



WEEKLY LAW RESUME™

Issue By: Mark Hazelwood

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Premises Liability - Duty To Protect Customers Does Not Extend To Criminal Conduct Occurring Outside of Owner's Property

Toomer v. United States of America

United States Court of Appeals, Ninth Circuit (August 18, 2010)

California law imposes an affirmative duty on business owners to protect customers from foreseeable third-party criminal conduct. This obligation derives from the special relationship between a business owner and his or her customers. The question presented in this case is whether the duty extends to acts that occur beyond the owner's property.

Club Metro, a bar and dance club located inside the U.S. Naval Base in San Diego, hosted a weekly Hip Hop Night. Navy Seaman Roderick Little and his friends attended the party. Marine Lance Corporal Myron Thomas and his friends also visited the club that same evening. The two parties got into a fight on the dance floor. Security personnel intervened. The two groups got into a further fight in the parking lot of the club. Again, security personnel broke up the fight and instructed both groups to leave the Navy base.

As the Thomas car drove out the secured exit to the base, posted security officers heard someone in Thomas' vehicle say, "I'm going to do a 187." Both officers understood this to be a threat of murder. Neither of the officers could see who made the statement and the vehicle sped off before the officers could get a license plate number. One of the officers thought to report the threat to dispatch, but got tied up directing traffic.

San Francisco Office

505 Montgomery Street, 7th Floor | San Francisco, CA 94111 | Phone: 415-981-6630 | Fax: 415-982-1634

Monterey Office

2 Lower Ragsdale Drive, Suite 120 | Monterey, CA 93940 | Telephone: (831) 655-8822 | Fax: (831) 655-8881

Web: www.lowball.com



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Meanwhile, Thomas went to his apartment and took a supervisor's AK-47 automatic rifle. Later, Thomas and a friend located Little and his friends at a nearby Del Taco Restaurant, across the street from the Naval base. Thomas shot in the direction of Little and his friends. Little was killed.

Marie Toomer and Jaya Little, Little's wife and daughter, brought suit against the United States, claiming negligence pursuant to the Federal Tort Claims Act (FTCA). Under the FTCA, the United States can be held liable for injuries/death if a private individual, under like circumstances, could be held liable under California law. Plaintiffs contended that the U.S. owed Little a duty to protect him from third-party criminal conduct. Further, Plaintiffs alleged that the U.S. failed to provide reasonable security at Club Metro. The U.S. brought a motion for summary judgment arguing that it did not owe Little such a duty. The trial court granted the motion. Plaintiffs appealed. The Ninth Circuit Court of Appeals affirmed.

On appeal, Plaintiffs argued that the U.S., which operated Club Metro, had a duty to undertake minimally burdensome measures, such as calling 911, to protect Little from imminent or ongoing criminal activity. Plaintiffs also contended that Club Metro should have had a greater and more effective security presence. The Ninth Circuit held that while the Government might have had such a duty while Little was at Club Metro or on the Naval base, the duty did not extend to acts occurring off the base. The Court could find no California Supreme Court case directly on point. The Ninth Circuit, therefore, looked to California appellate decisions that held that if a proprietor is to be held liable in tort for third party criminal activity, the act must occur on the proprietor's property. Further, the Ninth Circuit reasoned that even if the U.S. had a duty to protect Little beyond the base, the U.S. still could not be held liable for Little's death, because it was not reasonably foreseeable that Thomas would go get a weapon and shoot Little. (The Dissent strongly disagreed with this point). As such, Plaintiffs could not establish a claim of negligence and the judgment was affirmed.

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COMMENT

This decision places a limit on the duty of a business owner to protect patrons from third-party criminal activity. At some point, the California Supreme Court will need to provide clarity on whether such a duty extends beyond the owner's property

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