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WHITE PAPER ALERT

**Premises Liability – Duty
Foreseeable Criminal Attack**

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Ambriz v. Kelegian

California Court of Appeal (4th District) – January 24, 2007

Premises Liability - Apartment Owner's Duty To Prevent Foreseeable Criminal Act

California landlord-tenant law imposes a duty of reasonable care on property owners to protect tenants from foreseeable third party criminal acts. This case provides another example of the balancing of the foreseeability of harm against the burden imposed on the property owner.

Plaintiff, Celia Ambriz, was assaulted and raped by an intruder at her apartment complex. The apartment complex rented to low-income senior citizens. The complex was marketed as a "controlled-access" community with a locked entry-gate and secure buildings. However, at the time of the attack, several entrances did not have working locks. The rapist was a transient, who was seen around the complex on a number of occasions in the months leading up to the assault, and was reported as becoming more aggressive over time. He frightened Ambriz and other tenants prior to the attack and was a known intruder to property management.

Following the attack, Ambriz retained attorney Kelegian to represent her in a premises liability action against the apartment complex owner. The owner of the complex filed a motion for summary judgment, which was granted.

Ambriz then filed an action against Kelegian for legal malpractice. Kelegian filed a motion for summary judgment arguing Ambriz could not establish the element of causation in her legal malpractice case. The trial court agreed and granted summary judgment in favor of Kelegian. Ambriz appealed and the Fourth District Court of Appeal reversed.

On appeal, Kelegian maintained it was not possible for Ambriz (and Kelegian) to prove the elements of duty and/or causation in the premises liability action. Thus there was no causal connection between any alleged fault on his part and the grant of summary judgment in the premises liability action. The Fourth District disagreed.

The Court of Appeal held that the apartment complex owner owed Ambriz a duty to protect her from third party crime. The Court reiterated that the scope of a landowner's duty is determined, in large part, by balancing the foreseeability of the harm against the burden of the duty to be imposed. In cases where the burden of preventing future harm is great, a high degree of foreseeability may be required. On the other hand, if the harm could be prevented by simple means a lesser degree of foreseeability is needed.

In this case the Court noted there was no need for onerous measures to be placed upon the property owner, such as hiring security guards, installing bright lighting or having security cameras. The Court concluded that all that was needed was for the apartment complex owner to maintain doors and locks in good working order. The court also determined that more likely than not the attacker, seen at the complex over 19 times before the assault, entered the complex through one of the non-secured entrances. The Court of Appeal held, the attack was foreseeable and the trial court should not have granted summary judgment. As a result, the Fourth District ruled that Kelegian had a winnable case and he was therefore not entitled to summary judgment in the legal malpractice action.

COMMENT

This is the latest in a series of cases interpreting the California Supreme Court's decision in Ann M. v. Pacific Plaza Shopping Center (1993) 6 Cal 4th 666. In any third-party criminal case, the defendant property owner must critically analyze whether a duty is owed to protect the plaintiff under the circumstances and whether there is a causal connection between the alleged breach of duty and the attack.

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