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Just Call the Cops: Michigan Supreme Court holds that landlords have a duty to respond to known criminal activity

By Drew Broaddus

Is a premises owner under a duty to protect invitees from the criminal acts of third parties? If so, to what extent? Michigan appellate courts have searched for clear answers to these questions for decades. The tension arises from the fact that generally, an individual has no duty to protect another from the criminal acts of a third party. The rationale underlying this general rule is that criminal activity, by its deviant nature, is normally unforeseeable. However, a duty to protect against certain criminal activities can arise when there is a "special relationship." The relationship between a business owner and a customer is one such relationship. *MacDonald v PKT Inc*, 464 Mich 322 (2001). But how far is a premises owner required to go? Isn't law enforcement the responsibility of the police? And in what other contexts might such a "special relationship" exist?

Two years ago, the Court of Appeals sought to answer these questions in *Bailey v Schaff*, 293 Mich App 611 (2011). The Court of Appeals held that a landlord owes a duty, both to tenants and their guests, to take "reasonable measures" in response to an *ongoing* crime that takes place on the premises. This generally means calling the police; landlords and their agents are not expected to fight crime themselves. The Supreme Court granted leave to appeal and, in an opinion released July 30, 2013, affirmed the Court of Appeals in significant part.

The issue presented in *Bailey* was whether the owner of an apartment complex (Evergreen) owed a duty to the guest of a tenant, once it was reported to Evergreen's agents that a gunman was threatening people on the premises. The facts of the case were: the plaintiff went to a party at a friend's apartment, located in Evergreen's complex. Evergreen had a contract with a company called Hi-Tech to provide security. During the party, an Evergreen resident complained to two of Hi-Tech's security guards that there was a man on the premises waving a gun. The resident also told the security guards that this person was threatening to shoot the guests. She pointed to the area of the gathering and identified the man with the gun. Hi-Tech's guards did not immediately respond to this information. They instead decided to complete another task. In the interim,

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The fact that this was an *ongoing* situation was crucial to the finding of a duty. If there had not been notice or time to react – for example, if the gunman had suddenly walked up to plaintiff and shot him – plaintiff's claim against Evergreen probably would have failed. See *Youmans v BWA Properties,* unpublished Court of Appeals opinion, decided 7/26/11 (No. 297275).

It is important to note the procedural posture of *Bailey*. The claim against Evergreen was dismissed by the trial court for failure to state claim. The Supreme Court *did not* find that Evergreen breached a duty or that it had liability. It only found that a duty existed.

The Court went out of its way to note that landlords have no duty to respond to criminal activity within rental units. "[A] landlord's duty arises only when the triggering conduct occurs in those areas under the landlord's control." *Bailey*, Slip Op at 20.

the gunman shot plaintiff. Approximately 10-15 minutes passed between the time of the resident's complaint to Hi-Tech's guards and the shooting. Apparently, Hi-Tech's guards did not react at all until after they heard the gunshots. Plaintiff sued the apartment complex (Evergreen), the security firm (Hi-Tech), the gunman, and others. The trial court dismissed plaintiff's claims against all except the gunman.[1]

Several issues were raised on appeal. However, the Supreme Court devoted most of its 23-page majority opinion to the question of whether Evergreen owed a duty to the plaintiff to protect him from the gunman's criminal acts. After a lengthy discussion of the evolution of the duty owed by landlords, and the duty to respond to criminal acts in general, the Court found that Evergreen *did* owe a duty to Plaintiff. The Court articulated that duty as follows:

> …[A] landlord can presume that tenants and their invitees will obey the criminal law. Because of the unpredictability and irrationality of criminal activity, this assumption should continue until a specific situation occurs on the premises that would cause a reasonable person to recognize a risk of imminent harm to an identifiable [tenant or] invitee. Only when given notice of such a situation is a duty imposed on a landlord. Notice is critical to determination whether a landlord's duty is triggered; without notice that alerts the landlord to a risk of imminent harm, it may continue to presume that individuals on the premises will not violate the criminal law…. *Bailey*, Slip Op at 18-19.

The Court further explained that "[i]f and when a landlord's duty is triggered, a reasonable response by the landlord is required." *Bailey*, Slip Op at 18-19. When "a landlord is confronted with imminent criminal acts occurring on the premises under the landlord's control … the duty to respond requires only that a landlord make reasonable efforts to expedite police involvement." *Id.* The duty is limited in scope because landlords "have a low degree of control over the criminal acts of others." The Court was careful to clarify that this "does not expand a landlord's duty concerning third-party criminal acts; requiring more of a landlord than taking reasonable efforts to expedite police involvement would essentially result in the duty to provide police protection, a concept this Court has repeatedly rejected." *Id.* "[T]he duty to provide police protection is vested with the government, and given the unpredictability of specific acts of crime, we decline to impose any greater obligation on a landlord. *Id.*

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[1] Notably, plaintiff's claim against Hi-Tech was dismissed under *Fultz v Union-Commerce Assocs*, 470 Mich 460 (2004), as Hi-Tech's responsibilities arose solely out of its contract with Evergreen, and the plaintiff was not a third party beneficiary of that agreement. The Court of Appeals affirmed without mentioning *Loweke v Ann Arbor Ceiling*, 489 Mich 157 (2011). The Supreme Court reversed and remanded to the Court of Appeals for further consideration of this issue. *Bailey*, Slip Op at 23.

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