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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

JAMEY MADDAS, Plaintiff and Appellant, v. JAIME RAMIREZ et al., Defendants and Respondents.	D076372 (Super. Ct. No. 37-2017-00008334-CU-PO-CTL)

APPEAL from a judgment of the Superior Court of San Diego County, Joel R. Wolfeil, Judge. Affirmed.

Joel C. Golden and John Y. Tremblatt for Plaintiff and Appellant.

Gates, Gonter, Guy, Proudfoot & Muench, Douglas D. Guy and Jesse Aaron Allen for Defendants and Respondents.

Defendants Dina Barron-Ramirez and her husband, Jaime Ramirez (collectively, Homeowners), contracted with AT&T to have a home security system installed in their residence. Plaintiff Jamey Maddas, an electrician

employed by Endeavor Telecom,[1] an AT&T subcontractor, was dispatched to the Ramirez home to complete the installation. During the installation work, as he was descending the stairs from the second to the first floor, Maddas fell and fractured his leg. As there was no dispute that Maddas was injured in the course and scope of his employment with Endeavor, he recovered worker's compensation benefits for his medical expenses and wage loss. Two years later, after settling his worker's compensation case, he sued Homeowners claiming the accident was caused by a loose carpet runner, which made the staircase unreasonably dangerous.

Generally, an employee of an independent contractor who is injured in the workplace cannot sue the hirer. (*SeaBright Ins. Co. v. US Airways, Inc.* (2011) 52 Cal.4th 590, 594.) An exception exists where the injury results from a concealed hazardous condition on the property that the landowner knew or should have known of and failed to remedy. (*Kinsman v. Unocal Corp.* (2005) 37 Cal.4th 659, 664 (*Kinsman*).) At the conclusion of Maddas's case-in-chief, the trial court granted Homeowners' motion for nonsuit, determining under *Kinsman* there was no substantial evidence they knew or should have known of a preexisting concealed danger on the stairs.

On this appeal, Maddas contends: (1) the court should have applied the nondelegable duty doctrine, not *Kinsman*; (2) there is substantial evidence that Homeowners knew or should have known of a hazardous condition; and (3) the court erroneously excluded evidence that Homeowners forged a signature on a $300 estimate for post-incident repair. We reject each of these contentions and affirm the judgment.

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1 According to Maddas, at some point Endeavor Telecom became known as Onepath Systems. Because the parties refer to Maddas's employer as "Endeavor," we do the same.

FACTUAL AND PROCEDURAL BACKGROUND

A. *The Carpet Runner Is Installed in 2004 and Reinstalled in 2012*

In 2003, Homeowners purchased a two-story single family residence that has a curved wooden stairway. A year later, they bought a carpet runner for the stairs from a retail carpet store. Having no experience installing carpet themselves, Homeowners purchased a carpet runner that included professional installation.

Because the stairway is curved, the installers cut the runner at each step and stapled the carpet to each stair. No one informed Homeowners of any difficulty or concern with the installation. They trusted that the installers "were professionals and they were doing the right thing in laying it properly." The carpet was flat and securely fastened to the stairs. Homeowners and their two minor children used the staircase virtually every day from 2004 to 2012 without incident.

In 2012, a water leak flooded the home. Homeowners' property insurer hired professionals to remove, dry, and reinstall the carpet runner. Homeowners trusted that their insurance company had hired competent professional installers. After the 2012 reinstallation, the stairs were again "perfect" and "looked like new." Homeowners had no concerns about stairway safety.

B. *Maddas Falls in April 2015*

Endeavor is an AT&T subcontractor that installs residential security systems. Maddas was hired by Endeavor in 2014. In April 2015, he was installing a system at Homeowner's residence that included a sensor to shut off the water supply in the event of a leak. This required Maddas to coordinate his work with a plumber.

As of April 13, 2015, Maddas had worked in the home on six separate occasions. Because part of the system was located in an upstairs bedroom, Maddas traversed the stairs numerous times. On each of these six prior occasions, Maddas saw the carpet runner; it was flat on every step and not torn. He never saw any indication that the runner was "in any way defective."

On April 13, while the plumber was working in the garage, Maddas was "walking around the house, just making sure everything was in order." While descending the stairs to check on the plumber, Maddas's foot came out from under him and he fell about midway down the staircase. He slid to the bottom of the stairs on his backside, coming to rest on the second step. Maddas fractured his fibula and dislocated his ankle. After falling, Maddas saw the carpet runner had separated at a seam and detached from some of the stairs. He was not sure what caused his fall; however, he "assume[d]" it was due to the carpet runner.

Workers compensation paid Maddas's medical bills and wages while he was unable to work. After receiving a lump sum settlement of his worker's compensation claim in 2017, he sued Homeowners.

C. *The Litigation and the Nonsuit Motion*

Maddas's form complaint alleges a cause of action for premises liability based on "loose carpet on the stairway."[2] At trial, Maddas's retained carpet expert, Steven Vanderstyne, testified that he inspected the stairway on April 12, 2019—four years after the fall. He found the carpet runner on the "third or fourth stair from the bottom" to be "pretty loose." He was able to form a one-inch "bubble" in that part of the carpet by pushing from the front to the

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[2] Maddas also alleged a cause of action for "General Negligence"; however, he voluntarily dismissed that on the first day of trial.

back of the tread. According to Vanderstyne, the bubble indicated that the "standard staples" used to affix the runner to the stairs were "coming up." He opined that the installers should have used different staples with a narrower crown designed to penetrate carpet. However, Vanderstyne conceded that he could not determine if the bubble existed when the carpet was installed or if the staples were simply coming loose at the time of his inspection, some four years after Maddas fell.

Vanderstyne agreed that Homeowners had the "right to expect . . . quality installation" by the store that sold them the runner. In response to hypothetical questions, he testified that Homeowners would reasonably believe the runner had been properly installed if it never exhibited any wrinkles, loosening, tearing, separating, or any other type of observable defect prior to Maddas's fall.

Relying on *Kinsman*, *supra*, 37 Cal.4th 659, Homeowners moved for nonsuit at the end of Maddas's case-in-chief on the grounds there was no substantial evidence to support a finding that they knew or should have known of a concealed preexisting hazardous condition on the stairs. Explaining why Vanderstyne's testimony about the bubble in the carpet was insufficient to create a jury issue, Homeowners' attorney stated:

> "Now, there's this bubble comment that when Mr. Vanderstyne got there 4 years later, looked at a different step, he was able to push and get some air underneath the tread. But what hasn't been said is that ever occurred before this incident or in the same area of this incident.
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> "Mr. Maddas himself said that it never moved whatsoever underneath his feet. Ms. Barron-Ramirez said that it never moved whatsoever under anyone's feet in their house. So, again, the 4-year-later fact that he was able to put some pressure on and get some air underneath one of the treads, that is not substantial evidence of known or should have known . . . ."

Applying *Kinsman*, *supra*, 37 Cal.4th 659 , the court granted the motion, stating:

> "[T]he court is aware of no evidence that [Homeowners] knew that the installation of the carpet runner as described by Mr. Vanderstyne was an unsafe condition.
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> "The real question then is whether they reasonably should have known. And I heard plaintiff's argument. I'm just not persuaded though that there's a rational foundation in the evidence that would support a finding by the jury that the [Homeowners] knew or reasonably should have known that the installation of this carpet runner constituted an unsafe concealed condition."

The court then entered judgment for Homeowners.

DISCUSSION

A. *The Court Correctly Granted Nonsuit Because There is No Substantial Evidence That Homeowners Knew or Should Have Known of Any Concealed Hazard*

1. Kinsman *Supplies the Applicable Legal Rule*

Privette v. Superior Court (1993) 5 Cal.4th 689 (*Privette*) holds that as a general rule, the hirer of an independent contractor is not liable for on-the-job injuries to the independent contractor's employees. (See *Gordon v. ARC Manufacturing, Inc.* (2019) 43 Cal.App.5th 705, 717.) One of *Privette*'s underpinnings is the availability of workers' compensation benefits to the injured employee. " '[I]t would be unfair to impose liability on the hiring person when the liability of the contractor, the one primarily responsible for the worker's on-the-job injuries, is limited to providing worker's compensation coverage.' " (*Kinsman*, *supra*, 37 Cal.4th at p. 669.) Thus, "principally because of the availability of workers' compensation," a "useful way" to view these cases "is in terms of delegation." (*Id.* at p. 671.) The hirer delegates to the independent contractor the duty to provide the contractor's employees with a safe working environment. (*Ibid.*)

"[W]hen there is a known safety hazard on a hirer's premises that can be addressed through reasonable safety precautions on the part of the independent contractor, a corollary of *Privette* and its progeny is that the hirer generally delegates the responsibility to take such precautions to the contractor, and is not liable to the contractor's employee if the contractor fails to do so." (*Kinsman*, *supra*, 37 Cal.4th at pp. 673–674.) But the rule is different for concealed hazards. This is because "[a] landowner cannot effectively delegate to the contractor responsibility for the safety of its employees if it fails to disclose critical information needed to fulfill that responsibility, and therefore the landowner would be liable to the contractor's employee if the employee's injury is attributable to an undisclosed hazard." (*Kinsman*, at p. 674.) The hirer's liability in such cases is based on his or her own negligence. (*Ibid.*)[3]

In sum, the "usual rules about landowner liability" in a premises liability action are "modified, after *Privette*, as they apply to a hirer's duty to the employees of independent contractors." (*Kinsman*, *supra*, 37 Cal.4th at p. 674.) Because the landowner delegates responsibility for employee safety to the independent contractor, "a hirer has no duty to act to protect the employee when the contractor fails in that task and therefore no liability."

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[3] For example, "If the employee of an independent contractor as part of his job . . . burrows into ground belonging to the landowner/hirer, and is injured when he ruptures an underground storage tank containing a hazardous substance that the landowner knew was present but the contractor did not . . . . [w]hat is critical . . . is that if the landowner knew or should have known of the hazard and the contractor did not know and could not have reasonably discovered it, then the landowner delegated the responsibility for employee safety to the contractor without informing the contractor of critical information that would allow the contractor to fulfill its responsibility. Under such circumstances the landowner may be liable." (*Kinsman*, *supra*, 37 Cal.4th at p. 677.)

(*Ibid.*) However, "the hirer as landowner may be independently liable to the contractor's employee . . . if (1) [the landowner] knows or reasonably should know of a concealed, pre-existing hazardous condition on [the] premises; (2) the contractor does not know and could not reasonably ascertain the condition; and (3) the landowner fails to warn the contractor." (*Id.* at p. 675.)

Maddas contends the court made a fundamental mistake by applying *Kinsman*. He contends *Kinsman* stands for the proposition that Civil Code section 1714 is the " 'proper test to be applied' " in a premises liability case. Maddas concludes the court should have determined that Homeowners had a "non-delegable duty" of care and are, therefore, liable for negligent installation of the carpet runner.

Kinsman forecloses this argument. After recognizing the "basic policy of this state" is set forth in Civil Code section 1714, the Supreme Court held that these "usual rules about landowner liability *must be modified*, after *Privette*, as they apply to a hirer's duty to the employees of independent contractors." (*Kinsman*, *supra*, 37 Cal.4th at p. 674, italics added.) Civil Code section 1714 does not entirely define the hirer's duty to employees of independent contractors. (*Kinsman*, at p. 674; *Alaniz v. Sun Pacific Shippers, L.P.* (2020) 48 Cal.App.5th 332, 338–339 [jury instructions on general principles of premises liability erroneously given; court should have instructed under *Kinsman*].) As the court explained in *Sheeler v. Greystone Homes, Inc.* (2003) 113 Cal.App.4th 908, "[T]he nondelegable duty rule is incompatible with the limitations on hirer liability established in *Privette* and subsequent cases." (*Sheeler,* at p. 922.)

In a related argument, Maddas asserts the trial court erroneously "expanded" *Kinsman* to "excuse an owner from liability for the entirety of the building containing the workspace, for work completed years before the

incident, or for work completed by an unknown unidentified general contractor." But the court here did not "excuse" liability. Far from it. In ruling on the nonsuit motion, the court stated it "listened carefully" to the testimony. The court determined there was sufficient evidence to support a finding that the installation created an unsafe condition. The court was "impressed" with Vanderstyne's testimony and expressed "tremendous empathy for Mr. Maddas." The court granted nonsuit not because it excused Homeowners, but because it determined there was no substantial evidence, they did anything wrong. Moreover, in determining whether *Kinsman* applies, it does not matter that the carpet was installed years before the fall ago by an unidentified installer. Applying the *Kinsman* rule turns on the plaintiff's identity—as an employee of an independent contractor—not the carpet installer's identity.

Maddas also contends that applying *Kinsman* here would "create new safety obligations on an independent contractor." The record belies this claim. Under *Kinsman*, the duty of care delegated as a matter of law from the landowner to the contractor is not onerous. It is limited to "a known safety hazard on the hirer's premises that can be addressed through reasonable safety precautions on the part of the independent contractor." (*Kinsman*, *supra,* 37 Cal.3d at p. 673.) Maddas's employer has a "standard procedure" to check the premises, "observing the condition of the home . . . as we're moving through it" for safety. Employees are instructed to report anything they view as unsafe to the homeowner. In applying *Kinsman* here, the court did not impose any obligation that Maddas's employer did not already undertake under its own standard policies.

Citing *McKown v. Wal-Mart Stores* (2002) 27 Cal.4th 219, Maddas also contends that "responsibility for provision of a safe stairway . . . lies with the

owner." However, *McKown* is materially distinguishable. There, an independent contractor was hired to install sound systems in the ceiling of the defendant's store. The contractor installed the systems using platforms attached to the defendant's forklifts. The plaintiff, an employee of the independent contractor, was injured when the platform came loose from the forklift, causing him to fall. The Supreme Court held that "when a hirer of an independent contractor, by negligently furnishing unsafe equipment to the contractor, affirmatively contributes to the injury of [a plaintiff] . . . , the hirer should be liable to the employee for the consequences of the hirer's own negligence." (*Id.* at p. 225.)

In contrast to the setting in *McKown*, there is no evidence that Homeowners supplied Maddas with equipment to perform his work or in any other way actively participated or "affirmatively contribute[d]" to his injuries. (*McKown*, *supra*, 27 Cal.4th at p. 225.) Passively permitting an unsafe condition to occur does not constitute affirmative contribution to injury. (*Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 214–215.) " 'A hirer's failure to correct an unsafe condition, by itself, does not establish an affirmative contribution.' " (*Horne v. Ahern Rentals, Inc.* (2020) 50 Cal.App.5th 192, 202.)

Maddas's reliance on *Markley v. Beagle* (1967) 66 Cal.2d 951 is also unpersuasive because the facts are so different from the relevant ones here.[4] In that case, an employee of an independent contractor, en route to repair a ventilation fan on the landowners' roof, was injured when a mezzanine railing inside the building gave way, and he fell to the floor below. (*Markley,*

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4 *Markley*, a pre-*Privette* case, involves a hirer's liability to an independent contractor's employee for a known concealed hazard and is consistent with the rule in *Kinsman*. (See *Kinsman*, *supra*, 37 Cal.4th at p. 675.)

at p. 955.) The owners were liable because "[t]hey knew or should have known that [the worker] would use the mezzanine to get to the fan on the roof" and in light of recent renovations by the owners that removed bins built around the railing, "the jury could reasonably conclude that . . . the owners were negligent in failing to discover the dangerous condition of the railing [that now lacked sufficient support] and to either correct it or adequately warn [the worker] of it." (*Id.* at pp. 955–956.) In contrast here, and as we next discuss, there is no substantial evidence that Homeowners knew or should have known of a concealed hazard on the stairway.

2. *Standards for Nonsuit and Appellate Review*

Having clarified the applicable law, we briefly review the standards for granting a nonsuit. "A defendant is entitled to a nonsuit if the trial court determines that, as a matter of law, the evidence presented by plaintiff is insufficient to permit a jury to find in his favor. [Citation.] 'In determining whether plaintiff's evidence is sufficient, the court may not weigh the evidence or consider the credibility of witnesses. Instead, the evidence most favorable to plaintiff must be accepted as true and conflicting evidence must be disregarded. The court must give "to the plaintiff['s] evidence all the value to which it is legally entitled, . . . indulging every legitimate inference which may be drawn from the evidence in plaintiff['s] favor." ' [Citation.] A mere 'scintilla of evidence' does not create a conflict for the jury's resolution; 'there must be *substantial evidence* to create the necessary conflict.' " (*Nally v. Grace Community Church* (1988) 47 Cal.3d 278, 291 (*Nally*).)

In reviewing a grant of nonsuit, we evaluate the evidence de novo to determine if there is substantial evidence to support a plaintiff's verdict. (*Nally, supra,* 47 Cal.3d at p. 291.) Accordingly, in this case the court could properly grant nonsuit only if there is no substantial evidence to support a

finding that Homeowners knew, or in the exercise of reasonable care should have known, of a concealed hazardous condition of the stairs.

3. *There is No Substantial Evidence That Homeowners Knew or Should Have Known of a Hazardous Condition of the Stairs*

The evidence was undisputed that Homeowners were not carpet experts and had never installed carpet themselves. They hired a professional carpet installer to do so in 2004 as part of the carpet's purchase price. After installation, the carpet covering each stair tread lay perfectly flat and did not move. Barron-Ramirez testified, "Everything was secure. It felt good. It didn't have any wrinkles. It didn't feel loose at all." The carpet was "firmly stapled" on each tread. From 2004 to 2012, Homeowners and their two minor children used the staircase daily without incident.

Homeowners again relied on professional carpet installers retained by their insurer to remove and reinstall the carpet after the 2012 flood. Barron-Ramirez testified that after the carpet runner was reinstalled in 2012, the stairs were "perfect." From 2012 to the date of Maddas's fall, Homeowners and their children "used that staircase up and down, sometimes at night with the lights off. Nothing was ever a problem." Consistent with this evidence, Vanderstyne acknowledged that after the runner was reinstalled in 2012, Homeowners "would not become aware of a fall risk on the staircase just by them using those stairs normally."

Prior to his fall, Maddas had been in the home six different times. The first and only time that he observed any defect in the runner was after he fell. On his prior visits to the home, Maddas saw nothing indicating the carpet runner was defective or torn. On each of the six prior occasions, the carpet runner was flat on every step. Maddas never felt "any sort of slip" until he fell.

Homeowners knew that the original installers cut the runner and attached it with staples. But there was no evidence they knew or should have known that the installation method was hazardous or below professional standards. No one told them there was any difficulty in installing the runner. No one spoke to them about using "additional methods" to secure the carpet. After Homeowners returned to the home after the flood remediation, "everything looked like new."

In asserting there is sufficient evidence of constructive notice, Maddas points to Vanderstyne's testimony that when he examined the third or fourth stair from the bottom, the carpet was loose enough to create a one inch "bubble." Vanderstyne testified that this bubble would loosen the carpet from the staples securing it to the stairs. Critically, however, Vanderstyne conducted his site inspection in April 2019—*four years after Maddas fell*. Evidence of loose carpet in 2019 is relevant to show constructive notice at the time Maddas fell only if the same or substantially similar conditions existed before April 13, 2015, the date of the accident.

Maddas does not cite, and we have not found, any evidence to support even a faint inference that the "bubble" existed before Maddas's fall. Vanderstyne was not asked whether the bubble he observed in 2019 was likely also present four years earlier. To the extent his testimony addresses that critical inquiry, it undercuts Maddas's argument. Vanderstyne testified that he was unable to determine if the bubble was causing staples to loosen for the first time in 2019, or instead if the staples were installed that way in 2012.

Absent substantial evidence of actual or constructive knowledge of the concealed hazard, the court was required to grant nonsuit. " 'Substantial evidence . . . is not synonymous with "any" evidence.' Instead, it is

' " 'substantial' proof of the essentials which the law requires." ' [Citations.] The focus is on the quality, rather than the quantity, of the evidence. 'Very little solid evidence may be "substantial," while a lot of extremely weak evidence might be "insubstantial." ' [Citation.] Inferences may constitute substantial evidence, but they must be the product of logic and reason. Speculation or conjecture alone is not substantial evidence. [Citations.] Expert opinion testimony constitutes substantial evidence only if based on conclusions or assumptions supported by evidence in the record. Opinion testimony which is conjectural or speculative 'cannot rise to the dignity of substantial evidence.' " (*Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651.)

Contrary to Maddas's contention, evidence of a carpet "bubble" in 2019 is not *by itself* substantial evidence of a like bubble four years earlier. On this record, one can only speculate whether the bubble preexisted Maddas's fall, and if so to such a degree that it would impart constructive knowledge of a fall hazard.

Maddas also contends that in ruling on the nonsuit motion, the court "impermissibly weighed the evidence." He points to the court's statement that it found Barron-Ramirez's testimony to be "credible." However, the court also stated Maddas "testified credibly" and that the court was "impressed" with Vanderstyne's testimony. Moreover, in a portion of the reporter's transcript that Maddas does not cite, the court acknowledged that it was required to "draw inferences" in Maddas's favor and "it's not about credibility. It's about the state of the evidence as it was presented." Viewing the record as a whole, as we must, the court's statements about witness credibility were gratuitous and do not indicate the court applied an incorrect standard in ruling on the nonsuit motion.

Maddas additionally asserts that the court "disregarded" substantial evidence from which a jury could infer constructive knowledge. He states that Barron-Ramirez "was an experienced property owner" who "saved money by not purchasing carpet pad, tack strip, and/or professional carpet layers," and "[unprofessional] carpet layers were used in all three installations."

The record belies this assertion. Barron-Ramirez is not a carpet expert and she has never installed carpet. She purchased the carpet at retail from a store that only sells carpet. She never refused the store's offer to sell her a carpet pad; there never was an offer.

Vanderstyne testified the carpet was not installed in a professional manner. But that is a distinctly different issue from whether the carpet was installed by professionals. Vanderstyne conceded that Homeowners could reasonably rely on the installer's expertise and believe the carpet was properly installed.

Maddas also contends the court ignored Vanderstyne's testimony that a professional carpet installer would "normally explain the risks of laying the carpet." Based on that testimony, he asserts the jury could infer that Homeowners were warned about the hazards of attaching the runner to the stairs. Again, however, the record contradicts Maddas's assertion. Vanderstyne was not asked and did not testify about what a professional carpet installer would "normally" explain. Counsel asked Vanderstyne, "Do *you* advise your clients and customers about the safety of the carpets they want to install?" (Italics added.) A professional standard of care is established by the accepted industry practice, not the opinion or practices of a single expert. (*Spann v. Irwin Memorial Blood Center* (1995) 34 Cal.App.4th 644, 655.) Barron-Ramirez testified that Homeowners received no such warnings. There is no contrary evidence.

B. *The Court Did Not Abuse Its Discretion in Excluding Evidence That Homeowners Forged a Signature on a $300 Repair Estimate*

Maddas damaged the carpet runner when he fell. After the accident, Barron-Ramirez and/or her husband contacted Jesse Diaz, a carpet salesperson, to obtain a repair estimate. Barron-Ramirez had purchased carpet from him some 25 years ago, and they were family friends. Homeowners told Diaz they needed a $300 estimate for labor, and Diaz obliged by giving them one on a company invoice, no questions asked.

In producing a copy of the estimate in response to a subpoena, Diaz wrote, "They forged my signature." Homeowners moved in limine to exclude evidence of the estimate and "alleged forgery" on the grounds that it was irrelevant, inadmissible as a subsequent remedial measure, and also properly excluded under Evidence Code section 352. The court granted the motion.[5]

On appeal, Maddas contends the court erroneously excluded the evidence because forgery is relevant to impeach Homeowners' credibility. Pointing to the court's comment that it found Barron-Ramirez's testimony to be credible, Maddas asserts the court "suppressed evidence of a forgery relating to the very issue the court found dispositive in the case."

The court did not abuse its discretion in excluding the evidence of forgery. Forging a post-incident estimate for labor (as part of a reimbursement claim to AT&T) is not relevant to show actual or constructive knowledge of a pre-incident concealed hazard. Moreover, to the extent forgery might reflect on Homeowners' credibility, the court in ruling on the nonsuit motion could not, and did not, weigh or consider witness credibility. Thus, excluding evidence of forgery could not have affected the outcome.

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[5] The record on appeal does not include the order granting this motion. However, the clerk's minutes (also not in the record) indicate the court granted the motion in limine.

DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

HUFFMAN, Acting P. J.

HALLER, J.