

Burke wins CA 2nd District Court of Appeal Decision on ‘Obvious Defect’ and Constructive Notice

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Burke partners **Charles Abbott** and **Michael Nebenzahl** won a California 2nd District Court decision to uphold a motion for summary judgment for the City of Beverly Hills. In a published opinion, the Court agreed with the City’s argument that what is an obvious defect in an alley is not the same as for a sidewalk. Less obviousness for a defect in a sidewalk is required to confer constructive notice because people have a reasonable expectation that walking on sidewalks is presumably safe without having to look at the ground. The Court agreed that the same cannot be said for alleys. California statutes, case law, commonsense, and public policy all require that a defect in an alley has to be very obvious for a city government to have constructive notice of it. In *Martinez*, the Court decided that the plaintiff offered no evidence to raise a triable issue of material fact that a two-inch divot was a condition of an obvious nature which the City, in the exercise of due care, should have discovered. [Martinez v. City of Beverly Hills; B305826 (Trial Court Case No. BC667123)]

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