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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

JUAN CASTRO, Plaintiff and Appellant, v. KNOWLTON MANNERS APARTMENTS et al., Defendants and Respondents.	B298000 (Los Angeles County Super. Ct. No. BC622707)

APPEAL from a judgment of the Superior Court of Los Angeles County, Jon R. Takasugi, Judge. Affirmed.

Samuel O. Ogbogu for Plaintiff and Appellant.

Proctor, Shyer & Winter and Lisa N. Shyer for Defendants and Respondents.

INTRODUCTION

Juan Castro appeals from the adverse judgment entered in his personal injury action after the trial court granted a motion by Hallmark Realty and Kirby Manor Corporation for summary judgment. Because the exclusive remedy provisions of the Workers' Compensation Act (Lab. Code, § 3200 et seq.) bar Castro's action, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Castro Files This Action Against Hallmark and Kirby*

In 2014 Castro sustained injuries when he fell out of a tree he was trimming at an apartment complex owned by Kirby and managed by Hallmark. Kirby and Hallmark had an agreement that identified Hallmark as both an independent contractor hired by Kirby and Kirby's agent. Hallmark had hired Marcos Patino to provide landscaping services, including tree-trimming, and Patino, in turn, had hired Castro to help him trim the trees.[1]

In May 2016 Castro filed this negligence action against Kirby (sued erroneously as Knowlton Manners Apartments) and, after amending the complaint, Hallmark. Castro alleged that he was an employee of the defendants, that he sustained his injuries in the course of his employment, and that during his employment the defendants "failed to secure any worker's compensation insurance coverage whatsoever to cover any workplace injuries suffered by" him. Castro alleged the defendants' failure to obtain

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[1] Patino, who is not a party to this action, denied hiring Castro to help him trim trees, but the parties agree Patino did.

a worker's compensation policy entitled him to bring a civil action for negligence under Labor Code section 3706.[2]

B. *The Trial Court Grants Hallmark and Kirby's Motion for Summary Judgment*

Hallmark and Kirby filed a motion for summary judgment. Hallmark conceded Castro was its employee, but contended that it had workers' compensation insurance when he suffered his injury and that therefore Castro's exclusive remedy was through the workers' compensation system. Hallmark submitted a declaration by Mark Len, the president of both Hallmark and Kirby, stating Hallmark "maintained workers' compensation insurance at the time of the incident." Hallmark also submitted what Len declared was a true and correct copy of Hallmark's workers' compensation insurance policy in effect at the time of Castro's accident.

Kirby, for its part, contended there was "no circumstance under which [it] could be held liable for [Castro's] injuries because [Kirby] was not [Castro's] employer and there is no basis for liability against [Kirby]." In particular, Kirby argued that Castro was an employee of Hallmark, which Kirby hired as an independent contractor to manage the apartment complex, and that under *Privette v. Superior Court* (1993) 5 Cal.4th 689 (*Privette*) "the hirer of an independent contractor is generally not liable for work-related injuries to the contractor's employees."

In opposition to the motion for summary judgment Castro argued Hallmark had not met "its burden of producing admissible and material evidence that the workers' compensation

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[2] Undesignated statutory references are to the Labor Code.

remedy applies in this case." Objecting to Len's statement about Hallmark's coverage and to the copy of the policy Hallmark submitted, Castro argued Hallmark had "produced no competent evidence of workers' compensation insurance." And, Castro argued, even assuming "there was a valid workers' compensation policy," Hallmark had not produced evidence Castro "met the minimum number of hours required to qualify for workers' compensation coverage." Castro also argued, and purported to cite evidence showing, Hallmark negligently failed to provide him appropriate training and supervision for tree-trimming. Finally, Castro argued Kirby was not immune from liability under *Privette* because Hallmark was not merely an independent contractor but was also Kirby's agent.

The trial court granted the motion for summary judgment. Overruling Castro's objections to Len's statement that Hallmark had workers' compensation insurance coverage at the time of the accident and to the copy of the policy Hallmark submitted, the court ruled that Hallmark "met its moving burden to show it had a workers' compensation policy in place at the time of the accident" and that Castro "failed to raise a triable issue of material fact concerning the existence of workers' compensation insurance that covers his injuries." The court rejected Castro's argument Hallmark was obligated and failed to produce evidence its policy applied to him because Castro "did not advance this theory in his complaint." Similarly, the court rejected Castro's argument "Hallmark was negligent" because "the complaint does not allege Hallmark was negligent" and because "the entire purpose of the workers' compensation doctrine is to preclude a lawsuit for negligence."

Concerning Kirby, the trial court ruled: "[T]he sole theory advanced in the complaint is that 'Defendants' lacked workers' compensation insurance and are therefore presumed negligent. The complaint does not allege Kirby, as the landowner, retained control over [Castro's] work or that Kirby's negligence affirmatively contributed to [Castro's] injuries. [Castro] argues, instead, that there is a triable issue as to whether Hallmark was Kirby's agent, such that Hallmark's negligence can be imputed to Kirby. [Citations.] This argument cannot be considered in opposition to the motion as the complaint does not allege any facts to establish that either Defendant was negligent or that Kirby is responsible under the [*Privette*] doctrine. Even were the argument considered, Defendants submitted sufficient evidence regarding Kirby's lack of supervision and control of [Castro's] work which was not refuted by [Castro]." Castro timely appealed from the ensuing judgment.

DISCUSSION

A. *Applicable Law and Standard of Review*

"Summary judgment is appropriate only 'where no triable issue of material fact exists and the moving party is entitled to judgment as a matter of law.'" (*Regents of University of California v. Superior Court* (2018) 4 Cal.5th 607, 618; see *Tansavatdi v. City of Rancho Palos Verdes* (2021) 60 Cal.App.5th 423, 433.) "To meet its initial burden in moving for summary judgment, a defendant must present evidence that either 'conclusively negate[s] an element of [each of] the plaintiff's cause of action' or 'show[s] that the plaintiff does not possess, and cannot reasonably obtain,' evidence necessary to establish at

least one element of [each] cause of action." (*Henderson v. Equilon Enterprises, LLC* (2019) 40 Cal.App.5th 1111, 1116; see *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853-854.) "Once the defendant satisfies its initial burden, 'the burden shifts to the plaintiff . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.'" (*Henderson*, at p. 1116; see *Aguilar*, at p. 849.)

We review a trial court's ruling on a motion for summary judgment de novo. (*Samara v. Matar* (2018) 5 Cal.5th 322, 338.) We consider "'"'"all the evidence set forth in the moving and opposing papers except that to which objections were made and sustained.'" [Citation.] We liberally construe the evidence in support of the party opposing summary judgment and resolve doubts concerning the evidence in favor of that party."'" (*Hampton v. County of San Diego* (2015) 62 Cal.4th 340, 347; see *Hartford Casualty Ins. Co. v. Swift Distribution, Inc.* (2014) 59 Cal.4th 277, 286.) "'We affirm the trial court's decision if it is correct on any ground the parties had an adequate opportunity to address in the trial court, regardless of the reasons the trial court gave.'" (*Wolf v. Weber* (2020) 52 Cal.App.5th 406, 410.)

B. *The Trial Court Did Not Err in Granting Summary Judgment in Favor of Hallmark*

"'Ordinarily, when an employee sustains a worksite injury, the exclusive remedy against his or her employer is provided by the workers' compensation law, and the employer is immune from a suit for damages.'"[3] (*Jones v. Sorenson* (2018)

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[3] '"'"The legal theory supporting this exclusive remedy provision 'is a presumed "compensation bargain," pursuant to which the employer assumes liability for industrial personal

25 Cal.App.5th 933, 941; see *People ex rel. Alzayat v. Hebb* (2017) 18 Cal.App.5th 801, 829 [workers' compensation "'"provides an employee's exclusive remedy against his or her employer for injuries arising out of and in the course of employment"'"].) Courts refer to this as "the workers' compensation exclusivity rule." (*People ex rel. Alzayat v. Hebb*, at p. 829; see *Shirvanyan v. Los Angeles Community College District* (2020) 59 Cal.App.5th 82, 105.)

One exception to that rule appears in section 3706, which provides that an injured employee may bring a civil action for damages against "any employer [who] fails to secure the payment of compensation" under the Act, as required by section 3700. An employer complies with its obligation under section 3700 "'to "secure the payment of compensation"'" by "'either purchasing workers' compensation insurance[ ] or self-insuring.'" (*Employers Mutual Liability Ins. Co. v. Tutor-Saliba Corp.* (1998) 17 Cal.4th 632, 638; see *Hollingsworth v. Superior Court* (2019) 37 Cal.App.5th 927, 930 ["All employers are required to 'secure the payment of compensation by obtaining insurance from an authorized carrier or by securing a certificate of consent from the Director of Industrial Relations to become a self-insurer.'"].) "'[I]f the employer has not secured workers' compensation coverage or

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injury or death without regard to fault in exchange for limitations on the amount of that liability. The employee is afforded relatively swift and certain payment of benefits to cure or relieve the effects of industrial injury without having to prove fault but, in exchange, gives up the wider range of damages potentially available in tort."'" (*People ex rel. Alzayat v. Hebb* (2017) 18 Cal.App.5th 801, 829; see *King v. CompPartners, Inc.* (2018) 5 Cal.5th 1039, 1046-1047.)

its equivalent, an injured employee may bring a civil suit against his or her employer.'" (*Jones v. Sorenson*, *supra*, 25 Cal.App.5th at p. 941.)

Castro argues the trial court erred in granting summary judgment in favor of Hallmark because Hallmark did not meet its burden to show the workers' compensation exclusivity rule barred his action. Castro no longer challenges Hallmark's evidence it had a workers' compensation insurance policy at the time of his accident,[4] but instead argues evidence Hallmark had a policy at the time of the accident was not enough to meet its burden. He insists Hallmark had the burden to show Castro "received payment of workers' compensation benefits."

The first problem with Castro's argument is that he did not raise it in his opposition to the motion for summary judgment. There, he argued only that Hallmark did not submit competent evidence it had a policy and that, even if Hallmark did have a policy, Castro had not worked enough hours to qualify for coverage under it (another argument he has abandoned on appeal). Therefore, as Hallmark correctly contends, Castro has forfeited his argument Hallmark was required to show Castro received payment of workers' compensation benefits. (See *Jackpot Harvesting Co., Inc. v. Superior Court* (2018)

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[4] Castro states in passing that the trial court erred in overruling his "hearsay and authentication objections to the insurance policy," but he does not provide any argument, record citation, or legal authority to support that statement. He therefore has forfeited any argument the trial court erred in overruling his evidentiary objections. (See *Hernandez v. First Student, Inc.* (2019) 37 Cal.App.5th 270, 282 [an appellant forfeits an argument by failing to provide record citations, cite legal authority, or develop any legal argument].)

26 Cal.App.5th 125, 155 ["arguments not raised in summary judgment proceedings" are forfeited]; *Roman v. BRE Properties, Inc.* (2015) 237 Cal.App.4th 1040, 1056-1057 [by not making an argument in opposition to a motion for summary judgment, the appellants forfeited the argument on appeal].)

The second problem with Castro's argument is that it is incorrect. Castro alleged he suffered his injury when, "in the course of and scope of his employment with defendants," he "fell from a tree as he was performing services for" them at the apartment complex. As stated, he alleged section 3706 entitled him to bring an action for damages because Hallmark did not obtain worker's compensation insurance that covered injuries Castro incurred in the course and scope of his employment. Thus, as Castro states in his reply brief, the "actual theory alleged in [his] Complaint is based on Labor Code [section] 3706."

"In a statutory action under section 3706 of the Labor Code, it is the '*plaintiff's* obligation to plead and prove violation of section 3700 by his [employer's] failure to carry workers' compensation insurance.'" (*Campos Food Fair v. Superior Court* (1987) 193 Cal.App.3d 965, 968 (*Campos*); see *Doney v. Tambouratgis* (1979) 23 Cal.3d 91, 99, fn. 11 [it is the "*plaintiff's* obligation to plead and prove [a] violation of section 3700 by his [employer's] failure to carry workers' compensation insurance"]; *Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1178 ["Because the complaint . . . seeks recovery against an employer for work-related injuries, the exclusivity rule will bar appellant's . . . action unless he can establish that [the defendant] failed 'to secure the payment of compensation' as required under the Act. It is appellant's burden to show there was no coverage."].) Because Hallmark presented evidence it had workers'

compensation insurance coverage at the time of Castro's accident, which he no longer disputes,[5] Hallmark was entitled to judgment as a matter of law. (See *Campos*, at p. 967 [employer was entitled to summary judgment in an action under section 3706 where it provided a declaration stating "it had a workers' compensation policy in full force and effect at the time [the employee] was injured"]; see also *Rymer*, at p. 1177 ["Jurisdiction of the superior court to try claims of an employee against his employer for damages under section 3706 arises only when payment of compensation is not secured."].)

Castro cites several cases he suggests "indicate that a defendant must show a plaintiff received workers' compensation benefits for the claimed injuries, before a plaintiff can be barred from pursuing a damages action for the same injuries." None of those cases, however, says anything like that. (See, e.g., *Amerigas Propane, L.P. v. Landstar Ranger, Inc.* (2010) 184 Cal.App.4th 981, 990 [evidence the injured worker was an independent contractor and "had never received workers' compensation benefits" created a triable issue of fact concerning whether he was an "employee"]; *Zamudio v. City & County of San Francisco* (1999) 70 Cal.App.4th 445, 447 [injured employee of a subcontractor on a construction project who received workers'

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[5] Castro hints at a distinction between presenting evidence of an insurance policy and presenting evidence of insurance coverage, but he does not explain what that distinction might be. If he is suggesting Hallmark had the burden to show its policy covered him, that is not the law. (See *Campos*, *supra*, 193 Cal.App.3d at p. 968 ["it clearly was not [the employer's] burden here to show that the policy 'specifically' covered" the plaintiff in an action under section 3706].)

compensation benefits for his injury could not bring a tort action for the same injury against the project's owner and others].)

Castro also cites the rule that ordinarily "'a defendant in a civil action who claims to be one of that class of persons protected from an action at law by the provisions of the . . . Act bears the burden of pleading and proving, as an affirmative defense to the action, the existence of the conditions of compensation set forth in the statute which are necessary to its application.'" (*Arriaga v. County of Alameda* (1995) 9 Cal.4th 1055, 1060.) But an important exception to that rule applies where, as here, "a complaint affirmatively alleges facts indicating that the Act applies," along with "additional facts that negate application of the exclusive remedy rule." (*Ibid.*; see *Brown v. Desert Christian Center* (2011) 193 Cal.App.4th 733, 742, fn. 9 [application of the workers' compensation exclusivity rule may be shown "in one of two ways—i.e., either by the plaintiff through alleging facts indicating coverage under the [A]ct in his pleadings, or by the defendant through setting up the affirmative defense of coverage in responsive pleadings and proceeding to prove the existence of the requisite conditions"]; *Hughes v. Western MacArthur Co.* (1987) 192 Cal.App.3d 951, 957 ["if the complaint indicates that the action is within the scope of the workers' compensation law, the superior court has no jurisdiction over it unless additional allegations indicate that an exception to the exclusive remedy rule applies"].) In particular, as discussed, when a plaintiff alleges superior court jurisdiction under section 3706, he or she has the burden to prove the defendant's failure to comply with section 3700 by, for example, demonstrating the defendant did not have workers' compensation insurance. (*Campos*, *supra*, 193 Cal.App.3d at p. 968.)

C. *The Trial Court Did Not Err in Granting Summary Judgment in Favor of Kirby*

Castro contends the trial court erred in granting summary judgment in favor of Kirby because there were triable issues of material fact regarding whether Kirby is vicariously liable, under Civil Code section 2330, as the principal of its negligent agent, Hallmark. (See Civ. Code, § 2330 [rights and liabilities that would accrue to an agent from transactions within the scope of its authority accrue to the principal].) Although Kirby continues to maintain that Hallmark is an independent contractor, Kirby does not dispute that Hallmark is also its agent.[6] But in either case, Kirby argues, under *Privette*, *supra*, 5 Cal.4th 689 it is not vicariously liable for Castro's injury as a matter of law.

Privette, *supra*, 5 Cal.4th 689 held that "[a]n employee of an independent contractor generally may not sue the contractor's hirer for work-related injuries." (*Khosh v. Staples Construction Co., Inc.* (2016) 4 Cal.App.5th 712, 717; see *Privette*, at p. 702; *Alvarez v. Seaside Transportation Services LLC* (2017) 13 Cal.App.5th 635, 642 ["The *Privette* line of decisions establishes a presumption that an independent contractor's hirer 'delegates to that contractor its tort law duty to provide a safe workplace for the contractor's employees.'"].) "Instead, the injured employee is generally limited to worker's compensation remedies against his employer." (*Khosh*, at p. 717; see *Privette*,

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[6] Of course, Hallmark may be both. (See *Secci v. United Independent Taxi Drivers, Inc.* (2017) 8 Cal.App.5th 846, 859 [""Agency and independent contractorship are not *necessarily* mutually exclusive legal categories as independent contractor and servant or employee are. In other words, an agent may also be an independent contractor.""].)

at pp. 698-700.) And Castro does not challenge Kirby's contention that *Privette* would immunize it from liability here if Hallmark were merely an independent contractor. Instead, Castro argues "*Privette* principles" do not immunize Kirby from vicarious liability because Hallmark was not an independent contractor, but Kirby's agent.

As the Supreme Court indicated in *Privette*, however, the general rule of nonliability for the hirer of an independent contractor was an extension of the concept that a "principal" is subject to no greater liability than its "'agent,' whose exposure for injury to an employee is limited to providing workers' compensation insurance." (*Privette*, *supra*, 5 Cal.4th at p. 699, citing *Olson v. Kilstofte & Vosejpka, Inc.* (D.Minn. 1971) 327 F.Supp. 583, 587-588; cf. *Park v. Burlington Northern Santa Fe Railway Co.* (2003) 108 Cal.App.4th 595, 613 [the "*Privette* rationale," as extended by *Hooker v. Department of Transportation* (2002) 27 Cal.4th 198 (*Hooker*), applied regardless of whether the employer was an independent contractor or an agent of the hirer].)[7] As one court explained, in a passage cited by the Supreme Court in *Privette*: A principal "can be subject to no greater liability than its agent," and "[t]he agent being immune from suit at common law for negligence, the

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[7] In *Hooker*, *supra*, 27 Cal.4th 198 the Supreme Court held that "a hirer of an independent contractor is not liable to an employee of the contractor merely because the hirer retained control over safety conditions at a worksite, but that a hirer is liable to an employee of a contractor insofar as a hirer's exercise of retained control *affirmatively contributed* to the employee's injuries." (*Id.* at p. 202.) Castro insists *Hooker* does not apply because he is "not pursuing a 'retained control' theory of direct liability against Kirby."

principal would be likewise immune from suit; or put another way, the 'agent's' procuring of workman's compensation insurance is in this instance for the benefit of its 'principal' as well as for itself." (*Olson*, at pp. 587-588; see 2A C.J.S. (2021 supp.) Agency, § 466 ["The immunity of an agent, who is also an employer, because of a release effected by the workers' compensation laws, will ordinarily release the agent's principal."].)

Thus, under principles cited by *Privette*, even if Hallmark is Kirby's agent, Kirby, as the principal, could have no greater liability than Hallmark for Castro's injury.[8] And because, as discussed, Hallmark is not liable under the workers' compensation exclusivity rule, Kirby is not liable as a matter of law. (See *Vesci v. Ingrim* (1961) 190 Cal.App.2d 419, 422 ["where the recovery sought is based upon an agent's act or omission not directed or participated in by his principal (that is, where the principal's responsibility is simply that cast upon him by law by reason of his relationship to the agent), a judgment exonerating the agent also releases the principal from responsibility"].)

Castro also contends there were triable issues of material fact regarding whether Kirby is liable for Hallmark's alleged negligence "under the equitable doctrine of alter ego" and whether Kirby is liable as his (direct) employer "who had no workers' compensation insurance." Because Castro did not make

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[8] At oral argument, counsel for Castro conceded that, "to the extent that . . . workers' compensation applies to Mr. Castro and he is entitled to receive benefits" as Hallmark's employee, "then Kirby would get the benefit of that provision."

these arguments in opposing the motion for summary judgment,[9] however, he has forfeited them. (See *Jackpot Harvesting Co., Inc. v. Superior Court*, *supra*, 26 Cal.App.5th at p. 155; *Roman v. BRE Properties, Inc.*, *supra*, 237 Cal.App.4th at pp. 1056-1057.)

Finally, Castro argues Kirby was not entitled to summary judgment because "the policy of assuring compensation is not fulfilled in this case." He argues: "The policy rationale behind *Privette* is to preclude liability of a non-negligent hirer . . . to a non-negligent injured worker when there is a negligent independent contractor who has workers' compensation insurance to pay for the workers' injuries and who cannot be sued for damages in a civil action." He asserts this policy is not well served here because, after the court granted the motion for summary judgment, he filed a workers' compensation claim, and "Hallmark is disputing [his] entitlement to workers' compensation benefits."

As Castro concedes, however, "there has been no determination of [his] entitlement to benefits." More importantly, Castro cites no authority suggesting Hallmark's position in the worker's compensation proceeding or a

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[9] Castro did state in his opposition that it was "significant" Kirby and Hallmark are owned by the same person and that a reasonable jury was likely to find, "despite the corporate legal fiction of the defendants' existence, one man's ownership of both entities demonstrates that Kirby controlled Hallmark." These assertions, however, did not relate to any argument concerning "the equitable doctrine of alter ego." Rather, they related to Castro's argument that Kirby was liable as the principal of a negligent agent, more specifically, to Castro's contention that Hallmark was Kirby's agent because, among other reasons, Kirby controlled Hallmark.

determination in that proceeding that Castro is not entitled to benefits provides any basis for reversing the order granting summary judgment in favor of Kirby. (Cf. *Livitsanos v. Superior Court* (1992) 2 Cal.4th 744, 755 [there may be a "limited" class of cases where an employee's "injury will simply not have resulted in any occupational impairment compensable under the workers' compensation law or remediable by way of a civil action," but "the possibility of a lack of a remedy in a few cases does not abrogate workers' compensation exclusivity"]; Eskenazi, Cal. Civil Practice (2020 supp.) Workers' Compensation, § 15:1 ["The fact that no benefits are available for the kind of injury suffered does not affect the exclusivity of the compensation remedy."].)

DISPOSITION

The judgment is affirmed. The requests for judicial notice are denied. Hallmark and Kirby are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

FEUER, J.