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A Win For General Contractors As To Subcontractor Employee Injury Claims: Court of Appeal Narrowly Construes the "Hooker Exception" to the "Privette Doctrine"

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As many are aware, under California law, a strong presumption exists that the hirer of an independent contractor delegates to the contractor all responsibility for workplace safety. This is known as the "Privette Doctrine," which is based on the California Supreme Court decision that first announced that principle. Privette v. Superior Court (1993) 5 Cal.4th 689. The Privette Doctrine largely shields an independent contractor (typically a general contractor) from lawsuits for personal injuries involving subcontractors of the general contractor.

There are two significant exceptions to the Privette Doctrine. The first exception, often known as the "Hooker exception," deals with the situation where a hirer, typically, again, the general contractor, is liable for a subcontractor employee injury when it retains control over any part of the independent contractor's work, and negligently exercises that retained control in a manner that affirmatively contributes to the worker's injury. Hooker v. Department of Transportation (2002) 27 Cal.4th 198). A second exception involves what is often known as the "Kinsman Exception," where a landowner who hires an independent contractor may be liable if the landowner knew, or should have known, of a concealed hazard.

In the case of McCullar v. SMC Contracting, Inc. (2002) Westlaw 4181422 ("McCullar Case"), the California Court of Appeal, 3rd Appellate District, affirmed a summary judgment involving the Hooker exception of the Privette Doctrine. In the McCullar case, an employee of subcontractor Tyco SimplexGrinnell, Inc. ("Tyco"), Tommy Ray McCullar, suffered injuries after when he had arrived at work on a construction site where general contractor SMC Contracting, Inc. ("SMC") (prime contractor which had hired Tyco) was developing improvements in a property known as Chateau at the Village in South Lake Tahoe. McCullar arrived at work and had found ice on the floor of the subject building, and had complained about the ice to the foreman for SMC. McCullar claimed that SMC had used heating equipment the night before that had melted snow on the roof of the subject building, and that water from the melted snow had come to the floor of the building. McCullar claimed that the water on the floor had frozen into ice by the time he arrived. McCullar claimed that the SMC Superintendent was nonresponsive about the ice, and had told McCullar to go back to work. McCullar then went on a ladder and later fell, due to the ice on the floor.

McCullar sued SMC Contracting on the basis that SMC had retained control over the building, had caused the unsafe condition with respect to the ice on the floor and affirmatively contributed to the accident. SMC filed for summary judgment arguing that Tyco retained exclusive control over McCullar's work site conditions. The Trial Court agreed with SMC and granted Summary Judgment.

On Appeal, the Court of Appeal, Third Appellate District, affirmed. The Court of Appeal noted that, under the Hooker exception, the Plaintiff employee was required to demonstrate that the general contractor had retained control, had exercised actual control, and the actions of the general contractor formally contributed to the accident. In its Opinion, the Court of Appeal acknowledged that SMC had caused the ice to form on the floor of the building but noted that McCullar was aware of the ice on the floor, and that Tyco, which retained control over the work of McCullar, was still responsible for McCullar being on a ladder, on ice. Based on that, the Court of Appeal held that the Hooker exception did not apply.

The McCullar case is important in that it demonstrates a relatively narrow construction of the Hooker exception to the Privette Doctrine.

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