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PREMISES LIABILITY: FORESEEABLE CRIMES

This summary discusses Florida law pertaining to criminal acts which occur on premises.

If a plaintiff can prove that he or she was an invitee on the premises, the plaintiff must prove that the crime in question was one that the premises owner should have foreseen. The plaintiff must demonstrate that the premises owner knew or should have known of the specific third party's inclination towards a crime.

Appellate courts disagree as to whether prior crimes make a specific crime foreseeable. In 1983, the Florida Supreme Court confirmed that existence of evidence of prior crimes is an additional test which must be considered.

The 3d DCA has created a rigorous test regarding whether a crime was foreseeable. The 3d DCA test considers 1) similarity of the prior crimes; 2) geographical proximity of the prior crimes; and 3) temporal proximity of the prior crimes. Notably, the 4th DCA however, has refused to apply such a strict test.

Premises Liability: Foreseeable Crimes

April 11, 2012

Page 2

SIMILARITY OF THE PRIOR CRIMES

According to the 3d DCA, any evidence of prior crimes used to prove foreseeability must be similar to the crime in the plaintiff's case.

On the other hand, the 4th DCA has applied the generous landlord-tenant standard to all premises liability cases. The 4th DCA held that the evidence of prior dissimilar crimes is relevant and admissible to foreseeability in any context.

The 5th DCA has adopted 4th DCA's lenient standard, and allows evidence of prior dissimilar crimes to reach a jury despite acknowledging that this would not be permitted under the 3d DCA's test. The 1st DCA appears to have joined the 4th and 5th DCA's lenient standards.

GEOGRAPHICAL PROXIMITY OF THE PRIOR CRIMES

Geographical proximity of prior crimes constitutes the second hurdle to proving whether a crime is foreseeable. The 3d DCA has held that any prior similar crimes must have occurred on the landowner's premises to be considered probative. Additionally, the 4th DCA has held that premises crimes might contribute to a foreseeability analysis, as long as they did not occur "substantial distances away." Notably, there is an exception for landlord-tenant relationships where off premises crimes may be regarded as probative.

The 4th DCA has rejected strict geographical requirements by allowing evidence of crimes in the general vicinity to support an inference of foreseeability. The 1st DCA has sided with the 3d DCA about adopting a strict geographical test.

TEMPORAL PROXIMITY OF THE PRIOR CRIMES

A premises liability defendant litigating in the 3d DCA against a claim of third-party crime is entitled to prevail if no prior similar crimes occurred on the premises during the preceding two years. There is a similar exception in landlord-tenant arrangements, where crimes which are older than two years may play a role in the foreseeability analysis.

Premises Liability: Foreseeable Crimes

April 11, 2012

Page 3

The 4th DCA has transformed the exception into the rule, holding that it will not impose any strict constraints regarding the time frame of prior crimes. The 5th DCA appears to side with the 4th DCA in its lenient temporal test.

JLH/CVZ/jm/tsr

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