. *Id.*

17. *Id.* at 1286. See R.I.P.U.C. No. 2031-A: “The city is responsible for notifying [Narragansett] of inoperable lamps.”

18. *Laprocina*, 250 A.3d at 1286.

19. *Id.*

20. *Id.*

21. *Id.* at 1287.

22. *Id.*

23. *Id.*

24. *Id.*

reasoning of the California Court of Appeals, which found that imposing a duty on the utilities for vehicular collisions would be an undue burden because of the cost in increased utility rates, the high likelihood that streetlights will become periodically inoperable, the low likelihood that an inoperable streetlight will cause a collision given the prevalence of headlights, and the availability of insurance to cover the costs.²⁵

The Court found that there is no bright-line rule in Rhode Island for determining whether a legal duty exists; rather, the determination must be made on a case-by-case basis.²⁶ Expanding on the *Banks* factors, the Court used a broad common law duty test that considered “all relevant factors, including the relationship of the parties, the scope and burden of the obligation to be imposed upon the defendant, public policy considerations, and notions of fairness.”²⁷ Therefore, under this broad common law balancing test, and given the persuasive rationale of the majority of jurisdictions evidenced by the California Court of Appeals, Narragansett’s burdens from liability here greatly outweighed the injured plaintiff’s sought-after compensation.²⁸

Furthermore, the Court reasoned that it “declined to find a duty when an injury occurred on property not owned or controlled by the defendant.”²⁹ The Court found that Narragansett “does not own, control, or maintain the subject area; rather, the city has exclusive ownership and control of its public streets.”³⁰ The decedent, furthermore, “had no special or direct relationship with

25. *Id.* at 1288. *See* *White v. S. California Edison Co.*, 25 Cal. Rptr. 2d 431, 434, 437 (Cal. Ct. App. 1994) (holding that utility owed no contractual or common law duty to moped driver injured in a collision that occurred at an intersection where streetlights were not functioning.)

26. *Laprocina*, 250 A.3d at 1288.

27. *Id.* at 1288–89 (citing *Carlson v. Town of South Kingstown*: 131 A.3d 705, 709 (R.I. 2016) (quoting *Woodruff v. Gitlow*, 91 A.3d 805, 814 (R.I. 2014).

28. *Laprocina*, 250 A.3d at 1289.

29. *Id.* (citing *Wyso v. Full Moon Tide, LLC*, 78 A.3d 747, 751 (R.I. 2013)).

30. *Laprocina*, 250 A.3d at 1289. The City’s public service engineer inspects electrical fixtures within the City and is vested with “the general control and supervision of all public lights used by the city for illuminating its streets, highways, parks and public places.” PROVIDENCE, R.I., CODE § 23-136 (2019); *see id.* § 23-125.

Narragansett.”³¹ And if Narragansett were to be held liable to third parties for streetlight malfunction, it would “be required to alter its business operations by inspecting, maintaining, and replacing thousands of streetlights on hundreds of streets in the city.”³² The cost of this new mandate would result in a substantial burden on the public utilities.³³ Consequently, the Court held that a public utility generally owes no common law duty to individual third parties who are allegedly injured, at least in part, as a result of inoperable streetlights.³⁴

COMMENTARY

Under Section 7 and Section 37 of the Restatement (Third) of Torts, an actor ordinarily has a duty to exercise reasonable care when the actor’s conduct creates a risk of physical harm.³⁵ However, an actor whose conduct has not created a risk of physical harm to another has no duty of care to the other.³⁶ The Restatement analysis applied here, therefore, turns on whether the public utility created a risk of physical harm to the pedestrian through its actions in allegedly failing to maintain a streetlight. The Court reasoned that there is only a “slight chance that a single inoperative streetlight will be the cause of a motor vehicle collision.”³⁷ Therefore, the likelihood of an inoperable streetlight creating a risk of physical harm is minimal.

The Court reasoned that from a public policy perspective this low risk of physical harm is greatly outweighed by the burden that tort liability would place on public utilities. That is, the driver of a vehicle in a vehicular collision under an inoperable streetlight is in a better position to assume the liability because of the high likelihood that streetlights will become periodically inoperable, the low likelihood that an inoperable streetlight will cause a collision given

31. *Laprocina*, 250 A.3d at 1289. The decedent was a member of the public who was a pedestrian but had no special or direct relationship with Narragansett. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 1289–90.

35. RESTATEMENT (THIRD) OF TORTS: LIABILITY FOR PHYSICAL AND EMOTIONAL HARM § 7, 37 (AM. L. INST. 2010).

36. *Id.*

37. *Laprocina*, 250 A.3d at 1289 (quoting White, 25 Cal. Rptr. 2d at 437).

the prevalence of headlights, and the availability of insurance to cover the costs. Imposing a duty on the public utility for vehicular collisions would thus be an undue burden. The undue burden would consist of the cost in increased utility rates when the public utility externalized the cost to the public. The Court, in essence, applied Learned Hand's liability formula and found that the high burden to the defendant to avoid the harm and the low likelihood that the harm will occur offsets the risk of the magnitude of the injury.³⁸ Therefore, the complaint failed the common law duty balancing test because the defendant's burden greatly outweighed the plaintiff's likelihood of injury.

On the other hand, between the driver and the utility, the utility may be the cheapest cost-avoider because it would likely know how long streetlights last and when to reasonably expect them to go out.³⁹ According to the cheapest cost-avoider theory, the utility could be in the best position to most efficiently cure the harm upstream by setting up a program that will timely maintain inoperable lights downstream. If so, the duty should attach because the utility would be the cheapest cost-avoider with an incentive to reduce the plaintiff's severe risk of death. But this position assumes that such a system of maintenance is feasible, accurate, and reasonably priced. Furthermore, a minority of jurisdictions have reasoned to the contrary that streetlights are particularly important for pedestrian safety because drivers can see pedestrians from farther away with streetlights than with mere headlights.⁴⁰

The Court made the correct holding in this case, halting what could become a floodgate of litigation against the public utilities, an increase the cost of utility bills, and a perverse incentive on the defendant to not provide streetlights so as to avoid liability. The Court thus determined that the public utilities generally owe no common law duty to individual third parties who are allegedly injured, at least in part, as a result of inoperable streetlights because

38. For Learned Hand formula, $B=PL$, see *United States v. Carroll Towing Co.*, 159 F.2d 169 (2d Cir. 1947).

39. For an explanation of the cheapest cost-avoider theory, see Stephen G. Gilles, *Negligence, Strict Liability, and the Cheapest Cost-Avoider*, 78 V.A. L. REV. 1291 (1992).

40. For this rationale, see *Clay Electric Co-op., Inc. v. Johnson*, 873 So. 2d. 1182 (Fl. 2003) (holding that the injured pedestrian has adequately shown that the utility assumed a specific, legally recognized duty to act with due care in maintaining the streetlight).

(1) the likelihood of risk of harm from an inoperable streetlight is minimal given car headlights; (2) the defendant's burden greatly outweighed the plaintiff's likelihood of injury; (3) the plaintiff failed to prove either an employer-employee relationship or sufficient control of the subject area to establish the defendant's common law duty; and (4) the plaintiff's harm was not foreseeable to the defendant.

CONCLUSION

In an issue of first impression to the Rhode Island Supreme Court, the Court held that a public utility generally owes no common law duty to individual third parties who are allegedly injured, at least in part, as a result of inoperable streetlights. The Court reasoned that the common law duty balancing test weighed in favor of the utilities because imposing a duty on the utilities for failure to maintain streetlights would constitute an undue burden.

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