McCullar v. SMC Contracting, Inc.
(2022) 83 Cal. App. 5th 1005
Subcontractor retained responsibility for its employee's workplace injury even though the general contractor created the hazard.

FACTS/ PROCEDURE

Defendant SMC Contracting hired subcontractor Tyco Simplex Grinnell, Inc., to install an automatic fire sprinkler system for a South Lake Tahoe development, Chateau at the Village. One day during the installation, a Tyco employee, Tommy McCullar arrived at work and found the floor covered in ice. While using a ladder on the ice, McCullar slipped and was injured.

McCullar sued SMC who moved for summary judgment on the *Privette* doctrine arguing it delegated the duty of safety to Tyco in their contract. McCullar opposed on the grounds the *Privette* doctrine did not protect SMC because they retained control over Tyco's work and negligently exercised that control in a way that affirmatively contributed to his injuries. Plaintiff argued SMC employees working on the roof caused water to drip onto the floor and form the ice. He also argued he told the SMC foreman about the ice, who told him SMC needed heaters on the roof to dry fireproofing material and Plaintiff had to install the sprinkler system. Plaintiff told his boss at Tyco who told him he had to get his job done. The trial court granted summary judgement. Plaintiff appealed.

3rd APPELLATE DISTRICT

[Panel: Hoch, Renner, Earl]

Summary judgement affirmed. The *Privette* doctrine holds that a hirer of an independent contractor is presumed to delegate any duty of workplace safety to the contractor and is not liable for injuries to the contractor's employees. The policy is based on the point that a hirer typically has no right to control the manner of a contractor's work and hires a contractor precisely because of the contractor's greater ability to perform the work safely and successfully.

Under this doctrine, Plaintiff failed to raise a triable issue of material fact. The *Hooker* exception to *Privette* applies when the hirer/general contractor has: (1) retained control over the work site, (2) actual exercise of that control, and (3) affirmatively contributes to the injury. It is not enough that a hirer knows of a dangerous condition. Even where the hirer negligently creates a workplace hazard, such as the creation of ice in Plaintiff's work area, the contractor still retains responsibility for assessing whether its workers can perform their work safely. In order for the actual exercise requirement to be met the hirer must involve itself in directing how to deal with the hazard, such as "by directing the manner or methods in which the contractor performs the work; interfering with the contractor's decisions regarding the appropriate safety measures to adopt; requesting the contractor to use the hirer's own defective equipment in performing the work; contractually prohibiting the contractor from implementing a necessary safety precaution; or reneging on a promise to remedy a known hazard." (*McCullar* at p. 1014.)

Here, SMC's general direction "to go back to work" did not interfere with or otherwise impact McCullar's decisions on how to safely perform his work. SMC did not, for example, direct McCullar to place a ladder on the ice and then attempt to climb it. Nor did SMC prohibit McCullar from removing the ice, as McCullar suggests. Therefore, as the duty of safety was delegated there are no triable issues.