

New Jersey Extends and Clarifies Premises Liability Law to Include Criminal Attacks Even on Residential Property in Certain Circumstances

The New Jersey Appellate Court recently decided an appeal that had questioned the legal duties owed by a college fraternity and its officers or members to guests who are injured by criminal acts of third persons, while attending a social event at a private premises used as a fraternity house.

In *Peguero v. Tau Kappa Epsilon*, 439 N.J. Super. 77 (App. Div. 2015), the plaintiff attended a party hosted at a private residence that had been rented by several fraternity members. At some point a fight broke out amongst some of the guests. The plaintiff attempted to intercede and was shot and wounded by another person who was at the party. The shooter was never apprehended or identified, and there was no evidence that the fraternity had any past incidents involving guns on the premises or involving violent criminal behavior. The plaintiff brought a negligence action against the national fraternity, the local fraternity chapter and several students who were officers or members of the fraternity. The defendants argued that the shooting was an unforeseeable criminal act, and that they owed no duty to protect the plaintiff from that event. The plaintiff contended that the defendants could have and should have envisioned that a violent incident would occur at the party, given the enormous crowd that had gathered at the house, the widespread consumption of alcohol and the lack of effective controls on who entered the premises.

Under New Jersey's premises liability law, plaintiff was injured while visiting the house rented and occupied by the fraternity brothers, and a negligence cause of action requires four elements: (1) duty of care, (2) breach of that duty, (3) actual and proximate causation and (4) damages. If duty of care is not well settled, courts balance the relevant interests to decide whether imposition of a duty to prevent foreseeable harm is fair under the circumstances. In balancing these interests the court considers: relationship of the parties, nature of the attendant risk, opportunity and ability to exercise care, and public policy considerations. Duty to exercise reasonable care extends only to foreseeable damages to foreseeable plaintiffs.

Here, the Court found that gunfire and the injury that followed was not foreseeable, and therefore, the defendants owed no legal duty to the plaintiff to prevent the criminal act, because there was no evidence that it was foreseeable that the plaintiff would be shot while attending a party at the house. The court noted that the nature of the risk was unclear given that a violent criminal act, such as the shooting, was not one normally associated with a social gathering of that nature. The plaintiff provided no expert witness or other persuasive basis to support the notion that the fraternity should have installed metal detectors or frisked guests as they arrived; nor did the court agree that expanding the duty of protection would be in the best interest of the public. In fact, the court opined that expanding the zone of protections would inject "far more confusion and uncertainty."

This holding is in line with others involving criminal attacks on patrons on a commercial premises by third party actors (see *Butler v. Acme Markets, Inc.*, 89 N.J. 270 (1982) and *Clohesy v. Food Circus Supermarkets*, 149 N.J. 496 (1997)). However, this ruling goes a step further to extend the holdings in *Butler* and *Clohesy* to include not just commercial property, but residential property as well. If you have claims in New Jersey involving criminal attacks on commercial, quasi-public, or residential property, this case is a great amendment/clarification of current New Jersey Law.

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