

## Inadequate Security Cases

***“This case signals the likely rejection by the Arizona Supreme Court that a landlord or owner cannot be held liable for criminal acts of third persons on the property.”***

In a recent decision by the Arizona Supreme Court Justice Feldman in commenting on the liability of an alcohol provider (i.e. dram shop liability) stated as follows:

"There are similar situations in which courts impose a duty of reasonable care to protect the public against another's foreseeable criminal acts. The imposition of duty generally responds to changed social conditions. For instance, courts now routinely hold a landlord liable for damages from the property's inadequate security or lighting, which contributes to harming a tenant or third person due to an intervening criminal act ..."

Consequently, Justice Feldman's comment in this case signals the likely rejection by the Arizona Supreme Court of the long held position that a landlord or owner cannot be held liable for criminal acts of third persons on the property. This position by the Arizona courts can be illustrated by the decision in *Shaner v. Tucson Airport Authority, Inc.*, where an action was brought by the husband of a murder victim against the Tucson Airport Authority, Inc. and operator of the parking lot at the airport for the abduction and murder of his wife. Mrs. Shaner had received a telephone call from her husband who was to be flying in from San Francisco and arriving at the Tucson Airport at 10:15 p.m. in May of 1973, but when he arrived at the airport his wife was not there to meet him and she was later found murdered near Fort Huachuca, Arizona. Mr. Shaner argued that there was grossly inadequate security at the parking lot in that it was dimly lit; there was security policy but no standard operating procedures as to how security was conducted in the parking lot; there was no security man stationed in the parking lot; security would merely patrol the perimeter of the parking lot; and anyone could enter the parking lot from the perimeter since it was fenced only with a rail fence running approximately thirty inches above the ground. The Arizona Court of Appeals refused to impose liability upon the Defendant airport and parking lot operator because it concluded that Mr. Shaner failed to prove that the Defendant's inadequate security was the causation in fact of his wife's murder.

It appears clear that the Arizona courts when faced with an issue of this sort in the context of an inadequate security claim made against an apartment complex landlord or owner that will no longer use "causation" as a bar to the ability of the plaintiff to successfully bring such a lawsuit.

The criminal act of the third person at the property will most probably be viewed as an intervening act not a superseding act that would mean liability could be imposed upon the landlord or the owner of the apartment complex. It has been stated that an event cannot be a superseding cause when the original party's negligence actually occurs in creating a risk that a certain event would occur. Another Arizona case illustrated this concept by stating that "an intervening force is not a superseding cause if the original actor's negligence creates the very risk of harm that creates the injury." In an Arizona case, a burglar alarm company had left a key to deactivate the alarm system and it was accessible to unauthorized persons. A subsequent burglary occurred and the burglar alarm company was not relieved of its liability by the Arizona Court of Appeals as it ruled that the subsequent intervening criminal conduct (of the burglar)

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was an intervening cause, not a superseding cause, of the victim's losses. The Arizona Court of Appeals commented: "The intervening act was certainly within the ambit of risk created by (the Defendant)".

A treatise which is referred to in many instances by the Courts, (The Restatement of Torts, 2nd states:

"If the likelihood that a third person may act in a particular manner is the hazard or one of the hazards which makes the actor negligent, such an act whether innocent, negligent, intentionally tortious, or criminal does not prevent the actor from being liable for harm caused thereby."

It naturally follows that the property owner who has an obligation of adequate security, [i.e. A.R.S. § 33-1324(3)] will not be able to relieve itself of liability merely by the pointing to the conduct which arguably is foreseeable and which could have been prevented by the landlord or owner. Recent jury verdict research has shown that since 1988 there have been 116 reported cases involving settlements in verdicts where the primary injury has been rape. Many juries are awarding verdicts well into million dollars plus range. As for cases involving apartment complexes and rapes, 46 cases surveyed in the research showed that the average jury verdict was \$1,500,000 and the average settlement was \$1,200,000. With such potential jury verdicts and with the emerging law in the State of Arizona, it is well advised that the prudent landlord and owner of an apartment complex take all appropriate means to avoid such incidents, and the potential liability which may exist given the current legal climate.

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October 1994 / Apartment News