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Another Nail In The Coffin? California Court of Appeal Narrowly
Construes "Pre-Existing Hazard" Exception To Privette Doctrine....

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As many are aware, the California Supreme Court ruled in Privette v. Superior Court (1993) 5 Cal.4th 689 ("Privette") that, in general, an employee of an independent contractor injured in the workplace may not sue the party that hired the independent contractor for his or her workplace injuries. One of the exceptions to the "Privette" rule is where direct liability is imposed on a landowner for maintaining premises with a pre-existing hazardous condition and for the landowner's failure to warn of that condition.

The pre-existing hazard exception was most recently articulated in the California Supreme Court decision in Kinsman v. Unocal Corp. (2005) 37 Cal.4th 659 ("Kinsman"). In Kinsman, the California Supreme Court considered "how the general principles [found in Privette] apply when a landowner hires an independent contractor whose employee is injured by a hazardous condition on the premises." Kinsman, *supra*, 37 Cal.4th at 673. The California Supreme Court in Kinsman modified the general principles set forth in Privette and concluded that a hirer may be liable if the hirer (1) knows or reasonably should know of a concealed, pre-existing hazardous condition on its premises, (2) the contractor does not know and could not reasonably ascertain the condition and (3) the landowner fails to warn the contractor.

As we explained in the September 2011 Edition of The Morrison Law Journal, the trend in Court decisions has been to expand the Privette rule of no liability and to narrow the remaining exceptions to that rule. [See, SeaBright Insurance Company v. US Airways, Inc. (2011) 52 Cal.4th 590 (case where California Supreme Court ruled that the Privette rule applies even where the party that hired the independent contractor failed to comply with mandatory workplace safety requirements concerning the subject matter of the agreement with the independent contractor and the injuries were alleged to have occurred as a direct consequence of that failure)]

Based on the even more recent decision in Gravelin v. Satterfield (2011) 200 Cal.App.4th 1209 ("Gravelin"), that trend appears to be continuing.

In Gravelin, defendants Raymond and Charlotte Coolidge, and their grandson, Paul Satterfield, owned a home in Mendocino California which appears to have been constructed sometime in the 1970s. The Coolidges contracted with Dish Network to replace their existing satellite dish which was located on the roof of their residence. Dish Network outsourced the job for replacement of the satellite dish to Linkus Enterprises, Inc. which sent plaintiff Gary Gravelin, six feet seven inches tall and 225 pounds, to perform the installation job.

Plaintiff Gravelin was either an employee of Linkus Enterprises, Inc. or an independent contractor retained by that company.

Plaintiff Gravelin arrived at the defendants' residence on April 26, 2006. One of the defendant homeowners showed him where the existing satellite dish was located. However, plaintiff Gravelin could not obtain direct access to the roof where the satellite dish was located because the ladder he brought with him was too short. Plaintiff Gravelin did own a 24 foot long extension ladder, but had not brought it to the site. Plaintiff Gravelin instead decided to use an eight foot long ladder which he used to gain access to a roof extension or awning. The roof extension or awning had been added sometime after 1999 or 2000, years after the original construction of the home in the 1970s. One of the defendant homeowners testified in deposition that the roof extension was built to provide rain cover when one walked between the house and the carport. It was apparently constructed by a local builder, a Doug Moyer, who was a family friend. Mr. Moyer did not obtain a permit for the roof awning and had not even charged the defendant homeowners.

Once the plaintiff climbed the ladder to the high rung, he stepped over about 24 inches onto the roof extension and then fell when the roof extension collapsed. Plaintiff Gravelin later sued the defendant homeowners on the basis that a pre-existing hazardous condition existed which the homeowners had failed to advise him of.

The Trial Court granted summary judgment on the basis that there was no liability under the Privette doctrine. On appeal, plaintiff Gravelin argued that, under the Kinsman premises liability exception, the defendants could be liable notwithstanding the Privette doctrine on the theory that the defendant homeowners knew or reasonably should have known of a concealed, pre-existing hazardous condition, that plaintiff Gravelin did not know about the condition, and the defendants failed to warn the plaintiff.

The Court of Appeal affirmed the grant of summary judgment.

In its holding, the Court of Appeal construed the Kinsman exception narrowly, concluding that the alleged hazard, i.e. the roof extension, could not be considered to be a concealed hazard since the plaintiff was in a position to inspect the roof himself. In that regard, the Court of Appeal pointed out that the plaintiff had failed to engage in the inspection of the premises explicitly delegated to him, citing the Kinsman case. The Court of Appeal went on to rule, even further, that it was the plaintiff that created the dangerous condition - not the defendants, and that he alone was responsible for his injuries.

The Court of Appeal's holding in Gravelin is instructive insofar as it provides guidance as to the interpretation of the exception for concealed hazards as set forth in Kinsman and will likely be a factor in personal injury litigation for quite some time in the future.

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