



# Calif. Judges Keep Project Leads Liable In Foreman's Attack

By **Nate Beck**

Law360 (January 30, 2023, 7:10 PM EST) -- A California state appeals court has found project leaders may be liable after a foreman for a subcontractor was assaulted on the job at a San Francisco apartment construction site, in a decision overturning a lower court's ruling.

A three-judge panel in California's First Appellate District on Friday **ruled** that project owner John Stewart Co. and general contractor Cahill Contractors Inc. could be on the hook for injuries that Abraham Degala, a foreman for subcontractor Janus Corp., suffered while working on the site in San Francisco's Hunters Point neighborhood.

A lower court in 2021 found Degala couldn't sue John Stewart Co. or Cahill under [Privette v. Superior Court](#) , a decision that makes subcontractors alone responsible for the injuries of their employees in many cases.

The appeals court, however, homed in on an exception to the Privette rule. They sided with Degala, who argued the project owner's and lead contractor's decisions on the site led to his injuries, making them liable under an exception in [Hooker v. Department of Transportation](#) .

"We obviously think that they're spot on," Alan Dell'Ario, an attorney for Degala, told Law360 on Monday. "The court seemed to recognize that this was a textbook example of the Hooker exception to Privette."

Degala sued after a 2017 attack in which three people somehow entered one construction site, followed him into an unfenced walkway between two buildings that were part of the project, and assaulted him there.


Degala sued Cahill and John Stewart Co., claiming they failed to monitor access to the site and failed in their duty to provide a safe working environment.

The work called for renovating 27 buildings that contained housing over five phases beginning in 2015. Cahill typically fences off the entirety of its construction sites, but had opened the walkway where Degala was assaulted after neighborhood residents complained that the fences were blocking their access to a bus stop, according to court documents.

In the first phase of the project, the two project leaders hired a security company that provided uniformed guards to prevent theft. But in 2016, the companies replaced the security guards with cameras that were not monitored during working hours, according to court documents.

Cahill also interrupted work on the site in response to safety problems in the neighborhood, telling workers to stop work before sundown after a 2016 shooting, for example. Workers also complained in hazard reports that working in the neighborhood posed a danger to them.

Degala ultimately argued in his complaint that Cahill had allowed "unfettered access" to the site and that its decision to remove security from the project led to his assault.

Shelly Kramer, an attorney for the project leaders, told Law360 on Monday that the appeals court overlooked arguments in their brief that the companies weren't liable under another California appeals decision. [Arendell v. Auto Parts Club Inc.](#)  held that employees of an auto parts store that

was repeatedly robbed couldn't seek relief beyond workers' compensation from their employer.

"They've failed to comment on that decision at all," Kramer said.

Dell'Ario, however, said the decision doesn't apply to employees of subcontractors, like Degala, only direct employees, making the argument moot.

"No wonder the Court of Appeal didn't discuss it," he said.

In its decision, the appeals court held that Cahill and John Stewart Co. were responsible for keeping the work site safe because Degala's employer, Janus, had no such duty under its subcontract.

The court also noted that the project leaders hired off-duty police officers to patrol the site and closed off the area where Degala had been attacked after the incident. It sent the case back to trial court, leaving a jury to decide if the companies acted reasonably or if their actions led to Degala's injuries.

"This is not a case where JSC and Cahill passively permitted an unsafe condition to exist: There is ample evidence that JSC and Cahill took affirmative steps to address the dangers posed to workers in an area known to have a high rate of crime," Justice Marla J. Miller wrote for the panel.

Justices Marla J. Miller, James Richman and Therese M. Stewart sat on the panel for the Court of Appeal of the State of California.

Abraham Degala is represented by Marjorie Heinrich and Ethan Ananda Wimert of Heinrich Law PC and Alan Charles Dell'Ario.

John Stewart Co. is represented by James E. Sell, Molly Aletha Gilardi and Shelley Kramer of Tyson & Mendes.

Cahill Contractors Inc. is represented by Louis Raymond Barella of Tyson & Mendes and Mark Giovanni Bonino of Hayes Scott Bonino Ellingson Guslani Simonson & Clause LLP.

The case is Abraham Degala v. John Stewart Co. et al., case number A163130, in the Court of Appeal of the State of California, First District, Division Two.

--Editing by Linda Voorhis.