THERE ARE EXCEPTIONS TO THE GENERAL RULE THAT ONE IS NOT LIABLE FOR INJURIES TO THEIR INDEPENDENT CONTRACTOR

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About 25 years ago, in a case called *Privette v. Superior Court* (*"Privette"),* the California Supreme Court set forth a rule, which generally prohibited an independent contractor or its employees from suing the hirer of the contractor for workplace injuries. This rule has evolved over the years to have certain exceptions, which were recently highlighted in a recent Court of Appeal decision, *Gonzalez v. Mathis ("Gonzalez").* In *Gonzalez*, an independent contractor who had climbed upon a roof to supervise the cleaning a skylight fell off of a ledge used for access to the roof, and then sued the homeowner. The housekeeper of John Mathis ("Mathis") hired Gonzalez, who was an independent contractor, to clean a skylight which was difficult to access. The skylight covered an indoor pool and protruded through a flat roof. The skylight was surrounded on one side by an exposed two foot ledge and the other side by a parapet wall to hide piping and mechanical equipment positioned next to the skylight. Gonzalez and his workers always utilized a ladder near the parapet to access the roof and clean the skylight.

One day while Gonzalez' workers were cleaning the skylight, the housekeeper noticed that water was leaking in through the skylight and instructed Gonzalez to go tell his employees to use less water. Gonzalez accessed the roof via the ladder, spoke with his employees, and used the small exposed ledge to get back to the ladder; however, he lost his footing and fell off the roof. This accident caused Gonzalez to file a negligence action against Mathis. Gonzalez initially contended that "loose rocks, pebbles and sand on the roof of the property" constituted a "dangerous condition," thus causing Gonzalez to fall from the roof. He later claimed that the construction of the parapet wall forced persons who needed access to the skylight to walk along the dangerous ledge which had no safety railing; secondly, he contended the shingles were slippery as they were worn; lastly, Gonzalez claimed that the roof lacked tie-off points that would enable workers to use safety devices. In turn, Mathis argued that Gonzalez was aware of the dangerous conditions on the roof and could have taken preventative safety measures such as utilizing the inside of the wall near the parapet to get to and from the ladder.

Mathis moved for Summary Judgment, which is a pre-trial motion to have judgment entered, arguing there were no disputed facts and as a matter of law Mathis could not be held liable under the rule set forth in *Privette.* This type of motion cannot be granted if there are any disputed facts that the "trier of fact" (either a court or jury) might disagree upon. Mathis argued that there are only two exceptions to the *Privette* rule: (1) when the hirer exercised control over the contractors' work in a manner that had contributed to the injury and (2) when the hirer failed to warn the contractor of concealed hazards on the premises. Mathis argued that neither exception applied to Gonzalez because he was not told how to clean the skylight and because Gonzalez had previously performed services to the property and knew of the dangerous conditions on the roof. The trial court granted Mathis' Motion for Summary Judgment.

On appeal, Gonzalez argued that there were triable issues of fact with regard to both *Privette* exceptions. He argued that Mathis "retained control over the worksite" since the housekeeper instructed him to complete specific cleaning tasks in a specific order as well as ordering him to go tell his employees, who were on the roof, to use less water. As to the second exception, Gonzalez argued that there were triable issues of fact whether Mathis was liable under the hazardous condition exception, which was determined in yet another Court decision, which held that hirer liability existed for *concealed hazards* or *open or known hazards that the contractor could not have remedied through reasonable safety precautions*. Gonzalez argued that the second exception applied since he claimed he had to use the exposed ledge to walk over to the ladder since he was unable to walk along the inside of the parapet wall due to the equipment. The Court of Appeal found there was a triable issue of fact whether Gonzalez "could have reasonably" utilized the inside of the wall for access, and therefore it reversed the judgment. In other words, this case was sent back to the trial court to be heard, throwing out the Summary Judgment.

You can protect yourself and your company by being cautious on jobsites with dangerous conditions, maintaining your workers compensation insurance in case an accident does happen, and if an accident does occur, remember that there are exceptions to the *Privette* rule.

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