***Zuniga v. Cherry Avenue Auction, Inc.* (2021) 61 Cal.App.5th 980**

A commercial lessor is liable to its tenants for injuries sustained due to uninsulated, high-voltage power lines because such power lines are not open and obvious dangers; the *Privette* doctrine does not insulate landowners from liability.

FACTS/PROCEDURE

In August 2013, Plaintiff Araceli Castellano Zuniga and her husband rented two vendor spaces at an outdoor swap meet owned and operated by Defendant Cherry Avenue Auction, Inc. in Fresno, California. Defendant hosted swap meets twice a week, and Plaintiff and her husband had rented spaces approximately 8 times prior. On the day of the incident, Plaintiff and her husband assembled their booth which had a metal frame and a fabric canopy. They attached two 28-foot metal poles to their tent to hang their advertising banners – something many vendors did. Approximately 26 feet above their booth was an uninsulated, high-voltage power line. As the two raised the advertising pole, the metal pole touched the power line, electrocuting them both and killing Plaintiff's husband.

In August 2014, Plaintiff sued Defendant for negligence, alleging premises liability. At trial, the jury found Defendant was 77.5 percent liable, and Plaintiff and her husband were both 11.25 percent liable. The trial court entered judgment for Plaintiff and awarded her $9,493,750.00 in damages, plus $470,785.96 in prejudgment interest. Defendant filed a notice of intent to move for a new trial and a notice of motion for judgment notwithstanding the verdict ("JNOV"), which were both denied. Defendant subsequently appealed the court's denial of their JNOV motion. On appeal, Defendant made two arguments: (1) Defendant owed no duty to Plaintiff and her husband under the *Privette* doctrine; and (2) Defendant owed no duty to warn of or remedy the power lines because the danger was open and obvious.

HOLDING/DISCUSSION

The Court of Appeal for the Fifth District affirmed. Under *Privette v. Superior Court* (1993) 5 Cal.4th 689, "the hirer of an independent contractor is not liable to the independent contractor's employees who sustain work-related injuries." Defendant argued *Laico v. Chevron U.S.A., Inc.* (2004) 123 Cal.App.4th 649 expanded the *Privette* doctrine to hold commercial lessors owe no duty to make their premises reasonably safe and are not liable for any resulting injuries. The appellate court rejected Defendant's argument, pointing out that the *Laico* court clearly stated the *Privette* doctrine was merely a "useful analogy" to the case; it did not purport to say commercial lessors owed no duties to their tenants. Landowners still have a duty to warn third parties of any dangerous conditions on their property. Here, Defendant was a commercial lessor that rented out spaces to vendors at its swap meets. Therefore, Defendant owed a duty to Plaintiff and her husband to warn them of the power lines or insulate the lines because the trial court found they were a dangerous condition of the property. In making this determination, the trial court considered expert witness testimony from both parties. Both experts acknowledged that most ordinary persons would not be able to discern whether power lines were insulated or uninsulated. Both owners of the property also testified that they were aware the lines were uninsulated and potentially deadly, and they were aware many of their vendors (approximately 30 percent) used tall advertising poles. However, there was a small "HIGH VOLTAGE" sign at the top of the electrical pole and the view of the lines were unobscured. Despite this, the court found it was "foreseeable that persons would not…appreciate the danger posed by [the] high voltage power lines." Therefore, Defendant should have warned vendors of the power lines or remedied the dangers they posed.