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A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

## Landlord's Duty to Tenant Assaulted in Building is Only to Timely Notify Authorities

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### SECRET WARDLE NOTES

This unpublished case exemplifies the current state of Michigan law as to what the duties of a landowner are relating to independent criminal acts taking place on the premises. This duty may be summarized as follows: While merchants are not insurers of their invitees' safety, and have no duty to protect the invitees from unreasonable risks that are unforeseeable, they do have a duty to use reasonable care to protect invitees from the foreseeable criminal acts of third parties, and the measures they take must be reasonable, which generally only means calling the police.

\* \* \* \*

On March 10, 2016, the Court of Appeals issued its unpublished opinion in *Zarembski-Cole v Bedrock Management Services, LLC*. Plaintiff in this case was attacked in the lobby of the office building where she worked by a woman named Carolyn Winfrey. Winfrey had attacked another employee working in that building about three months earlier. Defendant owned the building and provided security services through a contractor, Guardsmark, L.L.C. Plaintiff filed a premises liability action against Defendant, alleging that it had breached a duty of care owed to her by virtue of her status as a tenant in the building.

Defendant moved for summary disposition, arguing that it did not have a duty to anticipate, prevent, or protect against the criminal acts of a third party perpetrated against an unidentified person, even if there had been a similar attack against another person in the past. Defendant argued that it had fulfilled the duty owed to Plaintiff because the police were called when Plaintiff was attacked, i.e., after she had been identified as a potential victim. Plaintiff argued that Defendant owed a heightened duty to maintain the common areas of its building so that it was reasonably safe for its tenants because it should have known that Winfrey posed a foreseeable risk of harm to anyone in her vicinity. The Trial Court agreed with Defendant's position, dismissing the case, and Plaintiff appealed.

On appeal, the Court of Appeals relied on the precedent set by the Michigan Supreme Court in *Bailey v Schaff*, 293 Mich App 611 (2013) and affirmed the dismissal by the Trial Court. The *Zarembski-Cole* Court noted that the *Bailey* Court referenced the evolution of the applicable law, beginning with *Mason v Royal*

*Dequindre, Inc*, 455 Mich 391 (1997), where the Supreme Court held that: “merchants have a duty to use reasonable care to protect their identifiable invitees from the foreseeable criminal acts of third parties.” The *Bailey* Court, however, noted that the scope of the merchant’s duty was later modified in *MacDonald v PKT, Inc*, 464 Mich 322 (2001), a case handled by Secret Wardle. In *MacDonald*, the Supreme Court held that: “The duty [of reasonable care] is triggered by specific acts occurring on the premises that pose a risk of imminent and foreseeable harm to an identifiable invitee. . . . While a merchant is required to take reasonable measures in response to an ongoing situation that is taking place on the premises, there is no obligation to otherwise anticipate the criminal acts of third parties.” The *Bailey* Court therefore held that the “scope of the duty with regard to residential or commercial landlords” was that a landlord owes a duty to both tenants and their guests to take reasonable measures in response to *ongoing* crime taking place on the premises. This generally only means calling the police, and landlords and their agents are *not* expected to fight crime themselves. Landlords are under no duty to provide security services for their properties but, if security services have been provided, it does not create a duty to prevent crime.

Using this as a foundation, the *Zarembski-Cole* Court held that Plaintiff had failed to establish that a genuine issue of fact existed as to whether, under the facts of the case, Defendant’s duty of reasonable care was triggered before she was attacked. The Court noted that the factual evidence submitted was that a security guard saw Winfrey enter the building and walk over to look at the building directory. The guard approached Winfrey and asked if she needed assistance. After a short, uneventful exchange, the guard returned to his desk and Winfrey continued to look at the directory. Shortly thereafter, the guard heard a woman scream. He then saw Plaintiff lying on the lobby floor near Winfrey, who had been disarmed of a kitchen knife, and a bystander was lying on top of Winfrey. Plaintiff told police officers that she had been walking in the lobby area, and that Winfrey approached her and lunged at her with the knife. There is no evidence suggesting that Plaintiff and Winfrey shared any connection before the assault.

The parties did not dispute that Winfrey was arrested about three months earlier for assaulting another individual who worked in Plaintiff’s building. The Court noted, however, that the record was bare of any evidence that this prior assault was in any way related to the assault on Plaintiff, and there was no relationship, through work or otherwise, between Plaintiff and the prior victim. Under the holding in *Bailey*, Defendant’s duty of care to Plaintiff would have been triggered only after having “notice of a specific situation occurring on the premises that would cause a reasonable person to recognize a risk of imminent harm to an identifiable invitee.” In this case, the record revealed that no reasonable risk of imminent harm to Plaintiff was apparent *until Winfrey attacked Plaintiff*, and the Court therefore held that Defendant did not owe Plaintiff a duty of care until the time of the attack, and then satisfied the limited standard of care to respond by timely notifying the police.

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