

The Negligence Report

A Monthly Publication Dedicated to Detailing Recent Cases Pertaining to Civil Liability Issues.

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RECENT CASES PERTAINING TO LIABILITY FOR THE CRIMINAL ACTS OF THIRD PARTIES.

In this issue, we will examine two cases involving a premises owner's liability for the criminal acts of third parties.

In Comfort Inn v. Leribus, 2006 Tex. App. Lexis 1108 (Tex. App. – El Paso, 2006), Ms. Leribus was staying at the Comfort Inn in Alvin. When she exited the hotel and walked out to her car she was carjacked, assaulted and dumped by the side of the highway. She later filed suit in Brazoria County District Court against her assailants and Comfort Inn alleging that Comfort Inn was negligent in failing to provide proper and adequate security and take reasonable safety measures. A jury found Comfort Inn negligent and 24% responsible for the incident. As a result, a judgment was entered against Comfort Inn for approximately \$310,000.00, which Comfort Inn appealed. The opinion presents an excellent overview of the law applicable to liability for a third person's actions. For the most part, a person has no legal duty to protect another from the criminal acts of a third person. Although, a person who controls the security and safety of a premises has a duty to exercise ordinary care to protect invitees from the criminal acts of a third person when he has reason to know of an unreasonable and foreseeable risk of harm to his invitees. Foreseeability only requires that the general danger be foreseeable, not the exact sequence of events. In order to show foreseeability, there must be evidence of specific previous crimes on or near the premises. The factors the court considers in determining foreseeability are: **proximity, recency, frequency, similarity and publicity**. The Plaintiff and Defendant both had experts testify about criminal activity in the area. The Plaintiff's expert examined complaint calls made to the Alvin Police Department for a one mile radius of the motel for the two years and two months prior to the incident. The Defense expert examined both complaint calls and actual offenses on the Comfort Inn property and the surrounding motel properties for the same period. Not surprisingly, the Plaintiff expert's sample had a wide variety of violent and non-violent crimes. Whereas, the Defense expert's sample showed no violent crimes for the period sampled and few non-violent crimes. The appeals court found there was no publicity of crimes in the one mile radius of the property and that Comfort Inn had no actual knowledge of crimes occurring in the area. Based upon this evidence, the El Paso Court of Appeals concluded that the actions of Ms. Leribus' assailants were not foreseeable as a matter of law. Prior to its holding, the court stated that a property owner does not have a duty to review criminal records to determine the risk of crime on its premises.

The Fourteenth District Court of Appeals in Nichols v. Tanglewood Manor, 2006 Tex. App. Lexis 975 (Tex. App. – Houston [14th Dist.], 2006) addressed the apartment owner's liability for the criminal acts of a third party. Margaret Nichols lived in a home adjoining the Tanglewood Manor Apartments in Angleton. In June 2001, Ms. Nichols was in her backyard when she was struck by a vagrant and forced into her home. The vagrant attempted to rape her but was unsuccessful. In August 2001, the same vagrant returned to Ms. Nichols home and raped her at gunpoint. Before and after the assaults of Ms. Nichols, the Tanglewood Manor apartments had a reputation in the community, partially fueled by a local newspaper article on the subject, as being a refuge for vagrants and criminal activity. Ms. Nichols filed suit in Harris County District Court alleging that Tanglewood Manor created the dangerous condition which led to her assaults. The trial court granted summary judgment from which the Plaintiff appealed. The appeals court found that Tanglewood Manor did not owe a duty to the Plaintiff since the assaults occurred on her property and the vagrant was not their agent or employee. The court distinguished the Texas Supreme Court's holding in Nixon v. Mr. Property Management, 690 S.W.2d 546 (Tex. 1985) by pointing to the fact that in Nixon the vagrant captured the plaintiff on the public sidewalk outside the complex and brought her back to the vacant apartment building. The Houston Court of Appeals specifically, found that Tanglewood Manor did not have a right to control the vagrant, the conduct or the premises where the incident occurred. The court also found that the vagrant's actions were not foreseeable. The Plaintiff pointed to multiple calls to the police department complaining of vagrants and criminal activity and the newspaper as evidence that the assault could be foreseen. However, the court found that Tanglewood Manor was under no duty to inspect police records of calls complaining of vagrants and criminal activity and that the newspaper article was published after Ms. Nichols second attack.

Comment:

These cases show that it takes a special set of circumstances for a premises owner to be liable for the criminal acts of third parties. Where precautions need to be taken is when the property is in an area known for violent crime. If you research the history of criminal activity in your premises' area, it will likely make establishing lack of knowledge more difficult. Sometimes ignorance is bliss.

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