2nd Civil No. B094739

IN THE COURT OF APPEAL

OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

SHARON PRICE,

Plaintiff and Appellant,

vs.

ARMAN, LTD.; APCOA, INC., dba PARKING SERVICES, INC.,

Defendants and Respondents.

Appeal from the Los Angeles County Superior Court
Honorable Richard Neidorf, Judge
LASC Case No. SC029060

BRIEF OF RESPONDENT ARMAN, LTD.

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INTRODUCTION

Sadly, one can always foresee the possibility of violent crime occurring at home, at school, on the street, or in a parking garage. But that sort of foreseeability is *not* the standard for holding landowners liable for the crimes of others. Under governing California law, landowners are not deep pockets for the victims of crime simply because they fail to prevent crimes that possibly could occur on the premises. The Supreme Court holds that foreseeability is but one of the prerequisites for imposing a duty to prevent crime, and moreover,

> "the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises. To hold otherwise would be to impose an unfair burden upon landlords and, in effect, would force landlords to become the insurers of public safety, contrary to well-established policy in this state." (Ann M. v. Pacific Plaza Shopping Center (1993) 6 Cal.4th 666, 679, fn. omitted ["Ann M."].)

This case involves a sexual assault on plaintiff Sharon Price by an unknown assailant in the middle of a work day in the tenants' garage of a commercial office building adjacent to Beverly Hills and owned by

defendant Arman, Ltd. The assault was an unfortunate but wholly random event. There had been few similar crimes anywhere in the neighborhood, no similar crime anywhere in the building, and no violent crime *of any kind* in the tenants' garage. The burden of imposing a duty to prevent such a crime, including the high cost of posting security guards in the garage, or of installing and operating other forms of security, was not warranted in the absence of any previous violent crime. True, a bank on another level of the building had been held up a few times, but those were not similar violent crimes, and if they presaged anything, they presaged more hold-ups at the bank, not a sexual assault in the tenants' garage. (Ann M., supra, 6 Cal.4th at p. 680 [bank robberies not similar to sexual assault].) The trial court correctly concluded defendant had no legal duty to prevent this unforeseeable assault and thus properly granted summary judgment for defendant.

Plaintiff bases her appeal on a line of discredited authority, and in particular on two Court of Appeal decisions which have been depublished by the Supreme Court.[1/] No amount of rhetorical posturing and moralizing can reinvigorate these cases or overcome controlling Supreme Court and Court of Appeal decisions which hold that a landowner has no

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1/ Phillips v. Perils of Pauline Food Productions, Inc. was depublished by the Supreme Court on October 26, 1995, and Lisa P. v. Bingham was depublished on May 26, 1996. Plaintiff filed her opening brief on July 3, 1996.

legal duty to prevent crime in the circumstances of this case. In particular, the trial court's application of settled legal principles to the facts of this case will not, as plaintiff suggests, "pav[e] the road to damnation and degradation" (AOB 5), absolve landowners of any legal duty to prevent foreseeable crime on their premises (AOB 4-5), or grant landowners "at least one free violent sexual assault" (AOB 1, 9).

For these and other reasons explained in this brief, defendant Arman, Ltd. respectfully urges this Court to affirm the judgment.

STATEMENT OF THE CASE

A. Plaintiff's Complaint.

Plaintiff alleges that on April 8, 1993, she was sexually assaulted at gunpoint by an unidentified man in the tenants' parking garage of a commercial office building at 1180 South Beverly Drive, Los Angeles. She seeks damages from the owner of the building, defendant Arman, Ltd., and the parking manager for the building, co-defendant Apcoa, Inc. (CT 1-12.)

B. Defendant's Motion For Summary Judgment.

1. The Issue Of Duty.

Defendants moved for summary judgment on the ground that it had no legal duty to prevent the criminal assault on plaintiff. (CT 18, 67.) Defendant contends that absent prior notice of similar violent crimes committed in the tenants' garage, it had no duty to prevent this sexual assault on plaintiff.

2. The Facts Showing Defendant Owed No Duty To Prevent This Crime Against Plaintiff.

Plaintiff's opening brief is littered with factual allegations that find no support in the record. Among other things, there is no evidence that defendant is "insensitive to human suffering and simply wants to soak his tenants for every dime" (AOB 5), that there were "transients occupying the garage" (AOB 7), or that plaintiff's assailant "laid in wait knowing the darkened and ill kept underground garage would protect him from prying eyes" (AOB 9). What the record really shows is as follows.

a. Defendant's Building.

Defendant Arman, Ltd. has owned the commercial office building at the northeast corner of Pico Boulevard and Beverly Drive in Los Angeles since 1982. (CT 55.) There is a bank (in 1993, a branch of Coast Savings) on the ground floor of the building with its entrance facing the intersection of Pico and Beverly. (CT 55.) To the north of the building is a surface parking lot for building visitors. (CT 40.) On the east side of the building adjacent to Elm Drive is a driveway leading to a one-level subterranean parking garage for building tenants. (CT 40, 55.) The tenants' garage is approximately 200 feet by 225 feet, with 79 marked parking stalls. (CT 53.) The garage can be accessed by the driveway, by stairway, or by elevator. (CT 53.)

Co-defendant Apcoa, Inc. has a contract with Arman, Ltd. to manage parking. (CT 42-52.) Apcoa's parking attendant operates from a booth at the northwest corner of the visitors' lot, several hundred feet from the driveway entrance to the tenants' garage. (CT 40.)

b. The Sexual Assault On Plaintiff In The Tenants' Parking Garage.

Plaintiff drove into the tenants' parking garage at about 11:00 a.m. on April 8, 1993 (a Thursday), and parked in her assigned space.. When she got out of her car and leaned into the back seat to retrieve some items, plaintiff saw a blur of movement. She turned and faced a man in a ski mask. At gunpoint, the man forced her to get back into the car and to orally copulate him. (CT 145.) Plaintiff's opening brief suggests her assailant "pistol-whipped" her (AOB 8), but there is no evidence of that in the record on appeal.

c. The Absence Of Previous Similar Violent Crimes In The Building.

Zacaria Simantob is a general partner of defendant Arman, Ltd., which has owned the building since 1982. He is responsible for day-to-day management. He knows of no incident, from 1982 to the day plaintiff was assaulted, where any person was physically assaulted or confronted with a firearm in the tenants' subterranean garage. He does know that robberies have occurred in the Coast Savings branch on the first floor of the building. However, none of the robberies involved any

criminal activity in the tenants' garage nor to his knowledge had anyone been injured during the robberies. (CT 55.)

Coast Federal Bank records show that from September 1991 to January 1993 there were seven hold-ups of its bank branch on the first floor of the building. (CT 210-216.) In only one hold-up was any physical injury reported. (CT 212.) In only one hold-up was a real weapon displayed. (CT 215.)

d. The Infrequency Of Sexual Assaults In The General Neighborhood.

Los Angeles Police Department "PACMIS" reports list crimes committed in the 50-square block area surrounding Beverly Drive and Pico Boulevard. (CT 143, 195-206.) For the entire year of 1992, there were 363 crimes in the entire area, including two rapes. (CT 199, 201, 202, 204.) During the first quarter of 1993, just prior to plaintiff's assault, there were 72 crimes and not a single rape. (CT 206.)

e. Opinions As To The Condition Of The Garage And The Efficacy Of Security Guards Or Similar Measures.

The Expert's Opinion. Robert H. McGowan, retired Chief of Police for the City of Pasadena and now a private security consultant, inspected the tenants' garage in defendant's building on September 7, 1994. In his opinion, lighting was sufficient to clearly view from one side of the garage to the other in any direction. (CT 53.)

McGowan explained that because there are at least three entrances to the garage through which an assailant could have entered, and because in the course of the business day people come in and out of the garage, there is no effective way to prevent a person from entering the garage or to confirm each person's identity and reason for entering the garage. (CT 53.)

McGowan also explained that closing the garage gate after each vehicle enters or exits would not be an effective deterrent to an assailant entering through another door, or when the garage door is left open inadvertently. An assailant could enter while the gate was closing behind an entering or exiting vehicle, or enter in a vehicle if he were a tenant. There is no assured way to completely guard against the type of assault described by plaintiff. The occurrence of armed robberies at the bank on

the building's ground floor created no greater likelihood of a sexual assault in the subterranean garage, as the bank is located on the other end of the structure from the entrance to the parking garage and the behavior of a bank robber is to immediately escape the area, not lie in wait for a victim. (CT 54.)

In McGowan's opinion, because of the garage's small size, minimal or no criminal activity, the relatively unobstructed view throughout the garage and the presence of drivers entering and leaving the garage, posting security guards in the garage would be an unreasonable burden on defendant. (CT 54.)

At his deposition, McGowan acknowledged that underground parking facilities are potential places for criminals to lie in wait (CT 178, 180) and present more difficult security problems than do surface parking lots (CT 181). However, McGowan believes it would be unreasonable to hire a security guard for the small garage in defendant's building, especially an armed guard who might shoot and injure an innocent person. (CT 180.) He testified that it would be unreasonable to require defendant to have closed circuit television and someone to monitor and investigate anything that looks suspicious. (CT 180.)

Plaintiff's Opinion. Plaintiff avers that during several months preceding the assault she saw on-going deterioration of the building and the parking garage. It was not unusual for several lights to be out,

causing several darkened areas to exist, including the area immediately surrounding her vehicle. (She does not aver that any lights were out on the day of her assault.) At various times she could smell urine. The garage was never patrolled, inspected, or monitored by defendant. (CT 145.) The garage had unlit storage areas cordoned with chain link fencing that provided vantage points from which, she speculated, someone lying in wait until after the morning influx of tenants could observe a lone woman arriving in her car as easy prey. According to plaintiff, the garage was always without any people or activity that, she hypothesized, would put an attacker on notice that he might be observed or captured. (CT 146.) In plaintiff's personal opinion, the garage was not clean, well lit, safe or secure. (CT 145-146.)

Plaintiff's Attorney's Opinion. Kelly L. Duenckel, one of plaintiff's attorneys, inspected the parking garage on October 25, 1994, eighteen months after the assault. She found twelve lights were out, four in the row of spaces where plaintiff would have parked. (She does not state how many lights were on or how well lit plaintiff's former space was.) At some unspecified place in the garage, she saw a darkened storage area cordoned by chain link fence. The smell of urine pervaded the area and there was a folded cot leaning against the chain link. The remaining storage areas cordoned by chain link fence were also dark. According to Duenckel, anyone could have access to those storage areas

and, she speculates, they would provide ideal hiding places for anyone who wanted to lie in wait. Duenckel also determined that video cameras above the elevator doors did not function. (CT 136.) During her inspection she did not see any of defendant's employees. In Duenckel's personal opinion, the garage was not regularly maintained. (CT 137.)

C. Judgment For Defendant.

The trial court granted defendant's motion for summary judgment. (CT 380-381.) The court's order explains that defendant offered evidence that it had no knowledge of any sexual assault having been committed in the parking garage prior to April 8, 1993, that there was no greater danger of a sexual assault occurring in the subterranean garage than in the surrounding community despite occurrence of armed robberies at the bank, and that the design of the parking structure is such that there is no effective way to prevent persons from entering the garage. The court noted that plaintiff offered evidence of other crimes occurring in the surrounding area but not within the parking garage. The Court held plaintiff's evidence not sufficient to raise a triable issue of fact in that it does not establish the degree of foreseeability necessary to impose upon the defendants a duty to plaintiff. (CT 381.)

D. Plaintiff's Appeal.

Plaintiff timely appeals from the summary judgment. (CT 384.)

LEGAL DISCUSSION

On summary judgment, this Court independently reviews the record to determine if judgment is proper. (Molko v. Holy Spirit Assn. (1988) 46 Cal.3d 1092, 1107.) The issue on this summary judgment motion is duty, and duty is a question of law to be determined by the court on a case-by-case basis. (Huggins v. Longs Drug Stores California, Inc. (1993) 6 Cal.4th 124, 129.)

On the record in this case, defendant Arman, Ltd. has demonstrated it had no duty to prevent the unfortunate but unforeseeable sexual assault on plaintiff. The trial court therefore properly granted summary judgment, as we now explain.

I.

SUMMARY JUDGMENT WAS PROPER BECAUSE DEFENDANT ARMAN, LTD. COULD NOT REASONABLY HAVE FORESEEN PLAINTIFF'S SEXUAL ASSAULT.

A. The Possibility Of Crime In General Did Not Make This Specific Crime Reasonably Foreseeable.

Although landowners have a general duty of care in managing their land (Civ. Code, § 1714), they do not insure the safety of persons on their land against crime. (Rosenbaum v. Security Pacific Corp. (1996) 43 Cal.App.4th 1084, 1089.) "[A] duty to take affirmative action to control the wrongful acts of a third party will be imposed only where such conduct can be *reasonably* anticipated." (Ann M., supra, 6 Cal.4th at p. 676, emphasis added.)

The logical possibility that an event may occur is not sufficient to establish reasonable foreseeability under the law. As the court holds in Sturgeon v. Cornutt (1994) 29 Cal.App.4th 301:

"Objective foreseeability (the logical opposite of impossibility) is tempered by subjective reasonableness, both

in our everyday decisions as individuals and in the decisions of the courts concerning duty." (Id. at p. 306.)

The Supreme Court put it this way in Thing v. La Chusa (1989) 48 Cal.3d 644:

"[T]here are clear judicial days on which a court can foresee forever and thus determine liability but none on which foresight alone provides a socially and judicially acceptable limit on recovery of damages for that injury." (Id. at p. 668.)

Thus, the possibility that crime could be committed in a parking garage in an office building in Los Angeles does not equate to *reasonable* foreseeability of the specific crime committed here. Noble v. Los Angeles Dodgers, Inc. (1985) 168 Cal.App.3d 912, explains that

"in this day and age anyone can foresee or expect that a crime will be committed at any time and at any place in the more populous areas of the country. That fact alone, however, is not enough to impose liability on a property owner . . . ." (Id. at pp. 914-915.)

The issue, therefore, is *reasonable* foreseeability, and here, there was no reasonable foreseeability of sexual assaults in the tenants' garage of defendant's building. Despite all of plaintiff's dramatic pronouncements about darkened hiding places for a "sniveling, cowardly miscreant" to lie in wait (AOB 9)[2/], to defendant's knowledge going back more than a decade, there had never been *any* violent crime in that garage before. In similar circumstances involving a defendant apartment house owner, the Court of Appeal held that the plaintiff crime victim could state no claim:

> "[T]here are no factual allegations to support the claim that the owner of the apartment house possessed knowledge any more precise than the knowledge of any citizen in Los Angeles County that there are violent crimes committed in this County [and] other than an allegation of the widely held notion that darkness is an ally of the stealthful criminal, the complaint provides no basis for attributing to the apartment owner an ability to predict or foresee where such criminals might strike next or just how such criminals could be

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2/ Actually, there is no evidence how plaintiff's assailant entered the garage or that he was "lying in wait" behind a chain link fence in a darkened storage area, or anywhere else, in the garage. Plaintiff's unsupported assertions in that regard are pure speculation. (Leslie G. v. Perry & Associates (1996) 43 Cal.App.4th 472.)

deterred, (not even the police can boast of such prescience)." (7735 Hollywood Blvd. Venture v. Superior Court (1981) 116 Cal.App.3d 901, 903-904, cited with approval in Ann M., supra, 6 Cal.4th at p. 679.)

B. Bank Hold-Ups On The Ground Floor Did Not Portend Sexual Assaults In The Garage.

Acknowledging that "the requisite degree of foreseeability rarely, if ever, can be proven in the absence of prior similar incidents of violent crime on the landowner's premises" (Ann M., supra, 6 Cal.4th at p. 679), plaintiff points to the fact that there had been a series of hold-ups at the bank on another level of the building. (AOB 10-11.) That fact, however, does not make a sexual assault in the tenants' garage any more reasonably foreseeable. Contrary to plaintiff's assertion (AOB 8), hold-ups bear little if any similarity to sexual assaults in general, and no similarity at all in the specific circumstances of this case. In only one of seven bank hold-ups in defendant's building was a real gun used, and in only one was anyone physically injured. (CT 210-216.) A bank robber is no more likely to commit a sexual assault than anyone else. Moreover, a bank robber would naturally be attracted to the bank, not the tenants' garage.

Robbers rob banks, not garages, because, as John Dillinger said, that is where the money is.

California appellate decisions fully support the conclusion that bank robberies and other general sorts of crime do not reasonably portend sexual assaults. In Ann M., there was significant prior criminal activity on the premises of the defendant's shopping mall -- including bank robberies, purse snatchings, and assaults by a man pulling down women's pants. (6 Cal.4th at 671, 679.) Nevertheless, the Supreme Court found that, even if the defendant had notice of these incidents, they created no duty to prevent a sexual assault on a tenant because "they were not similar in nature to the violent assault." (Id. at p. 680.)

Similarly, in Pamela W. v. Millsom (1994) 25 Cal.App.4th 950, there was a recent burglary of the condominium unit above the unit where the plaintiff was raped by an intruder. (Id. at p. 953.) Nevertheless, the Court of Appeal held the burglary was not so similar a crime as to establish sufficient foreseeability to warrant imposition of a duty to prevent the rape. (Id. at p. 959; cf. Kane v. Hartford Accident & Indemnity Co. (1979) 98 Cal.App.3d 350, 357 [property-related crimes do not create foreseeable risk of violent crimes to persons]; Wingard v. Safeway Stores, Inc. (1981) 123 Cal.App.3d 37, 43 ["The previous thefts at the warehouse neither provided notice nor created any reasonable foreseeability of the sexual attack which was inflicted upon plaintiff"].)

The cases cited by plaintiff all have materially different facts:

- The plaintiff in Frances T. v. Village Green Owners Assn. (1986) 42 Cal.3d 490, was attacked in her unit in a condominium complex. There had been a recent "crimewave" of burglaries and robberies in the complex, including a break-in at plaintiff's unit. The condominium association refused to permit the plaintiff to install her own outdoor lighting to protect her unit, leaving the unit in complete darkness.

- In Gomez v. Ticor (1983) 145 Cal.App.3d 622, plaintiffs' decedent was shot when he interrupted a robbery in progress at night in the visitors' parking garage of the defendant's commercial office building. There had been sixteen recent acts of theft and vandalism in the lot.

- Cohen v. Southland Corp. (1984) 157 Cal.App.3d 130, involved a plaintiff bystander injured during an early-morning armed robbery of a 7-11 convenience store. There had been several previous robberies of that particular store, and an "alarming frequency" of robberies in 7-11 stores generally. (Id. at p. 141.)

Moreover, these cases all pre-date Ann M. In particular, Frances T. followed the rule of Isaacs v. Huntington Memorial Hospital (1985) 38 Cal.3d 112, 127, that foreseeability does not depend on prior similar crimes. Ann M. "revisit[ed]" and "refin[ed]" the Isaacs rule and

concluded that prior similar crimes are almost always required. (6 Cal.4th at pp. 678-680.)[3/]

C. If Relevant At All, General Crime Statistics Did Not Foretell This Particular Crime.

Plaintiff also relies on police crime reports as foretelling her assault. However, crime in the general neighborhood is not a material factor in determining the foreseeability of crime at a particular location. (Ann M., supra, 6 Cal.4th at p. 680.) As stated in Pamela W. v. Millsom, supra, 25 Cal.App.4th 950:

> "[I]n any analysis of foreseeability, the emphasis must be on the specific, rather than more general, facts of which a defendant was or should have been aware. That is, there is little utility in evidence that, for example, the Pacific Beach area of San Diego is a 'high crime area.'" (Id. at p. 957.)

But even if general neighborhood crime statistics were pertinent, the statistics in this case offer no support for plaintiff's foreseeability argument. First, there is no evidence defendant knew or should have

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3/ As noted above at footnote 1, the Supreme Court has depublished subsequent cases which suggested to the contrary.

known these crime statistics. Second, the 50-square-block area around defendant's office building, adjacent to Beverly Hills, was relatively low in crime. There had been no rapes in the area during the three-month period prior to the assault on plaintiff and only two rapes reported during the entire previous year. None of this materially increased the foreseeability of a sexual assault in the tenants' garage of defendant's building.

D. An Office Parking Garage Is Not A Reasonably Foreseeable Site For A Mid-Day Sexual Assault.

A sexual assault was not, as plaintiff contends, reasonably foreseeable simply because the site of the assault was a parking garage. (AOB 7.) As we have shown, the possibility of some crime does not make all crime reasonably foreseeable. Plaintiff presented no evidence that parking garages are more likely places for crime. In fact, a parking garage is one of the least likely places for a sexual assault to occur.[4/]

4/ Crime statistics show that most crimes are committed in homes, on streets and in commercial places. Crime does occur in parking garages, but they are not magnets for criminals as plaintiff would have the Court believe. In particular, only 6 percent of all rapes and sexual assaults take place in parking lots or garages, compared to 37 percent at or near victim's home or lodging, 21 percent at a friend's, relative's, or neighbor's home, 17 percent in parks, open spaces, streets near the

(continued...)

And even if it were foreseeable that some sort of crime might be committed in a tenants' garage, a sexual assault is the least likely crime to anticipate in the middle of the day, when any one of 79 building tenants who parked in the garage might at any time enter the garage from any one of three entrances. As one eminent authority puts it:

> "Under all ordinary and normal circumstances, in the absence of any reason to expect the contrary, the actor may reasonably proceed upon the assumption that others will obey the laws. Under such ordinary circumstances, it is not reasonably to be expected that anyone will . . . abduct a woman from a parking lot and rape her. . . . Although such things do occur, as must be known to anyone who reads the daily papers, they are still so unlikely in any particular instance that the burden of taking continued precautions against them almost always exceeds the apparent risk." (Prosser & Keeton, Torts (5th ed. 1984) § 33, p. 201; fn. omitted.)

4/(...continued)
victim's home, and similar other locales, 8 percent on streets other than near the victim's home, and 7 percent in commercial places. (U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, Bulletin: Criminal Victimization 1994 (Apr. 1996) at p. 7; see also U.S. Dept. of Justice, Office of Justice Programs, Bureau of Justice Statistics, Criminal Victimization in the United States, 1993 (May 1996) at pp. 64, 67.)

E. Even If The Garage Could Have Been Better Maintained, That Did Not Create A Reasonable Foreseeability Of A Sexual Assault.

The alleged poor maintenance of the garage did not, as plaintiff asserts, increase the foreseeability of a sexual assault. (AOB 11.) Plaintiff describes the garage as "an open invitation to the criminal element" (AOB 2), but it obviously was not, since the garage was not visible from the street and there had been no violent crime reported there, ever (CT 55). Plaintiff hypothesizes that unlit storage areas cordoned by chain link fence provided hiding places for criminals in the garage, but her hypothesis makes no sense. If a storage area is fenced off from the rest of the garage, how would a criminal get in and out? The fence would prevent, not encourage, lying in wait. In any event, there is no evidence plaintiff's assailant was "lying in wait" in a storage area or anywhere else in the garage.[5/]

In desperation, plaintiff's invokes, without citation, Justice Thurgood Marshall's personal moral principle for always doing one's

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5/ The smell of urine and a folded cot reported by plaintiff's counsel 18 months after the crime was committed (CT 136) are hardly proof of "transients occupying the garage" (AOB 7), much less that defendant had notice of "transients occupying the garage" 18 months earlier, and even less that plaintiff was assaulted by such an occupant.

best. (AOB 6.) As noble as that principle might be, it was never intended by Justice Marshall or anyone else as the appropriate standard for imposing legal liability on one person for the crimes of another. "[T]he law has not yet enacted the golden rule." (Prosser & Keeton, Torts, supra, § 4, p. 23.) "[N]othing but confusion of thought can result from assuming that the rights of man in a moral sense are equally rights in the sense of the Constitution and the law." (Oliver Wendell Holmes, Jr., The Path of the Law (1897) 10 Harv.L.Rev. 457, 460.)

In sum, the record demonstrates no reasonable foreseeability of violent crime, and especially a sexual assault, in the middle of a work day in the tenants' garage of defendant's office building. The mere possibility that crime could occur in such a place is not sufficient to impose a duty on the owner of the building to prevent crime from occurring. As a matter of law, and for this reason alone, defendant is entitled to judgment.

II.

SUMMARY JUDGMENT WAS ALSO PROPER BECAUSE, EVEN IF THE SEXUAL ASSAULT WERE SOMEHOW FORESEEABLE, THE BURDEN OF ATTEMPTING TO PREVENT SUCH CRIME OUTWEIGHED ITS FORESEEABILITY.

Even where third party crime is reasonably foreseeable, the scope of a landowner's duty to protect against such crime is determined by balancing the foreseeability of the harm against the burden of the duty to be imposed. Where the burden of preventing crime is great, a high degree of foreseeability is required. (Ann M., supra, 6 Cal.4th at p. 678.)

Despite plaintiff's disclaimers (AOB 2, 8), the preventative measure against crime she would require defendant to provide (and by necessary implication, every other owner of a building with an underground garage to provide) is a trained, full-time security guard in the garage. A parking attendant located on another level of the building would have neither the time nor the expertise to provide effective security against criminal acts in the garage. Video cameras serve little use unless

there is someone on the premises to constantly monitor the cameras and respond appropriately if and when suspicious activity occurs.[6/] An electronic gate for the driveway to the parking garage would not stop anyone entering the garage by elevator or stairway, and would not be practical for 79 tenants entering and leaving the commercial office building throughout the business day. (CT 53-54.)

Furthermore, in the particular case of sexual assaults no one can say that even trained security guards would be effective deterrence. Plaintiff's assailant was willing to attack in the middle of a work day in a place where any of 79 tenants might come or go at any time. "No one really knows why people commit crime, hence no one really knows what is 'adequate' deterrence in any given situation." (7735 Hollywood Blvd. Venture v. Superior Court, supra, 116 Cal.App.3d 901, 905.) "'[H]ow can one know what measures will protect against the thug, the narcotic addict, the degenerate, the psychopath and the psychotic?'" (Ibid., quoting Goldberg v. Housing Auth. of Newark (1962) 38 N.J. 578 [186 A.2d 291, 297].)

6/ The fact that video cameras in the elevator area adjacent to the garage were not in operation might be relevant to the issue of breach of duty, but it is not relevant to the issue of whether defendant had a duty to prevent this crime in the first place. The question here is not whether defendant could have provided better security against this crime but whether defendant had a legal duty to provide adequate security against this crime at all.

Ineffectiveness aside, employing full time security is obviously a costly undertaking for any landowner. The cost would have to be passed on to the users of the garage. The cost would be passed on to users of all similar garages, too. Imposing a duty in the circumstances of this case means virtually all commercial garage owners face a similar duty. The use of security guards also entails its own set of problems, not the least of which is the ability of the guards to do their job safely. The combined cost to society of attempting to crime-proof parking garages in every commercial office building would be astronomical, and its efficacy doubtful.

The trial court therefore correctly concluded that the foreseeability of violent crime in the tenants' garage of defendant's office building, if any such crime were foreseeable at all, was outweighed by the massive cost of trying to that prevent crime. For this additional reason, defendant had no legal duty to prevent plaintiff's assault.

CONCLUSION

"The incidence of violence in our state continues to present an increasing and dominating societal problem that must be addressed at its root causes in order to reduce significantly its effects upon our society." (Pen. Code, § 14110, subd. (a).) Parking garages, however, are not

among the root causes of crime. There is no just reason to single out landowners as insurers of society against crime, especially when those we expect most likely to be effective against crime -- law enforcement, courts, schools and churches -- have yet to achieve any material success.

As distressing as it may be to plaintiff to lose access to an identifiable deep pocket for monetary compensation for injuries inflicted by an unknown, psychopathic assailant, the facts of this case compel the conclusion that defendant Arman, Ltd. breached no legal duty to prevent plaintiff's unfortunate but unforeseeable sexual assault. The judgment should be affirmed.

Respectfully submitted,

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