



**Georgia CVS Pharmacy, LLC v. Carmichael
Welch et al. v. Pappas Restaurants, Inc.
Welch et al. v. Tactical Security Group, LLC**
(June 29, 2023)

The Georgia Supreme Court recently issued its opinion in three negligent security premises liability cases that were collectively argued and considered by the court. One of the main issues considered was whether the test for foreseeability is based on prior substantially similar crimes or a broader totality of the circumstances test. In its opinion, the court ruled that (1) reasonable foreseeability of a third-party criminal act is linked to the proprietor's duty, which is (2) informed by the totality of the circumstances. Accordingly, the appropriate question when considering the foreseeability of third-party crimes is "whether the totality of the circumstances establishes reasonable foreseeability such that the proprietor has a duty to guard against that criminal activity"?

The court expressly rejected the notion that there is a bright-line rule for reasonable foreseeability. Instead, a fact-intensive totality of the circumstances analysis must be decided on a case-by-case basis. Reasonable foreseeability can now be established by evidence of prior crimes, the location as a high crime area and the proprietor's knowledge of a "volatile situation brewing on the premises." Further, prior crimes do not need to be identical to the subject incident to be relevant. Instead, "the proximity, timing, frequency, and similarity of prior acts informed the question of reasonable foreseeability." However, evidence that a property is located in a high crime area, alone, is insufficient to establish a duty to keep the property safe from "every conceivable crime."

Given this recent ruling, proprietors will likely have a more difficult time prevailing on summary judgment in negligent security cases. Under the totality of the circumstances test, it likewise appears that plaintiffs will have an easier time introducing and relying upon evidence of prior crimes or seemingly dangerous conditions at the property both to defeat summary judgment and at trial. Further, it appears that prior crimes that may not have been previously considered because they were not substantially similar to the crime at issue may now be factored into the analysis based on proximity, timing and frequency, as these crimes could still be sufficient to put the proprietor on notice of a dangerous condition.

The ruling in these cases will have an important impact on how negligent security premises liability cases are litigated moving forward. If you wish to discuss this case or have any questions, please contact a Swift Currie attorney.

The foregoing is not intended to be a comprehensive analysis of the full effect of these changes. Nothing in this notice should be construed as legal advice. This document is intended only to notify our clients and other interested parties about important recent developments. Every effort has been made to ascertain the accuracy of the information contained within this notice.

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