

Landlord Liability for Criminal Activity by Dale Alberstone, Esq.

In California, a Landlord owes a duty to his tenants to take reasonable action to protect them from foreseeable criminal conduct of third parties. The failure of the Landlord to implement appropriate precautionary measures to avert a crime may render the landlord liable for physical injuries sustained by his tenant or a guest.

One recent case demonstrating the importance of a landlord's duty to provide a safe environment is Castaneda v. Olsher, decided by the California Court of Appeal on September 7, 2005. A somewhat detailed discussion of the facts is necessary to understand the court's analysis and conclusions.

Factual Background

On November 9, 1996, Castaneda was injured by a stray bullet shot during a gang fight in the mobile home park where he lived. The boy, who was then 17 years old, and three of his friends left a late-night party at approximately 2:00 a.m. to return to the mobile home which Castaneda shared with his grandmother and sister. Upon arriving at his home, Castaneda went inside to tell his sister that he and his friends were there. Castaneda's friends remained outside in their car. A few minutes later, another car with four people in it pulled behind Castaneda's friends' car in front of Castaneda's mobile home. The occupants of the second car had been at the same party as Castaneda and his friends.

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At some point after the second vehicle arrived, two men emerged from the mobile home located in the space directly across from Castaneda's home. The two exchanged rival gang slurs with the individuals in the second car.

Castaneda came back outside. While he was standing on the steps of his mobile home, one of the men standing outside the home across from Castaneda's fired 23 shots. A stray bullet struck Castaneda.

After the shooting, the police found that the individual who fired the shot was a member of a local gang.

Evidence at Trial

Castaneda's attorney showed at trial that the mobile home park endured much gang activity during the five years preceding the landlord's purchase of the 60-space park. Over time, the landlord's manager began to suspect that certain teenagers or young adults who lived in five of the mobile home spaces were members of neighborhood gangs. However, because the parents of the suspected gang members paid rent in a timely fashion, the landlord was not interested in evicting them.

From 1993 to 1995, the manager and her son, who assisted in the management, witnessed drug sales taking place within the park. Also in 1995, someone fired a gunshot into the park from approximately one and one-half blocks away.

In 1996, a resident of the mobile home park fired a gun in a lot adjacent to the park and then ran into the park and attempted to hide the gun. The owner was advised that the shot was fired during a gang fight.

About three months before Castaneda was shot, Castaneda's grandmother complained to management about gang members hanging around the park. The manager's son stated: "Well, guess what? We got one more batch moving in. This will be the fifth batch of gang members and they are moving right across from you."

In addition, the landlord apparently had told the manager to go ahead and rent to them because "their money is as good as yours."

The issue at trial was whether the gang-related shooting of Castaneda was foreseeable. If so, the landlord could have liability for Castaneda's injury. If not, there would be no liability.

Castaneda argued at trial that the landlord should have taken steps to secure the park against a shooting incident such as by (1) refusing to rent the space directly across from Castaneda to the new tenant because the manager was warned that members of the tenant's family had gang affiliation, (2) evicting all residents who had family members that had been identified as gang members, (3) maintaining and improving the lighting in the common areas, and (4) hiring security guards to patrol the park.

Castaneda also presented evidence showing that prior to the shooting incident, the landlord was aware that the park had experienced substantial crime problems and that there was gang activity occurring on or near the premises. The park was marked with gang graffiti on a daily basis and drug sales were a weekly event. In the preceding five years, there were 26 reported incidents of theft, arson, assault or vandalism occurring on the property.

Other facts of criminal activity occurring at the premises were also introduced at trial.

Ruling of the Court

The Court observed that in the usual case alleging landlord liability for the criminal acts of third parties, the crime in question is random and unexpected. For that reason, such acts are generally considered to have been unforeseeable in the absence of prior similar incidents occurring on the property. When the crime is unforeseeable, the landlord avoids liability.

However, the Court recognized that gang-related crimes are different from random criminal acts of third parties. The Court explained that it is well known that criminal and often violent activities are inherent to the gang lifestyle. When gang rivals clash, verbal taunting can quickly give way to physical violence and gunfire. No one immersed in the gang culture, including a landlord, is unaware of these realities.

The Court found that the landlord was aware not only that gang members were congregating in the park on a regular basis, but also that gang-related criminal activity was occurring there. Also, the landlord specifically knew of two prior shootings that had taken place just outside the park and that those shootings impacted the park.

The Court then explained that in the landlord-tenant context, the judicial system imposes a duty of reasonable care on the owner of an apartment building to protect its tenants from foreseeable third-party criminal assaults. The scope of the duty is determined by balancing the foreseeability of the harm against the burden of the duty to be imposed.

The Court observed that there is a sliding scale for imposing a high burden on a landlord for protective measures when the foreseeability is strong and a minimal burden upon a showing of a lesser degree of foreseeability.

Thus, the Court explained that with a high degree of foreseeability of serious criminal acts occurring on a piece of property, a property owner has a duty of care that includes the hiring of security guards.

In the Castaneda case, the Court concluded that when a landlord is on notice of the presence of gang members and gang activity on his property, it is reasonable to require the landlord to undergo efforts to increase security measures on the property. The Court said that such could be done in any number of ways, including increasing the security presence to more than just the property manager and her son, providing security personnel with specialized training in how to identify and deal with potentially dangerous situations, imposing and enforcing strict rules as to resident conduct in common areas, or providing a means by which to warn residents of troublesome areas. The Court also noted that maintaining existing lighting in proper working order may also deter crime.

Conclusion

There was once a maxim in California that "every dog gets one free bite," although that principle is no longer followed with respect to canines. On the other hand, it does seem to be the

rule of law with landlords, namely, if no prior similar criminal acts occurred, the landlord is typically not liable for the first incident. However, once it becomes foreseeable to the landlord that a shooting, burglary, rape or other type of crime may occur on the premises (which foreseeability generally arises from the occurrence of a prior act of the same nature), the landlord must take reasonable steps to prevent a recurrence of the same or similar type of criminal activity. The more likely the crime and the more serious its nature, the higher the burden that is imposed on the landlord.

Recommendations

Preventive actions which a landlord might consider in the face of foreseeable criminal activity are increasing the exterior lighting, installing visible video cameras, converting the building to a "security" building, raising the height of perimeter walls and fences, evicting problem tenants and hiring a security guard.

One additional important measure a landlord can take to help insulate himself from future liability is to confer with his local police department and implement the measures the law enforcement agency suggests. In that regard, it may be particularly helpful to a landlord's successful defense at trial to obtain a written memorandum from the police department setting forth the measures they recommend. By implementing those recommendations, a landlord may be able to demonstrate to the satisfaction of a jury that he took reasonable precautions even though a subsequent crime occurred.

Dale Alberstone is a prominent real estate attorney who has practiced real property and business law for the past 28 years. He has been appointed to periodically serve as a judge pro tem of the Los Angeles Superior Court and is a former arbitrator for the American Arbitration Association. He also testifies as an expert witness for and against other attorneys who have been accused of legal malpractice.

*Mr. Alberstone has been awarded an **AV** rating from Martindale-Hubbell, which is a registered certification of Reed Elsevier Properties, Inc. An **AV** rating reflects an attorney who has reached the heights of professional excellence and is recognized for the highest levels of skill and integrity.*

The foregoing discussion is intended as a general overview of the law and may not apply to the reader's particular case. Readers are cautioned to consult an advisor of their own selection with respect to any particular situation.

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