

## **Property Owner Liability for Third Party Criminal Act - Reasonably Foreseeable?**

Imagine you own a strip mall property – you have tenants who own various businesses on the property, perhaps a nail salon, a liquor store, a small gym, a bike store, and an auto parts store. Your income stream is generally good, and you are satisfied with your tenants. You occasionally visit the mall to assess the physical condition, or perhaps you hire a property management company to perform those tasks. Over the years, there have been a few incidents of shoplifting and perhaps a broken window or two, but no serious or violent crimes. The surrounding area has more incidents of crime, but the neighborhood is not considered a “high crime area”.

One day, much to your horror and surprise, you learn a murder has taken place at your property. A person was waiting outside the liquor store while his friends were purchasing items inside the store. While waiting, that person gets into a yelling argument with another liquor store patron. These individuals did not previously know each other. Emotions rise, the individual walks away towards the parking lot, and while walking away, the other person shoots and kills that individual. The family of the deceased later file a wrongful death action against you, the property owner, alleging premises liability. In particular, the lawsuit alleges that your property was dangerous because of inadequate security.

Are you liable? Can the family of the deceased recover against you as the property owner? The simple answer is “yes” if the third-party conduct was “reasonably foreseeable” (*Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 674. However, as with most legal analyses, the answer is never quite that simple. The key is the determination of “reasonably foreseeable”.

Broadly speaking, premises liability alleges a defendant property owner allowed a dangerous condition on its property or failed to take reasonable steps to secure its property against criminal acts by third parties.” (*Delgado v. American Multi-Cinema, Inc.* (1999) 72 Cal.App.4th 1403, 1406, fn. 1). But property owners do not have a duty to prevent unexpected and random crimes. (*Nicole M. v. Sear, Roebuck & Co.* (1999) 76 Cal.App.4th 1238, 1247.) Further, the duty is owed to invitees on the land. But this duty must be examined by looking at many “angles” to answer the question of whether in the management of his property, the possessor of land has acted as a reasonable person under all the circumstances. (*Sprecher v. Adamson Companies* (1981) 30 Cal.3d 358, 371).

Legally, the foreseeability analysis is performed by the court. In its determination, the court may look at whether there were prior, similar violent crimes on the property in the not too distant past, whether the shooter had a history of gun use or of brandishing a gun at the property and

whether there were ever complaints , in particular to you, of danger from guns or from the shooter, at the property.

If the court finds this murder was highly foreseeable, it will then inquire whether the duty to provide adequate security should be imposed on you. “[W]hile there may be circumstances where the hiring of security guards will be required to satisfy a landowner's duty of care, such action will rarely, if ever, be found to be a "minimal burden." The monetary costs of security guards is not insignificant” (*Ann M.*, supra at 679). Most courts have not imposed the duty of security guards on landowners.

In sum, if a third person commits a crime on your property which results in injury to another, your liability will depend on a multi-faceted analysis by the court. The most important factor in the analysis will be whether the third party’s conduct was reasonably foreseeable.

Should you have any questions or would like to learn more, please feel free to consult with one of our attorneys at McDowall Cotter APC by giving us a call at 650-572-7933. The accomplished attorneys of McDowall Cotter APC work in civil litigation, business services, and estate planning and are located in San Mateo, California. Our experienced and knowledgeable staff will be able to help you with any of your needs or concerns. Additionally, you can find McDowall Cotter APC on Facebook, Instagram, Twitter and LinkedIn @McDowallCotter.

-Written by Monica Castillo, Esq.