

BUILDING SECURITY

{¶5} In order for plaintiff to prevail upon her claim of negligence, she must prove, by a preponderance of the evidence, that defendant owed her a duty, that it breached that duty, and that the breach proximately caused her injuries. *Strother v. Hutchinson* (1981), 67 Ohio St.2d 282, 285. As the landlord of its dormitory, defendant has “a duty to take those steps which are within [its] power to minimize the predictable risk to [its] tenants.” *Doe v. Flair Corp.* (1998), 129 Ohio App.3d 739, 751, quoting, *Kline v. 1500 Massachusetts Avenue Apartment Corp.* (C.A., D.C. 1970), 439 F.2d 477. Defendant is obligated “only to take some reasonable precautions to provide reasonable security.” *Carmichael v. Colonial Square Apartments* (1987), 38 Ohio App.3d 131, 132.

{¶6} Both parties presented expert testimony regarding whether defendant took “reasonable precautions.” Plaintiff’s security expert, James Clark, testified that it would be prudent for defendant to conduct periodic security surveys to determine whether its security measures were adequate; however, he was not aware of any such analysis having been performed by defendant. Based upon his own analysis, Clark concluded that defendant’s written security procedures were adequate but “inconsistently implemented.” Clark identified what he believed to be areas of vulnerability to crime including persons who could enter the dormitory without proper identification. Clark opined that the bathroom door should have been equipped with a lock and that defendant’s failure to put a lock on either the bathroom door or the shower door constituted an unreasonable lack of security. According to Clark, having a lock on either the bathroom door or the shower door would have significantly reduced the risk of plaintiff being assaulted.

{¶7} In contrast to Clark’s opinion, defendant offered the expert testimony of John Carpenter, the Chief of Police at San Diego State University. Carpenter opined that defendant’s dormitory security system was more than adequate. Specifically, Carpenter testified that defendant’s use of residence hall staff and student employees to monitor dormitory residents was a reasonable and effective security measure. Carpenter observed that the main entrance to Daniels Hall was monitored by two student-staffed security stations. Additional security was provided by a dormitory advisor, resident assistants who were assigned to each floor, and a “roaming patrol” by resident-life staff who periodically visited Daniels Hall.

{¶8} Although plaintiff contends that defendant failed to provide adequate security, her own expert testified that defendant's dormitory security plan was well-designed. Plaintiff also failed to establish that the standard of care required installation of either keyed locks on the exterior bathroom door or shower locks in the shower area. Clark testified that he was not aware of any university that had installed locks on all exterior dormitory bathroom doors. Clark conceded that the shower stalls must remain accessible in case of emergencies even if "privacy locks" were installed on the shower vestibule door. Clark did not offer an opinion about whether there was a breach of security by an unauthorized person in Daniels Hall on the night of the incident.

{¶9} With regard to plaintiff's claim that the attacker gained entrance to the dormitory through a negligently maintained entrance, several theories were offered to support this contention. Plaintiff speculated how an intruder might have entered the dormitory based upon the testimony of her friend, Nicole Wilkinson, who admitted to entering the building prior to the incident without identification. Plaintiff also theorized that the attacker could have entered through one of many alarmed pedestrian doors that are locked but can be opened from the inside in case of an emergency. However, plaintiff did not offer any evidence establishing how her assailant gained access to the dorm, nor did the criminal investigation reveal any such evidence. The court finds that plaintiff failed to prove that defendant's security plan or its implementation fell below the standard of care for dormitory security.

CRIMINAL ACTS OF A THIRD PARTY

{¶10} Ordinarily there is no duty to prevent a third person from harming another unless a "special relationship" exists between the parties. *Eagle v. Mathews-Click-Bauman, Inc.* (1995), 104 Ohio App.3d 792; *Fed. Steel & Wire Corp. v. Ruhlin Constr.* (1989), 45 Ohio St.3d 171, 173. Where a special relationship does exist, the duty to protect against injury caused by third parties is an exception to the general rule of no liability. *Fed. Steel* at 174. A "special relationship" exists when a duty is imposed upon one to act for the protection of others. *Gelbman v. Second Natl. Bank of Warren* (1984), 9 Ohio St.3d 77, 79. Such a "special relationship" exists between a business and its invitees. *Reitz v. May Co. Dept. Stores* (1990), 66 Ohio App.3d 188. Similarly, the duty of care

owed to plaintiff as a student of a state university is that of an invitee. *Baldauf v. Kent State Univ.* (1988), 49 Ohio App.3d 46; *Shimer v. Bowling Green State Univ.* (1999), 96 Ohio Misc.2d 12, 16.

{¶11} To find liability in negligence against a defendant based upon the criminal act of a third party, an invitee must demonstrate that the criminal act was foreseeable. *Reitz, supra*, at 191-192; *Howard v. Rogers* (1969), 19 Ohio St.2d 42, paragraphs one and two of the syllabus. The duty to warn or protect invitees from criminal acts of third persons arises when the defendant knows or should know that there is a substantial risk of harm to its invitees on the premises in possession and control of the owner. *Simpson v. Big Bear Stores Co.* (1995), 73 Ohio St.3d 130, syllabus. Although a landlord has some duty to provide security in common areas, he is not an insurer of the premises against criminal activity. *Doe v. Beach House Dev. Co.* (2000), 136 Ohio App.3d 573, 580.

{¶12} Under certain circumstances, Ohio courts have found, as a matter of law, that criminal acts are not foreseeable. See *Flair Corp., supra* (finding that a sexual assault is an unforeseeable criminal act which supersedes alleged negligence for failing to provide adequate building security). A landlord will be liable for a criminal attack only when it should have been reasonably foreseen and there was a failure to take reasonable precautions to prevent it. *Id.* at 751. The foreseeability of criminal acts occurring on premises is determined by using a totality of the circumstances test. *Reitz, supra*. The totality of the circumstances must be “somewhat overwhelming” before a criminal act will be considered foreseeable. *Id.* at 194.

{¶13} Although plaintiff asserts that defendant had notice of “ongoing criminal activity” at Daniels Hall, the evidence offered to show that the assault was foreseeable was not proven. Both experts agreed that most reported crime on campus involved theft offenses committed by students and that the vast majority of sexual assaults against dormitory students were perpetrated by acquaintances. Plaintiff’s expert was not aware of any other “stranger rape” that had occurred in Daniels Hall. Contrary to plaintiff’s assertion, the court finds that defendant’s literature addressing rape prevention, which warned students to watch for strangers in the dormitories, is not persuasive evidence that the attack was foreseeable. Considering the totality of the circumstances, the court concludes that the attack on plaintiff was not foreseeable.

{¶14} Foresight, not retrospect, is the standard of diligence. It is nearly always easy, after an accident has happened, to see how it could have been avoided.

But negligence is not a matter to be judged after the occurrence. It is always a question of what reasonably prudent men under the same circumstances would or should, in the exercise of reasonable care, have anticipated ***.

{¶15} *Hetrick v. Marion-Reserve Power Co.* (1943), 141 Ohio St. 347, 358-359. Absent any evidence of other similar crimes at Daniels Hall, and in light of the security procedures in place, the imposition of liability for random criminal attacks would render defendant an insurer of the safety of its dormitory residents.

{¶16} For the foregoing reasons, judgment shall be rendered in favor of defendant.

FRED J. SHOEMAKER
Judge