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Commercial Landlords and Duty to Warn of Dangers

A California appeals court (in *Zuniga v. Cherry Avenue Auction*) upheld a \$9.5 million verdict in a suit holding a flea market owner liable in a vendor's electrocution death after a metal pole held by the tenant touched an overhead powerline, holding that the powerline was not an open and obvious hazard.

Cherry Avenue owns an outdoor swap meet in Fresno, California. Araceli Zuniga and her late husband Jose Flores rented two spaces to sell merchandise. Araceli and Jose had a booth set up using a metal canopy and poles that were 28 feet high. The tenants were given a vendor space that was 26.5 feet below a Pacific Gas and Electric power line. When the tenants tilted their booth upright, one of the poles hit the power line and they were both electrocuted. Zuniga survived, but her husband did not. The court opinions held that it was not obvious that the line was uninsulated, that it was energized, or that the amount of electricity being transmitted was lethal. Therefore, a warning would not have been useless; it would have provided information that was not obvious.

This case serves as a reminder that if it is not possible to remove an on-site danger that landlords still have the duty to warn of dangerous conditions, even if the danger is not entirely within the control of the landlord. If you have any questions about this case or the landlord's duty to inspect and warn of dangerous conditions, please contact one of the Hart King attorneys below.

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JOHN PENTECOST
Managing Partner



BILL DAHLIN
Partner



RYAN EGAN
Associate



VICKIE CHAN
Associate

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P: 714-432-8700 | www.hartkinglaw.com | F: 714-546-7457

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Hart King Marketing
A California Law Corporation
4 Hutton Centre Drive, Suite 900
Santa Ana, CA 92707