



December 15, 2011

## Premises Liability—Independent Contractors and Pre-existing Hazardous Condition

*Gary Gravelin v. Paul Satterfield, et al.*

Court of Appeal, First District (November 15, 2011)

This case considered whether homeowners are liable for the injuries of an independent contractor sustained on the homeowners' property, when the independent contractor received workers compensation, there was no pre-existing hazardous condition, and no presumptive negligence.

Homeowners Raymond and Charlotte Coolidge contracted with DISH Network to replace the existing satellite dish on their home in Mendocino County. On April 26, 2006, DISH outsourced the job to Linkus Enterprises, Inc., which sent plaintiff Gary Gravelin, an independent contractor, to perform the installation job. Plaintiff brought an eight-foot ladder to the worksite that was too short, so he decided to access the roof using a lower, small roof extension, or "awning" as he referred to it. The roof extension was no more than four feet square, constructed of plywood and supported by two by fours. Plaintiff weighed 225 pounds and was carrying tools and equipment weighing about 46 pounds. As he stepped off the ladder onto the roof extension, it collapsed and he crashed to the ground. He was in the hospital for four days with a vertebral compression fracture. He resumed full-time employment around August 2008.

After plaintiff filed suit, the homeowners filed a summary judgment motion, and the Court granted the motion. The Appellate Court affirmed the ruling on three grounds: that Plaintiff was an independent contractor, the roof extension was not a pre-existing hazardous condition, and



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plaintiff did not establish presumptive negligence under Evidence Code Section 669.

The Court ruled that the hirer of an independent contractor will not be held vicariously liable for injuries resulting from the contractor's negligence in failing to perform its task safely. *Privette v. Superior Court* (1993) 5 Cal.4th 689, 695. The independent contractor "has authority to determine the manner in which inherently dangerous...work is to be performed, and thus assumes legal responsibility for carrying out the contracted work, including the taking of workplace safety precautions" to protect himself and his employees. *Tverberg v. Fillner Construction, Inc.* (2010) 49 Cal.4th 518, 522 and *Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 671. The remedy for the contractor's injured employee is workers' compensation, and plaintiff Gravelin received a workers' compensation settlement from Linkus in December 2008.

The Court also ruled that as to pre-existing hazardous conditions, the homeowner could not be held liable. The Court referred to the California Supreme Court holding in *Kinsman* which held that as a general principle, a hirer of an independent contractor may be liable if (1) the hirer "knows or reasonably should know of a concealed, pre-existing hazardous condition on its premises; (2) the contractor does not know and could not reasonably ascertain the condition; and (3) the landowner fails to warn the contractor." See, *Kinsman, supra*, 37 Cal.4th at 674-675. The *Kinsman* Court also noted exceptions to this holding where the independent contractor may be held liable: a hazard created by the independent contractor, an apparent hazard, and where an independent contractor has failed to engage in inspections of the premises. None of those conditions existed here, where the Plaintiff was responsible for choosing a poor roof access point and for his poor choice to use a small ladder. In addition, Plaintiff admitted that he was trained to conduct site surveys and conducted a site survey at the home.

Lastly, the Court noted that although Plaintiff's argument is correct that Evidence Code Section 669 allows proof of a statutory violation to create a presumption of negligence in specified circumstances, Plaintiff failed to cite to building code provisions setting forth specific structural requirements alleged to be violated by defendants.

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## COMMENT

This case clarifies and reinforces California law regarding liability to independent contractors. The Court reaffirmed the general principle in *Kinsman* that a hirer of an independent contractor may be held liable for the contractor's injuries when there is a pre-existing hazardous condition, but only after a three-part test is met.

For a copy of the complete decision see:

[HTTP://WWW.COURTINFO.CA.GOV/OPINIONS/DOCUMENTS/A131333.PDF](http://www.courtinfo.ca.gov/opinions/documents/A131333.pdf)

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