

COA Opinion: Landlord has duty to call police when aware of ongoing crime occurring against invitee on premises

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In *Bailey v. Schaff*, No. 295801, the Court of Appeals held that a landlord has a duty to take reasonable measures in response to an ongoing crime that takes place on the premises, which means “expediting the involvement of, or reasonably attempting to notify, the police.”

In *Bailey*, the plaintiff was shot on August 4, 2006, while attending a gathering at a friend’s apartment complex. According to the plaintiff, immediately before the shooting, two security guards working at the complex were told there was a gun on the premises, and the individual in possession of the gun was pointed out to the guards. Despite the warning, however, the plaintiff alleged the guards took no action. The guards argued that they looked for the person after being notified of his presence, but failed to find him. The plaintiff sued the security guards, the security company, and the owner of the apartment complex, under related theories of negligence, premises liability, vicarious liability, and breach of contract. Specifically, the plaintiff alleged a signed July 2006 draft contract between the security company and the complex owner imposed a duty on the security company to protect the plaintiff, and that the complex owner was liable for failing to adequately protect the plaintiff against third-party criminal acts.

On cross-motions for summary judgment, the trial court dismissed the individual security guards from the suit, holding that there was no basis for holding them personally liable for their conduct. The trial court also held that no contract existed between the security company and the complex owner at the time of the incident regarding the duties to guests of the complex, and the security company could therefore not be held liable. Finally, the trial court held that the complex owner did not violate any duty it had with respect to the plaintiff, given the facts of the case. The plaintiff appealed, arguing that (1) the trial court abused its discretion when it allowed the complex owner and manager to amend their answer to deny the existence of a security contract after having admitted one existed; (2) the trial court abused its discretion when it dismissed the plaintiff’s claim that he was a third-party beneficiary of a contract between the security company and the complex owner; and (3) that the complex owner had a duty to respond to criminal acts, and the trial court’s dismissal of the plaintiff’s claim against the complex owner was therefore improper.

Regarding the first issue, the Court held that the trial court did not abuse its discretion. The Court reasoned the amendment was properly made during the discovery process when the defendants discovered the contract in question was actually an incomplete draft, and the final contract was not executed until after the August 4, 2006 date. The Court also noted allowing the amendment while discovery was still open would not prejudice the plaintiff, and the trial court’s order was therefore proper. As to the second issue, the Court held that because no contract existed, the plaintiff could not maintain its breach of contract claim based on a third-party beneficiary theory, and the trial court’s dismissal of the claim was proper.

Addressing the plaintiff's premises liability claim against the complex owner, the Court held that the only duty the owner had was "to summon the police when, either directly or through . . . agents, they observe criminal acts in progress that pose a risk of imminent harm to identifiable invitees." Applying this principle, the Court held that the plaintiff stated a claim against the complex owner and security company, "premised on the [alleged] failure of their agents to respond appropriately to criminal activities on their principal's property." In sum, the Court held that the complex owner or security company had a duty to call the police "if they had knowledge of an ongoing emergency that posed a foreseeable risk of imminent harm to an identifiable invitee."