

A Win For “Hirers” Of Independent Contractors: Court Of Appeal Rules That Injured Worker’s Personal Injury Claims Were Barred Under *Privette v. Superior Court (1993) 5 Cal.4<sup>th</sup> 639*, Even Though There Was A Dispute As To The Date Of Execution Of The Hiring Party’s Written Contract And There Were No Permits Pulled For The Project

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As many are aware, under the Privette Doctrine (*See, Privette v. Superior Court (1993) 5 Cal.4<sup>th</sup> 639, "Privette"*), the California Courts have ruled that entities that hire independent contractors are shielded from liability for injuries sustained by employees of the independent contractor while working on a construction project. In the case of *CBRE v. Superior Court (Johnson)* (2024) Westlaw 2826398 ("*CBRE* case"), employee Jake Johnson was injured while working as an electrician on a tenant improvement construction project in a building owned by Property Reserve, Inc. ("PRI") and managed by CBRE ("CBRE"). At the time of the accident, Johnson was employed by PCF Electric ("PCF"), a subcontractor hired by Crew Builders ("Crew"), the general contractor for the Project.

Fact specific to the *CBRE* case is that CBRE had intended to hire Crew via a written contract and Crew had anticipated the need for permits for the tenant improvement work. Based on their ongoing relationship, Crew agreed that no permits would be pulled for the tenant improvement project and Crew began its work without a written contract (and no written contract had been executed as of the time of the accident). Johnson was injured when someone removed the PCF superintendent's lockout/tagout and, while attempting to replace a cover on a junction box labeled as 120-volt and containing wires color-coded as 120-volt under the current code, Johnson touched a live 277-volt wire, fell off a ladder, and sustained serious injuries.

Johnson filed a Complaint against PRI, CBRE, Crew and PCF, for damages.

PRI and CBRE moved for Summary Judgment based on the Privette Doctrine. The Trial Court denied the Motion the Motion for Summary Judgment, finding there to be a triable issue of fact as to when Crew was hired for the Project. PRI and CBRE then filed a Petition for Writ of Mandate asserting that the Trial Court erred by focusing on the execution date of the Crew contract. The Court of Appeal granted the Petition and reversed, finding that the Trial Court erred in denying the Motion for Summary Judgement. In that regard, the Court of Appeal ruled that a written contract is not required to invoke the Privette Doctrine and the undisputed facts established that the moving defendants delegated control over the tenant improvements to the Crew company prior to Johnson's injury. The Court of Appeal further ruled that the undisputed facts established that there was no exception to the Privette Doctrine based on the lack of permits, given that PRI and CBRE had hired Crew to proceed with the Project without obtaining permits and the permitting

process was not within the scope of the contracted for work. In that regard, the Court ruled that, because the evidence conclusively showed that PCF was able to discover any non-Code compliant wiring, even in the absence of permits, the "concealed, hazardous condition" exception to the Privette Doctrine did not apply. The Court went on to hold that, because the decision to forego the permitting process did not affect the means by which PCF and its employees performed the electrical work for which they were hired, the "retained control" exception to the Privette Doctrine also did not apply.

The CBRE case is important in that it holds that the failure to have permits, or a written contract, will not provide an exception to the Privette Doctrine.

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