

Degala v. John Stewart Co.

2023 DJDAR 1093

Where an owner/hirer affirmatively provides security measures in a high crime area and there are questions of fact as to the reasonableness of those measures, the *Hooker* exception to the *Privette* doctrine is applicable.

FACTS/ PROCEDURE

Abraham Degala was attacked and seriously injured by unknown assailants while working at a construction site at a housing complex in San Francisco. Degala was the foreman for a demolition subcontractor on the project. He sued the general contractor, Cahill, and the owner of the site, JSC, alleging they breached their duty to take reasonable security precautions at the site, which was in a very high-crime area.

The contract between the owner and the general contractor required the general to take reasonable precautions for the safety of employees. The subcontract between the general and the demolition subcontractor excluded site security and stated the sub was responsible for securing its own tools and equipment. The project began in late 2015 and Plaintiff was attacked in January 2017. From the start of the project, the owner and general contractor had weekly meetings about site security and made joint decisions. At first two uniformed security guards patrolled the site during the day but their services were eventually discontinued when an outside company was hired to provide cameras that were monitored offsite during non-working hours. Fencing was erected around the job site for the safety and security of personnel and property. There were multiple shootings in the area and workers were instructed to stop work before sundown and warned to stay indoors for lunch and breaks.

The site was closed several times out of concern for worker safety in the weeks leading up to the attack. An electrician submitted a hazard analysis stating working in the neighborhood was a hazard and Plaintiff submitted a job hazard analysis noting “neighborhood shooting guns” was a hazard and suggested “police officer on site escort.” Two weeks later, Plaintiff was leading a crew working on two buildings that were split by a sidewalk, which was left open so the neighborhood residents could use it to access a bus stop. Ordinarily the general contractor’s practice was to completely fence off an entire area under construction but due to the residents’ concerns, they left one section unfenced. Three men found a way through the fencing and into the building where Plaintiff was working. The men followed Plaintiff out of the building to the walkway and attacked him. They fled and were never identified.

Defendants moved for summary judgement on the ground Plaintiff’s claims were barred under the *Privette* doctrine. Plaintiff argued Defendants breached their duties by removing the security guards and allowing unfettered access to the site. The trial court granted summary judgment rejecting Plaintiff’s argument that defendants could be liable under the *Hooker* exception to *Privette* which applies when the hirer retains control over any part of the contractor’s work and exercises that control in a way that affirmatively contributes to the plaintiff’s injury.

FIRST APPELLATE DISTRICT

The appellate court reversed finding there were triable issues of fact under the retained control theory. Under *Privette*, ordinarily a hirer or owner is not liable for injuries to subcontract workers. The responsibility of worker safety is delegated to the subcontractor doing the work. However, there are exceptions where the courts find this delegation is ineffective or incomplete. The *Hooker* exception occurs when the delegation is incomplete and the task of providing a safe working environment is not fully delegated to the sub, but the hirer retains control over safety conditions and then negligently exercises that control in a way that affirmatively contributes to the injuries.

The court found Defendants met their burden to establish *Privette* applied as they were the hirer/owners who employed a subcontractor who employed Plaintiff. However, the court found Plaintiff then met his burden to demonstrate there were triable issues of fact as to whether Defendants retained control and exercised that control in a manner that affirmatively contributed to the injuries. The court noted a hirer's negligence can take any form, and could be an affirmative action or the failure to take a reasonable precaution or a promised safety measure. The court found there was evidence Defendants retained control over site security as they provided security guards and installed cameras. Additionally, after the attack, they hired off-duty police officers to be stationed on the site during work hours and added a perimeter fence around the entire project eliminating the public walkway. Although subsequent remedial measures are not admissible to show negligence it is admissible to show they retained control over site security. There was also evidence Defendants exercised that control over Plaintiff because they eliminated overtime and gave instructions to stop work before sundown and to stay indoors for lunch and breaks. Therefore, the subcontractor was not free to perform the work in its own manner. Additionally, it was a jury question as to whether the measures Defendants took in removing the guards and allowing the fence to be open in an area was reasonable.