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Ex-Supermodel Loses Appeal In Parking Gate Head Bonking

By **Dave Simpson**

Law360 (August 30, 2018, 6:14 PM EDT) -- Former supermodel Janice Dickinson's appeal of a decision to toss her suit, which seeks damages from Rite Aid Corp. and a parking garage after she was bonked on the head by a parking gate arm, fails because it doesn't address the defendants' argument that the gate arm was an open and obvious condition, a California appeals court ruled Wednesday.

In a unanimous, unpublished decision, the appellate court upheld the decision from a lower court, which found that Dickinson — who was injured after handing the parking attendant an apple — was owed no duty from Rite Aid or Ace Parking Management Inc. because she could see the gate and could have easily avoided it by taking another route.

"Parking gate arms are ubiquitous and readily observable barriers in place at commercial parking lots throughout California and the nation that serve to deter motorists from leaving without first paying," the panel said. "Their operational characteristics — that the gate arm goes up after paying and then comes down after a vehicle exits — is readily apparent to all, making them open and obvious conditions."

In July 2013, Dickinson was leaving a nearby gym, the panel said. It was her custom to take the gym's complimentary apple to the parking attendant in the garage where she had been parking for 30 years, the panel said. Typically, she handed the apple over from her car, but on this day she approached on foot. After giving the attendant the apple, she was struck by the parking arm and sustained injuries to the head, the panel said.

She sued the parking company and Rite Aid, which has a branch adjacent to the parking garage, saying the companies should have posted better signage to warn customers of the potential dangers of the arm, the panel said.

The companies responded that the arm was an obvious condition and that she could have retraced her steps to the parking attendant — across the elevated center island — allowing her to avoid the arm altogether, the panel said.

A lower court granted the companies summary judgment, and Dickinson appealed.

But the panel found that Dickinson did nothing to address her issues with the lower court's ruling. She didn't analyze or discuss the photographic, video and testimonial evidence concerning the gate arm.

"Instead, her opening brief consists of a capsule summary of the nature of her action in the section designated as her statement of facts and perfunctory snippets of evidence favorable to her in the first two discussion sections of that brief," the panel said.

She also failed to properly cite legal authority that would poke holes in the lower court's ruling, the panel said.

"In short, Dickinson has violated the fundamental rules of appellate practice concerning the need to

affirmatively demonstrate error by furnishing and appropriately discussing pertinent legal authority and explaining how it applies to her case," the panel said.

It also considered the lower court's logic and agreed that the condition of the arm was open and obvious, and that Dickinson could have sought a different route.

Dick Semerdjian, who represents Ace Parking, said that although the decision is unpublished, he hopes it will put a stop to injury claims stemming from parking gate arms.

"We were pleased with the court's ruling on the foreseeability issue — having represented Ace Parking for many years, people walk under gate arms and get hit while the gate arm descends," he said. "This court found it to be a foreseeable result for such conduct (i.e., walking under a parking lot gate arm)."

Representatives for Rite Aid declined to comment.

Representatives for Dickinson didn't immediately respond to requests for comment Thursday.

Judges Gary Micon, Nora Margaret Manella and Audrey B. Collins sat on the appellate panel.

Dickinson is represented by Lee C. Arter and Orly S. Talmor of the Law Offices of Lee Arter.

Rite Aid is represented by Sevan Gobel and Ladell Muhlestein of Manning & Kass Ellrod Ramirez Trester LLP.

Ace Parking is represented by Dick A. Semerdjian and Sierra J. Spitzer of Schwartz Semerdjian Cauley & Moot.

The case is Dickinson v. Thrifty Payless, case number B283252, in the Court of Appeal of the State of California, Second Appellate District, Division Four.

--Editing by Haylee Pearl.

Update: This story has been updated to include responses from Rite Aid's and Ace Parking's counsel.