

CBRE v. Superior Court
2024 DJDAR 4892

A written contract is not required to invoke the Privette doctrine, and the undisputed facts established that petitioners delegated control over the project to the general contractor prior to the injury.

PRIOR CASE LAW

In *Privette*, the California Supreme Court recognized the common law principle that “a person who hired an independent contractor generally was not liable to third parties for injuries caused by the contractor's negligence in performing the work.” (*Privette v. Superior Court*, 5 Cal. 4th 689 (1993)). However, that presumption gives way to two recognized exceptions: where the hirer withholds critical information regarding a concealed hazard or retains control over the contractor's work and actually exercises that control in a way that affirmatively contributes to the worker's injury¹.

FACTS/PROCEDURE

Jake Johnson was injured while working as an electrician on a construction project in a building owned by Property Reserve, Inc. (PRI), and managed by CBRE (collectively, Petitioners). At the time of injury, Johnson was employed by PCF Electric (PCF), a subcontractor hired by Crew Builders (Crew), the general contractor for the project.

While on the job, Johnson touched a mislabeled junction box which housed a live 277-volt wire, fell off a ladder and sustained serious injuries. Johnson subsequently filed a complaint against petitioners, Crew, and PCF for damages.

After discovery, Petitioners filed a motion for summary judgment, asserting all Johnson's claims as to them were barred by the *Privette* doctrine. Johnson opposed, asserting: (1) there was no contract delegating responsibility for workplace safety between Petitioners and Crew or PCF at the time of the incident, and (2) material issues of fact remained as to whether an exception to the *Privette* doctrine applied.

The trial court denied Petitioners' motion, concluding there was a triable issue of material fact as to **when** Petitioners hired Crew for the project such that Petitioners were not entitled to judgment as a matter of law. *CBRE v. Superior Court*, 2024 DJDAR 4892 at 7.

The trial court, however, simultaneously granted Crew's motion for summary judgment, concluding *Privette* barred Johnson's claims against it because there was no evidence (1) Crew retained control over any aspect of PCF's performance of the contracted work or (2) the mislabeled junction box was a “concealed hazard” not reasonably discoverable by PCF. It also granted PCF's motion for summary judgment, finding workers' compensation to be the sole remedy for Johnson's injury. Johnson obtained recovery through workers' compensation.

HOLDING/DISCUSSION

Holding: Writ of mandate issued, directing the superior court to vacate its order denying PRT's and CBRE's motion for summary judgment and enter a new order granting the motion.

¹ Retaining control can be as little as requiring the subcontractor to use the hirer's own equipment in performing the work. *CBRE v. Superior Court*, 2024 DJDAR 4892 at 22

Discussion: Johnson claims the trial court correctly identified a material factual dispute regarding the scope of the agreement: specifically, **what safety protocols** Petitioners delegated to Crew **and when**. He contends there are triable issues of fact as to whether Petitioners fall under one of the *Privette* doctrine's exceptions, either because they (1) failed to disclose a dangerous, concealed condition in the noncompliant electrical wiring or (2) retained control by instructing Crew to proceed without a permit.

The undisputed evidence establishes that, while Crew included permits in its initial bids, when Petitioners requested Crew omit permits, Crew willingly complied. The evidence is clear the Crew employee responsible for submitting the bid knew permits were required. Crew was free to walk away from the project at that point in time or insist that permits remain a part of the project. Instead, even as negotiations as to the scope of the project were ongoing, Crew communicated that the project was not permitted while soliciting bids from subcontractors. Crew's latest bid, which resulted in Petitioners giving the green light to begin work on the project, did not include permits.

Petitioners and Crew had also developed an “understanding” that Crew would begin work on projects before a formal contract was finalized. Petitioners asked Crew to immediately start this project in accordance with that understanding. The court of appeals found that this evidence conclusively shows that at the time of Johnson's accident, permits were not part of the contracted work. Petitioners did not retain control over whether, when, and how to pull permits as part of the project; everyone simply agreed from the beginning permits were not part of the project at all.

Because the evidence conclusively shows PCF was able to discover any noncode-compliant wiring itself, even in the absence of permits, the “concealed hazardous condition” exception to the *Privette* doctrine is inapplicable as a matter of law. The undisputed facts establish that no exception to the *Privette* doctrine applies. Petitioners and Crew mutually agreed to proceed with the project without obtaining permits such that the permitting process was never within the scope of the contracted work.

Dissent

KELETY, J., A jury should decide whether Petitioners retained control over a construction project when they instructed their general contractor, Crew, not to obtain legally necessary permits; and, whether that instruction contributed to the injuries sustained by Jake Johnson while working as an electrician for a subcontractor, PCF, hired by Crew. For this reason, I dissent from the majority opinion.