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SJC-12917

SHARON HEATH-LATSON<sup>1</sup> vs. ALEXANDER STYLLER & others.<sup>2</sup>

Essex. October 9, 2020. - June 7, 2021.

Present: Budd, C.J., Gaziano, Lowy, Cypher, & Kafker, JJ.

Wrongful Death. Negligence, Wrongful death, One owning or controlling real estate, Duty to prevent harm, Foreseeability of harm. Practice, Civil, Wrongful death, Motion to dismiss.

Civil action commenced in the Superior Court Department on December 4, 2018.

A motion to dismiss was heard by Timothy Q. Feeley, J.

The Supreme Judicial Court granted an application for direct appellate review.

George J. Leontire for the plaintiff.  
Christopher J. Sullivan for Alexander Styller.

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<sup>1</sup> Individually and as personal representative of the estate of Keivan B. Heath.

<sup>2</sup> Woody Victor and John Does.

BUDD, C.J. Keivan Heath was shot and killed at a crowded house party at approximately 3 A.M. on the Sunday of Memorial Day weekend in 2016. The host of the party had rented the house for the weekend. The shooter has not been identified; however, as the personal representative of the estate, the decedent's mother sued the defendant property owner, Alexander Styller (defendant), for wrongful death. A Superior Court judge granted the defendant's motion to dismiss the suit; the plaintiff appealed, and we allowed her petition for direct appellate review.

We agree with the judge that based on the facts alleged, the defendant's duty as the homeowner did not extend to protecting the decedent from harm perpetrated by a third party. Specifically, the complaint does not plausibly suggest either that the defendant owed a legal duty to the decedent by virtue of his ownership of the property or that the defendant voluntarily assumed such a duty. We therefore affirm the order allowing the defendant's motion to dismiss.

Background.<sup>3</sup> The defendant's property includes a 5,000 square foot home, a three-car garage, a 2,000 square foot patio,

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<sup>3</sup> The facts are taken from the complaint, as well as a stipulated statement of facts from a related Land Court case that was attached to the complaint, treating all factual allegations as true, and drawing every reasonable inference in favor of the plaintiff. See Lipsitt v. Plaud, 466 Mass. 240, 241 (2013).

an in-ground heated pool, and a pool house with a fireplace and a bar on a three-acre lot in Lynnfield (premises). The defendant rented out the premises for short periods of time using a variety of Internet platforms that facilitate short-term rentals. During each rental, the defendant and his family would leave the property and stay elsewhere. In the listings, the defendant touted the property's secluded location, fenced-in yard, and electronically operated gates. He also described the property as being in one of the safest areas in Massachusetts. Renters used the house for, among other things, business retreats, conferences, "photo shoots," and reunions.

In May 2016, Woody Victor and five other individuals rented the premises over Memorial Day weekend for what Victor described as a college reunion.<sup>4</sup> The defendant and Victor exchanged a few text messages before finalizing the rental. On the first day of the rental -- a Friday -- the defendant met briefly with Victor

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<sup>4</sup> The defendant and Victor arranged the rental through an Internet platform dedicated to facilitating short-term rentals. The platform allows homeowners to list their homes for rent, and provides methods of communication between owners and renters so that they can enter into rental agreements. A rental contract is formed when a prospective renter "requests" a "booking" for a specific listing on the platform and the owner of the listing accepts the request. No specific rental agreement between the defendant and Victor is in the record, and it appears that, for these types of Internet-based personal rentals, the defendant relied upon the service providers' general forms rather than drafting separate contracts, as he did with some business entities in the record.

to give him the keys to the house, instructions on using the appliances, and his telephone number in case Victor had any questions.

Victor informed the defendant that he planned to hold a college reunion party. However, he advertised a Saturday event on social media as the "Splash Mansion Pool Party," open to "Special Invitation & Girls Only," with three named disc jockeys to provide the music. At approximately 11 A.M. on Saturday, a neighbor noticed women in bikinis and college-aged individuals entering the property. The defendant stopped by at approximately 2 P.M. to give Victor and his guests instructions on using the pool facilities.

By 7 P.M., when the decedent arrived, music was playing, vehicles lined the driveway, people filled the patio, and catering trays were on display. At approximately 9 P.M., a neighbor called police to report an excessive number of vehicles in the driveway of the defendant's home. When police responded to the residence, they requested that vehicles be moved to allow emergency vehicles access to the house if necessary. Once a path had been cleared, the officers left. By 1 A.M. on Sunday morning, more than one hundred people were at the party.

At approximately 3 A.M., police received two 911 calls reporting that someone at the party had been shot; one caller said that the decedent was "dying," and the other reported that

people were attempting cardiopulmonary resuscitation and then said, "he's gone." Police arrived to find many vehicles leaving and people fleeing on foot. The decedent was lying alone, face up and unresponsive, near the pool. He was transported to a nearby hospital, where he was pronounced dead in the emergency room. The cause of death was two gunshot wounds to the chest.

The plaintiff, as personal representative of the decedent's estate, filed a complaint against the property owner<sup>5</sup> in the Superior Court, asserting a claim for wrongful death among others.<sup>6</sup> She alleged that the defendant committed a breach of his duty to conduct the rental of his home in a "reasonable, prudent, and legal manner" and that, as a result, the decedent was shot and killed.<sup>7</sup> The defendant moved to dismiss the complaint, arguing in part that the complaint failed to

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<sup>5</sup> The plaintiff also named Victor and five other individuals alleged to be short-term renters or guests of the defendant, each of whom was referred to as "John Doe." Victor is the only defendant to have filed an answer to the complaint.

<sup>6</sup> Following the judge's order on the motion to dismiss, the parties also stipulated to the dismissal of the two loss of consortium claims with prejudice.

<sup>7</sup> The plaintiff additionally claimed that the short-term rental agreement into which the defendant entered was a violation of a local zoning ordinance, and that this, too, "contributed to and caused" the decedent's death. This argument was not pressed on appeal. However, in a separate action the homeowner has challenged a determination by the zoning board of appeals of Lynnfield that the rental of his home on a short-term basis violated the town's zoning bylaw. See Styller v. Zoning Bd. of Appeals of Lynnfield, 487 Mass. , (2021).

demonstrate that he owed a duty to protect the decedent from injury caused by a third party. See Leavitt v. Brockton Hosp., Inc., 454 Mass. 37, 40 (2009) (existence of duty of care is question of law appropriately decided via motion to dismiss). The judge agreed and granted the defendant's motion to dismiss. The plaintiff appealed, and we allowed her petition for direct appellate review.

Upon de novo review,<sup>8</sup> we conclude that the plaintiff has failed to make a prima facie case of negligence as the complaint does not allege facts that, if true, imposed a duty on the defendant to protect the decedent from harm caused by a third party.

Discussion. A viable negligence claim requires a showing that a defendant owes a duty of reasonable care to the plaintiff, the defendant committed a breach of that duty, the plaintiff suffered damage, and a causal relationship existed between the breach of duty and the damage. Jupin v. Kask, 447 Mass. 141, 146 (2006). Here, the question whether the complaint properly was dismissed turns on whether the plaintiff alleged facts demonstrating that the defendant had a duty to the

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<sup>8</sup> "We review the allowance of a motion to dismiss de novo." Curtis v. Herb Chambers I-95, Inc., 458 Mass. 674, 676 (2011). In so doing, "[w]e accept as true the allegations in the complaint and draw every reasonable inference in favor of the plaintiff." Id.

decedent to protect him against harm from third parties. See Royal Indem. Co. v. Pittsfield Elec. Co., 293 Mass. 4, 6 (1935), and cases cited ("There can be no negligence without some act or omission in violation of legal duty" [citation omitted]).

Fundamentally, the existence of a duty of care depends upon the foreseeability of a risk of harm that the defendant has an ability to prevent. See Lev v. Beverly Enters.-Mass., 457 Mass. 234, 243 (2010), citing Irwin v. Ware, 392 Mass. 745, 756 (1984). Thus, as a property owner, the defendant owed a duty to maintain his property in a reasonably safe condition to avoid foreseeable injury to all lawful visitors. See Mounsey v. Ellard, 363 Mass. 693, 708-709 (1973).

This duty generally does not extend to taking "affirmative steps to protect against dangerous or unlawful acts of third persons." Luoni v. Berube, 431 Mass. 729, 731 (2000). See Lev, 457 Mass. at 242, citing Restatement (Second) of Torts § 315 (1965). There are exceptions to this rule, however. A duty to protect against harm caused by the conduct of a third person arises where there is a "special relationship" between a defendant and a plaintiff such that the "defendant reasonably could foresee that he would be expected to take affirmative action to protect the plaintiff and could anticipate harm to the plaintiff from the failure to do so." Irwin, 392 Mass. at 756. See, e.g., Fund v. Hotel Lenox of Boston, Inc., 418 Mass. 191,

192-193 (1994) (property owners owed duty to protect guests from harmful acts of third parties where they were aware of prior violent crimes on premises); Sharpe v. Peter Pan Bus Lines, Inc., 401 Mass. 788, 792-793 (1988) (previous robberies in high crime area made stabbing foreseeable).

Here, the complaint alleges no facts suggesting that the defendant had a duty to protect the decedent from wrongdoing of a third party. Although the complaint cites a finding made by a Land Court judge in a related case that that short-term rentals have "significant external effects on the neighboring community and community at large,"<sup>9</sup> it does not allege that short-term rentals are correlated with an increase in violent crime.<sup>10</sup> The complaint alleges that the defendant had rented his residence on several other occasions for various events but does not allege that any incidents of violence occurred during those rentals that would have put the defendant on notice of a risk of

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<sup>9</sup> See Styller vs. Aylward, Mass. Land Ct., No. 16 MISC 000757 (Sept. 19, 2018).

<sup>10</sup> In her brief, the plaintiff references a shooting with multiple victims during a large Halloween party that took place at a short-term rental property in a suburb of San Francisco, California, in 2019. As the incident occurred after the shooting at issue here, it was neither referenced in the complaint nor considered by the judge. At any rate, one shooting incident during a short-term rental on the west coast could not have served to provide notice to the defendant about third-party criminal acts during a short-term rental at his residence.

violence during Victor's event. See Belizaire v. Furr, 88 Mass. App. Ct. 299, 304-305 (2015) (landlord owed no duty to shooting victim where no evidence of prior gun violence on property prior to incident).

Further, the plaintiff did not allege that anything in Victor's background posed a risk of violence. Nor did she point to any information the defendant had about Victor's planned event that would have made the shooting foreseeable. Although the complaint alleges that Victor advertised the event widely, that police had been called to the residence, and that, by 1 A.M., more than one hundred people were present, it does not go on to allege that the defendant was aware of any of these facts.<sup>11</sup>

Finally, the complaint does not allege a connection between the shooter and the defendant. In fact, it makes no allegations regarding the perpetrator or the circumstances of the shooting whatsoever. Cf. Lev, 457 Mass. at 242-243 (special relationship between person posing risk and person who can prevent harm may give rise to duty).

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<sup>11</sup> We note that even if the defendant had been aware that Victor was planning a large event, the plaintiff does not allege a correlation between the size of a gathering and the likelihood of violence.

As the plaintiff has not alleged facts demonstrating that the defendant should have foreseen the risk of harm caused by a third party to lawful visitors,<sup>12</sup> she has failed to establish that the defendant had a duty to protect against such harm. See Luoni, 431 Mass. at 730-732 (homeowner not liable for injuries caused by negligence of third party on his property); Griffiths v. Campbell, 425 Mass. 31, 33-35 (1997) (risk of homicide not reasonably foreseeable to landlord based on suspicion of drug dealing activity); Whittaker v. Saraceno, 418 Mass. 196, 197 (1994) (landlord of commercial building not liable for unforeseeable attack on plaintiff).

The defendant argues that just as restaurants,<sup>13</sup> hotels,<sup>14</sup> and common carriers<sup>15</sup> have a duty to protect their customers from third-party harm, the defendant, as a "short-term rental operator," had the same duty vis-à-vis those lawfully on his property during a rental. This comparison misses the mark.

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<sup>12</sup> Although not a guest of the defendant, we assume without deciding that the decedent was a lawful visitor to the property.

<sup>13</sup> See Carey v. New Yorker of Worcester, Inc., 355 Mass. 450, 452 (1969).

<sup>14</sup> See McFadden v. Bancroft Hotel Corp., 313 Mass. 56, 59-60 (1942).

<sup>15</sup> See Quigley v. Wilson Line of Mass., Inc., 338 Mass. 125, 130 (1958).

Aside from the fact that there is no allegation of any relationship between the defendant and the decedent other than the fact that the decedent was shot and killed on property owned by the defendant, perhaps the biggest difference between the relationship between a business establishment and its customers and the defendant's relationship to the decedent is that the defendant had no control over the premises during the rental period. As the plaintiff acknowledged in the complaint, at the start of the rental period the defendant gave Victor "sole and exclusive possession of his [r]esidence for the three-day stay, with no visits, monitoring, or supervision by [the defendant]." In short, aside from ensuring that the property was in a reasonably safe condition when he turned the premises over to Victor, see Mounsey, 363 Mass. at 708-709, the defendant owed no additional duty of care to the decedent.<sup>16,17</sup>

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<sup>16</sup> In the alternative, the plaintiff argues that the defendant voluntarily assumed the duty to protect visitors on his property from third-party wrongdoing by touting the security features installed on the premises. This argument has no merit given the attenuated relationship between the defendant and the decedent and the fact that the defendant relinquished control over the premises during the rental. Contrast Mullins v. Pine Manor College, 389 Mass. 47, 53 (1983) (colleges voluntarily undertake to protect their students from criminal acts of third parties, as "[s]tudents are charged . . . for this service" and "[a]dequate security is an indispensable part of the bundle of services which colleges . . . afford their students").

<sup>17</sup> As we conclude that the plaintiff failed to allege facts suggesting that the defendant had a duty to the decedent, we need not consider the plaintiff's allegations of negligence,

Conclusion. As the plaintiff has failed to demonstrate that the duty the defendant owed to the decedent extended to protecting him from injury caused by a third party, we affirm the Superior Court judge's decision to grant the defendant's motion to dismiss.

So ordered.

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namely, a failure to conduct the rental in a reasonable, prudent, and legal manner by, among other things, failing properly to vet Victor prior to the rental and failing properly to monitor Victor's event. See Whittaker v. Saraceno, 418 Mass. 196, 198-199 (1994). (considering concept of foreseeability both in terms of limits of duty of care and limits of proximate cause).