

Property Security Measures

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A recent decision by the California Supreme Court provides the property management industry with a glimpse of how the Arizona courts could analyze a case where a Plaintiff (who is a crime victim at a property) sues an owner/management company for inadequate security measures at the property.

Plaintiff was an employee at a photo store that leased commercial space in a strip mall from the Defendants, the owners of the Pacific Plaza Shopping Center. The lease between the photo store and the owners granted the owners exclusive right to control the common areas of the strip mall.

An action arose after the Plaintiff was raped at the photo center when she was on duty. Plaintiff claimed that the owners were negligent in failing to provide adequate security to protect her from an unreasonable risk of harm. She stated that security patrols should have been implemented prior to her rape because criminal activity had previously occurred on the property and the employees and tenants were concerned about their safety on the premises. Furthermore, the Plaintiff alleged that transients who were often present in the common areas of the mall created a danger to the employees because of the possible violent confrontations that could occur between the transients and the employees of the shopping center.

The trial court granted summary judgement in favor of the owners on the basis that no legal duty was owed to the Plaintiff because her attack was unforeseeable and the Court of appeals affirmed this decision on other grounds. The court held that a duty was owed by the owners to the tenants and the tenants' employees to keep the premises in a reasonably safe condition and to take reasonable precautions against foreseeable criminal acts perpetrated by third persons. However, the court concluded that the owners did not act unreasonably in their failure to provide security patrols at the strip mall.

The Supreme Court of California limited their review to whether the owners were negligent in their failure to provide such security patrols. The court addressed whether the Plaintiff was among a class to which duty was owed because she was not an actual tenant of the owners, but merely an agent of the tenant. The court found that case law firmly upheld the notion that a duty was owed to employees of a tenant when that tenant is a store (and not a "natural person") because the store must act through its employees. Thus, the landlord owed the Plaintiff a duty to maintain their premises in a safe condition and protect her from foreseeable criminal acts of third parties that would likely occur in the absence of this safe condition.

Second, the court analyzed if the owners owed a duty to the Plaintiff despite the fact that the crime occurred in the store, and in an area in which the Defendants had no possession or control. In finding that such a duty existed, the court reasoned that the owners failure to control exterior areas could contribute to an attack which occurred inside a private area. Since the common areas of the strip mall were such an "exterior area" that was supposed to be maintained by the owner and because its condition may allow the perpetration of a crime, the fact that the crime occurred inside the store was irrelevant and did not negate the duty.

The court next determined whether the owners had reasonable cause to anticipate that criminal conduct such as at rape could occur in the shopping center unless it provided security patrols in the common

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areas. This analysis is hinged upon the determination of whether such criminal conduct was foreseeable. The Supreme Court of California had previously held that foreseeability could be established by a "totality of circumstances without the occurrence of similar incidents on the premises. However, in this case, this ruling was questionable because of the inherent unfairness it presented to the Defendants. In this action, the court distinguished its prior holding by stating that "rarely, if ever, can (foreseeability) be proven in the absence of prior similar incidents of a violent crime on (a) landowner's premises." The court then looked to the occurrence of other criminal conduct in the shopping center to see if it was determinative of foreseeability.

Although it was stated that a purse robbery and an act of indecent exposure had occurred in the Pacific Plaza shopping center the owners were given no notice that these crimes or any other similar incidents took place on the property. This lack of notice was supported by no entries of this nature in the owners' records which evidenced a standard practice of recording all violent crime that occurred on the owners' premises. Therefore, because of the owners' lack of knowledge and the court's uncertainty of whether these crimes actually occurred, the court held that such alleged conduct was not sufficient to make Plaintiffs attack foreseeable. Furthermore, even if such acts had occurred and the owners were put on notice, the alleged criminal acts that occurred in the Pacific Plaza shopping center were so dissimilar in nature to the assault suffered by the Plaintiff that they would not be indicative of foreseeability.

In determining whether Plaintiff's attack was foreseeable, the court also looked to the burden that could be imposed upon the owners. The court stated that because violent crime permeated society to the extent where any public locale could be a scene of a random attack, public policy could not mandate that security be in existence in every public area. Although utilization of security guards would have decreased the likelihood that the Plaintiff would have been attacked, such utilization was unwarranted in this case and would have imposed a significant expense upon the owners. Based upon the above reasoning, the Supreme Court upheld the Appellate Court's conclusion that the owners were justified in not providing guards in the common areas and were not negligent.

This decision indicates that a commercial landlord has several duties. The landlord owes a duty of maintaining the property in a safe condition not only to his commercial tenants, but to their employees. Furthermore, if the landlord does not keep the common areas of this property in a safe condition, he may be liable for an attack that occurred within the confines of a private store. This liability is based upon the fact that unsafe conditions in "exterior areas" perpetrate crimes in private areas. This decision also demonstrates that a landlord may be liable if he was put on notice of prior similar crimes that occurred upon his property because these would indicate that other criminal acts were foreseeable and that adequate security was needed. Because of the occurrence of prior criminal acts was not clearly established in this case, the rape of the Plaintiff was deemed unforeseeable and the landlord could not be negligent in his failure to provide security patrols.

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