

Favorable Defense Case - Liability for Criminal Acts  
Saelzler v. Advanced Group 400

by Eric A. Schneider

On May 31, 2001, the California Supreme Court handed down its decision in Saelzler v. Advanced Group 400, 25 Cal.4th 763, which significantly increases the burden on the part of plaintiffs to prove causation in cases involving criminal attacks by third parties on the defendant's premises.

Plaintiff Marianne Saelzler was a Federal Express driver who was making a delivery to a resident of a 28-building, 300-unit apartment complex when she was accosted by three men. They beat her and sexually assaulted her resulting in serious injuries. The assailants were neither apprehended nor identified.

Saelzler filed suit against the owners of the complex alleging that, even though the defendants knew of frequently recurring criminal activity not only in the neighborhood at large, but in the complex itself, they provided no security personnel during daylight hours, which is when the attack in question took place.

The defendants moved for and were granted summary judgment by the trial court. The Court of Appeal reversed, holding that the plaintiff had made a sufficient showing to raise a triable issue of fact relative to causation. The Supreme Court then reversed again, restoring the summary judgment.

For purposes of the summary judgment motion, the defendants did not contest that they may have owed and breached a duty of care, but asserted that the possible breach of duty was not a substantial factor in causing the plaintiff's injuries.

The plaintiff necessarily admitted that she could not prove the identity or background of the assailants. While they might have been unauthorized trespassers, they also could have been tenants of the apartment complex who would have been authorized and empowered to enter locked security gates and remain on the premises. The primary purpose for having functioning security gates and guards would be to exclude unauthorized individuals from entering. The court turned her assertion that if a juvenile gang was headquartered in one of the buildings against her by pointing out that the gang members would have been entitled to enter and remain on the premises. In sum, the court found that the plaintiff could not prove that it was more probable than not that additional security precautions would have prevented the attack.

The plaintiff also maintained that placing the burden on her to prove that the defendants' act or omission in such circumstance was a substantial factor in bringing about an injury would make it virtually impossible for plaintiffs to recover from landlords or other property owners for negligence in failing to take reasonable protective measures to safeguard others from the criminal assaults of third persons, as a finding of causation would be justified only where the criminal was caught, and then only if the criminal were to testify what specific lack of deterrence on the property made it easier to commit the crime.

The court dismissed that argument pointing out that direct or circumstantial evidence, such as eyewitnesses, security cameras, fingerprints, or signs of break-in or unauthorized entry could demonstrate how the incident took place.

The Supreme Court had relatively recently made the plaintiffs' difficulty in establishing the existence of duty more onerous in Sharon P. v. Arman, Ltd. (1992) 21 Cal.4th 1181. In Saelzler, the plaintiff's burden for establishing causation has been made more difficult as well.