

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2006 CA 0563

KENDRICK BENJAMIN AND MARGARET CROCKETT

VS.

STATE FARM MUTUAL INSURANCE COMPANY, JEAN BARNETT  
AND NOLA APARTMENTS

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JUDGMENT RENDERED: DECEMBER 28, 2006

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ON APPEAL FROM THE  
NINETEENTH JUDICIAL DISTRICT COURT  
DOCKET NUMBER 525,071, DIVISION D  
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE JANICE CLARK, JUDGE

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JEAN BARNETTE d/b/a NOLA  
APARTMENTS AND STATE FARM FIRE  
AND CASUALTY COMPANY

BEFORE: CARTER, C.J., WHIPPLE AND MCDONALD, JJ.

**McDONALD, J.**

Plaintiffs, Kendrick Benjamin and Margaret Crockett, appeal a trial court judgment granting the defendants' motion for summary judgment and dismissing their claims against the defendants. We affirm.<sup>1</sup>

On April 14, 2004, Mr. Benjamin resided at the NOLA Apartments. The NOLA Apartments are comprised of sixteen units in two buildings located at 3052 and 3064 Oswego Street in Baton Rouge, Louisiana. Jean Barnette<sup>2</sup> and her two sons, Donald and Benjamin Barnette, have owned the complex since 1988, when Mrs. Barnette's husband died.

At approximately 3:40 a.m. on April 14, 2004, Mr. Benjamin and his friend, Donnie Crockett, were returning to Mr. Benjamin's apartment at the complex. Mr. Crockett was not a tenant of the complex. At the time of the incident, both men were dressed in women's clothes, including wigs and makeup.

As Mr. Benjamin and Mr. Crockett exited their vehicle, two men pulled into the parking lot in another vehicle. According to Mr. Benjamin's deposition, one of the men from this vehicle approached Mr. Crockett and tried to get his attention, "trying to talk to him ... like how a guy will talk to a woman." Mr. Benjamin testified that Mr. Crockett ignored the man and continued up the stairs to Mr. Benjamin's apartment. The man then pulled out a gun and advised Mr. Benjamin and Mr. Crockett not to run. Upon seeing the gun, both Mr. Benjamin and Mr. Crockett began to run away. The assailant shot and killed Mr. Crockett; Mr. Benjamin was shot five times, but survived. The assailant was never caught.

On October 5, 2004, Mr. Benjamin and Margaret Crockett, Mr. Crockett's mother, filed suit for damages against Jean Barnette, the NOLA Apartments, and State Farm Fire and Casualty Company. The defendants filed a motion for

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<sup>1</sup>This memorandum opinion is issued in compliance with Uniform Rules-Courts of Appeal Rule 2-16.1.B.

<sup>2</sup>The plaintiffs apparently misspelled Jean Barnette's last name in the petition. In addition, the plaintiffs incorrectly referred to State Farm Fire and Casualty Company as "State Farm Mutual Insurance Company" in the petition.

summary judgment, contending that they had no duty to protect a lessee and his guest from the independent criminal acts of third persons under the facts and circumstances of this case. After a hearing, the trial court agreed and rendered judgment dismissing the plaintiffs' claims with prejudice. This appeal by the plaintiffs followed.

Appellate courts review summary judgments *de novo* under the same criteria that govern the trial court's determination of whether a summary judgment is appropriate. **Duplantis v. Dillard's Dept. Store**, 2002-0852, p. 5 (La. App. 1 Cir. 5/9/03), 849 So.2d 675, 679, writ denied, 2003-1620 (La. 10/10/03), 855 So.2d 350. A motion for summary judgment should only be granted if the pleadings, depositions, answers to interrogatories and admissions on file, together with any affidavits, show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. art. 966(B).

A threshold issue in any negligence action is whether the defendant owed the plaintiff a duty. **Posecai v. Wal-Mart Stores, Inc.**, 99-1222, p. 4 (La. 11/30/99), 752 So.2d 762, 766. Whether a duty is owed is a question of law. **Pinsonneault v. Merchants & Farmers Bank & Trust Co.**, 2001-2217, p. 7 (La. 4/3/02), 816 So.2d 270, 276. Generally, there is no duty to protect others from the criminal activities of third persons. **Harris v. Pizza Hut of Louisiana, Inc.**, 455 So.2d 1364, 1371 (La. 1984). In deciding whether to impose a duty in a particular case, the court must make a policy decision in light of the unique facts and circumstances presented. **Posecai**, 99-1222 at p. 4, 752 So.2d at 766.

After a thorough *de novo* review of the record, we find that the defendants did not owe a duty to Mr. Benjamin and Mr. Crockett to protect them from the criminal acts of third persons under the facts and circumstances of this case. As there remain no genuine issues of material fact, summary judgment is appropriate.

Thus, the judgment of the trial court is affirmed. All costs of this appeal are assessed to Kendrick Benjamin and Margaret Crockett.

**AFFIRMED.**