

## **N.C.'s premises liability law is variation of Roman notion**

BY MARK McGRATH

Seneca, the Roman statesman and orator, once said that a person who does not take action to prevent a crime when he has the ability and means to do so is guilty of encouraging its commission. The North Carolina courts have implicitly established a variant of this principle in recognizing that business and property owners can be held liable when they fail to take reasonable measures to protect persons from the foreseeable criminal acts of third parties.

### **FORESEEABILITY STANDARD**

North Carolina law does not impose a duty on landowners to ensure the safety of persons who come upon their property. As in most jurisdictions, however, North Carolina courts have held that business and property owners are required to exercise reasonable care for the protection of such persons when the occurrence of crime on their property is reasonably foreseeable.

What constitutes foreseeability? The courts have held that foreseeability may be shown by all relevant evidence, including evidence of prior criminal activity on the premises involved, or in the general area in which the property is located.

Typically, plaintiffs will attempt to demonstrate foreseeability by identifying crimes that occurred at or near the subject premises in the years preceding the incident at issue. For example, it was held that in light of 28 to 36 prior crimes occurring in a mall parking lot, the occurrence of crime was sufficiently foreseeable to impose a duty on the property owner to exercise reasonable care for the safety and protection of its customers. This was found to be the case even though only seven or eight of the incidents were violent crimes.

A history of sporadic violence will generally not suffice to demonstrate foreseeability. In one case it was held that evidence of isolated criminal incidents over a long period of time was not sufficient to raise a triable issue as to whether the abduction and murder of a woman was foreseeable. Rather, the evidence must reflect a repeated course of criminal activity before a duty to provide reasonable security will arise.

A lack of hard quantifiable data is not necessarily fatal. Our courts have recognized that anecdotal evidence is also permissible to prove foreseeability. For example, testimony from local residents, police and motel managers that a motel was located in a high-crime area and that similar crimes had been committed in the area in the recent past was found to be probative on the issue of foreseeability.

While prior crimes on the property at issue are most probative of foreseeability, off-site crimes can also be considered in determining foreseeability. In one case, it was held that prior crimes at an adjoining highway interchange and at another interchange two miles away could properly be considered by the jury. In another, a court held that evidence of prior crimes at an adjoining intersection could be considered by the jury. In yet another case, an appellate court found no error in allowing an expert to testify regarding crimes occurring in a half-mile radius of the subject property.

The North Carolina courts have not established a black line look-back period for considering prior crimes. Time frames of three, four and six years have been applied by the courts in considering the issue of foreseeability. Foreseeability might even arise from a crime wave of very short duration. For example,

one court has held that foreseeability could be shown by evidence of assaults and robberies committed against hotel guests in the Charlotte area over a two-week period by a group of known criminals.

The nature of the prior crimes is also relevant to the issue of foreseeability. While the courts have sometimes been indulgent in allowing juries to consider non-violent crimes, others have rejected their relevance. There is no question that prior violent crime will be much more probative in a case involving injuries or wrongful death arising from a failure to provide appropriate security.

It is also possible to demonstrate foreseeability when there is a total absence of prior crimes on the property at issue. For example, in one case our firm represented the estate of a woman who was murdered while working at a payday lending outlet. The available crime data revealed that no prior crimes had occurred on the property or in its immediate vicinity. In discovery, however, we obtained internal memoranda from the defendant's corporate security department indicating that employees were at risk of robbery and violent crime and that consideration should be given to making its facilities safer. Using this evidence, we were able to demonstrate that the murder of the decedent was foreseeable.

### **DUTY OF REASONABLE CARE**

Once foreseeability has been established, the owner will be held to a duty of reasonable care. Liability for injuries may arise from failure of the proprietor to exercise reasonable care to discover that crimes are occurring on his property or are likely to occur, coupled with failure either to provide reasonable security measures or to warn patrons that such crimes have occurred.

Our courts have held that whether an owner has exercised reasonable care will involve a consideration of conditions in the surrounding area, the general character of the neighborhood, the location of the premises, the character of the owner's business enterprise, and other criminal activity occurring on the premises.

### **CAUSATION**

In addition to proving negligence, plaintiffs must also prove that the owner's negligence was a cause of the claimant's injuries. Put another way, plaintiffs bear the burden of showing that the provision of additional security measures would have prevented or deterred the crime at issue. In one case a court held that it would be sheer speculation for a jury to find that an assailant would be deterred by the presence of security guards or additional lighting on the subject property. In support of its holding, the court noted that the assailant was an experienced criminal, recently released from prison, who decided upon his target location without any prior knowledge of the security measures (or lack of such measures) that were in place there.

### **CATEGORIES OF DEFENDANTS**

The pool of potential defendants is as varied as the kinds of properties and businesses that exist in North Carolina. The most common defendants include owners of malls, shopping centers, banks, apartment complexes, hotels, fast food restaurants and parking lots.

When handling an inadequate-security case, it is critical to obtain in discovery all leases for the subject property and a full description of all property interests held in the property, including common areas. Generally speaking, only parties in possession and control of the premises can be held responsible for

crimes occurring on the property. For example, landlords who have relinquished possession and control of property to tenants or others will generally not be liable unless they have retained control over the area of property where the subject incident occurred.

## **CONCLUSION**

As recent events in Chapel Hill so tragically illustrate, our nation continues to struggle against an epidemic of violent crime. Given the number of violent crimes that are committed each year, it is surprising that more inadequate-security claims are filed so infrequently. In many cases, potential clients have no idea that they may have claims against negligent property owners. Given what is usually at stake in such cases, the challenges of taking on an inadequate-security case can be formidable, but the rewards, in terms of both professional satisfaction and potential case value, can be just as great.