

**Court of Appeal Addresses Duty of Landowners
to Prevent Third-Party Criminal Acts on Premises**

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The recent case of *In Yu Fang Tan v. Arnel Management Company* (2nd App. Dist., Div. 3, January 29, 2009) 170 Cal. App. 4th 1087 (“*Yu Fang Tan*”), reaffirms existing California law and provides guidance to community managers and associations regarding their duty to take steps to properly secure common areas against foreseeable criminal acts of third parties.

Plaintiff Yu Fang Tan was shot at 11:30 p.m. in an attempted carjacking in the ungated portion of the common area of his apartment complex. Mr. Tan, his wife, and his son sued the management company and property owners, arguing that gates should have been installed on the entrance roadway rather than at the back of the entrance road to safeguard the parking area.

Three prior violent incidents had occurred in the apartment complex’s common area, all involving a sudden attack without warning, late at night, by a stranger on someone who was on the ungated portion of the premises. The trial court ruled that the prior violent crimes against others on the premises’ common areas were not sufficiently similar to the one perpetrated on plaintiff to impose a duty on defendants to protect tenants of the apartment complex. The court entered judgment for defendants, and plaintiffs appealed.

The Court of Appeal reversed the judgment, holding that three prior violent attacks by strangers in the common areas of the apartment complex were sufficiently similar to the attack on plaintiff to provide substantial evidence of the necessary degree of foreseeability to give rise to a duty on defendants to provide the “relatively minimal” security measures plaintiffs sought. The Court of Appeal found it significant that plaintiffs were *not* asking that defendants spend significant funds or take measures that would require ongoing surveillance or monitoring.

The scope of a landowner’s duty to provide protection from foreseeable third party criminal acts is determined by a balancing of foreseeability of the criminal acts against the burdensomeness, vagueness, and efficacy of the proposed security measures. The higher the burden to be imposed on the landowner, the higher the degree of foreseeability is required. On the other hand, where there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required.

The sliding-scale balancing formula is defined by the California Supreme Court using the following principles: Where the burden of preventing future harm caused by third party criminal conduct is great or onerous (as when a plaintiff asserts the defendant had a legal duty to provide guards or undertake equally onerous measures, or as when a plaintiff asserts the defendant had a legal duty to provide bright lighting, activate and

monitor security cameras, provide periodic “walk-throughs” by existing personnel, or provide stronger fencing), heightened foreseeability -- shown by prior similar criminal incidents or other indications of a reasonably foreseeable risk of violent criminal assaults in that location -- will be required. However, where the harm can be prevented by simple means or by imposing merely minimal burdens, only “regular” reasonable foreseeability as opposed to heightened foreseeability is required.

Following this analytical approach, courts evaluating a landowner’s duty first determine the specific measures the plaintiff asserts the defendant should have taken to prevent the harm. This defines the scope of the duty under consideration. Second, the court analyzes how financially and socially burdensome the proposed measures would be to a landlord given the facts of the case. Third, the court identifies the nature of the third party conduct that the plaintiff claims could have been prevented had the landlord taken the proposed measures, and assesses how foreseeable (from mere possibility to reasonable probability) it was that this conduct would occur.

In *Yu Fang Tan*, the Court of Appeal concluded that because the security measures sought by plaintiffs were not especially burdensome under the facts of the case, the trial court had erroneously required an excessively high showing of foreseeability requiring nearly identical prior crimes. The Court of Appeal emphasized that the test is prior *similar* incidents, not prior *identical* incidents. Because the plaintiffs in *Yu Fang Tan* asked only for relatively minimal security measures, the degree of foreseeability required was found to be “not especially high,” and the three prior incidents were sufficiently similar to make the assault on plaintiff foreseeable, and to place a duty of care on the defendants.

While *Yu Fang Tan* involved an apartment complex’s common area, its conclusions are equally applicable to an association’s common area. In a nutshell, the greater the degree of burden to be imposed on a landowner, the more foreseeable the criminal activity in question must be. Prior incidents do not have to be perfectly identical to the crime being evaluated, but must be sufficiently similar to make the subject criminal activity foreseeable in order to place a duty of care on the landowner.

Given the foregoing, associations board members and community association managers would be well-served to evaluate their scope of duty by reviewing historical police reports, complaints to the police, as well as their own records, including meeting minutes, community management reports, and security service records. Please contact our office for further information should your association wish to conduct such a review.