

## Property Managers Alert

On July 30, 2013 the Michigan Supreme Court released an opinion that appears to expand the legal duties that owners and property managers of residential real estate owe to their tenants and their guests. Usually, when a Michigan appellate court makes a decision that changes the law for a large number of people, it garners a fair amount of publicity. Very little has been said about this case, which may be due to the fact that it is hard to tell the potentially affected persons (i.e., owners and property managers of residential real estate) and exactly how they are to deal with this new duty imposed on them by the Michigan Supreme Court.

The facts of this case are fairly straightforward. There is an apartment complex known as Evergreen Regency Townhomes (“Evergreen”) located in Flint. Evergreen is owned and managed by Radney Management & Investments, Inc. (“Radney”). Radney had a contract with a security company, Hi-Tech Protection (“Hi-Tech”) to provide security guards to patrol Evergreen.

Devon Bailey visited Evergreen on August 4, 2006 to participate in an outdoor party in the common area of Evergreen. Two security guards of Hi-Tech, Baker and Campbell, were patrolling the area in a golf cart. At some point during the party, a tenant of Evergreen, Laura Green (“Green”), told the Hi-Tech security guards that Steven Schaaf was “brandishing” a revolver and threatening to kill someone (The written opinion of one of the Supreme Court Justices suggests that Schaaf had actually waived his gun in front of the security guards). In any case, the security guards did nothing. Later, after Green had advised the security guards that Schaaf had a gun and was threatening to kill someone, the security guards heard two gunshots. Schaaf had shot Devon Bailey twice in the back. Devon Bailey is now a paraplegic.

The legal issues in this case were whether Radney or its agents, Baker and Campbell, had any duty to do anything to protect Devon Bailey from Schaaf and, if so, what they were required to do in order to protect him. Many REALTORS® may be surprised to learn that up until the decision in this case, generally no duty was owed to Devon Bailey; thus, the owner and the property manager who managed the property were not required to do anything.

It has long been true that generally, under the common law there is no duty that requires one person to come to the aid of or to provide protection for another person. The exception to this general rule is when a “special relationship” exists

between two parties. An example of the exception to the general rule would be the duty an owner of property owes to invitees on that property to warn them of any dangers present on the property. In this instance, the owner of the property is deemed to have a “special relationship” with the invitee based on the fact that the owner controls the property and is thus in the best position to maintain the physical premises and to warn of any dangers.

In the past there was also a general rule that merchants and landlords owed no duty to protect tenants or invitees from the criminal acts of others. This general rule made some sense, inasmuch as neither a merchant, nor a landlord, nor a property owner can control the occurrence of crime in the community in which they are situated. Crime can occur at anytime and anywhere. If merchants, landlords or property owners were deemed to owe a duty to prevent criminal acts from occurring on their properties, presumably they would be required to provide armed guards. Such a duty would require property owners to provide a safer environment for their invitees than their invitees would have in the community at large.

In the recent case, it would appear that the Michigan Supreme Court case chose to change this established the common law. In its decision, the Supreme Court determined that a landlord and its property manager might continue to presume that tenants and their invitees will obey the criminal law. The Court also reaffirmed the continued unpredictability and irrationality of criminal activities, e.g., appearing at a party in an apartment complex and shooting a stranger twice in the back. However, the Supreme Court stated that this general assumption “. . . should continue until a specific situation occurs on the premises that would cause a reasonable person to recognize a risk of imminent harm to an identifiable [tenant] invitee.” When the landlord receives notice of this type of situation, the Supreme Court found, the landlord and its property manager are required to make “reasonable efforts to expedite police involvement.” In other words, in this case, the two security guards, Baker and Campbell, would have satisfied the duties Radney owed to Devon Bailey if one of them had simply called 911 and requested immediate assistance from the Flint police. However, they did not do so; thus, Radney will now bear the burden of the injury done to Devon Bailey by Steven Schaaf if the claims made in this case ultimately prove to be true.

The fact that the injury took place in the com-



mon area was a significant factor in the Court's decision. The Michigan Supreme Court made it clear that a landlord or property manager does not owe a duty to respond to criminal acts occurring within the leased premises of a tenant. In other words, had the party at Evergreen been held inside a tenant's apartment and Schaaf shot Devon Bailey in the apartment; there would be no claim against Evergreen. Obviously, Evergreen has no ability to control what goes on in a tenant's apartment.

The new rule announced by the Michigan Supreme Court in this case works very well on the facts of this case. A man was in a common area at an apartment complex waving a revolver saying he was going to kill someone. Further, another tenant gave notice of the situation to two security guards who apparently were in a position to also witness the man waving or brandishing the gun.

at ACE Realty received notice of a specific situation occurring on the property that would cause a reasonable person to recognize a risk of imminent harm to an "identifiable tenant" or invitee? Arguably not, as the tenant in Unit 3 cannot tell whether any of the young men are tenants or invitees of tenants, if the young men actually have any weapons or if the loud voices are anything more than the typical noises of celebratory young men on a Saturday night. Nonetheless, it would appear incumbent upon the property manager at ACE Realty to immediately call 911 and ask that a police car be dispatched to the property.

As another example, assume that ACE Realty manages an eight-unit apartment building. It receives a call from the tenant in Unit 5 that there is loud yelling and the sounds of things breaking in Unit 6. The tenant in Unit 5 also advises that

the persons in Unit 6 started partying at 3:00 p.m. and are still going strong at 11:00 p.m. What does the property manager at ACE Realty do with this information? According to the decision by the Michigan Supreme Court, since neither the owner nor the property manager has any

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Unfortunately, REALTORS® who act as property managers or who are owners of residential rental properties are going to have to figure out what to do in situations which are not quite as crystal clear. For example, assume ACE Realty manages a property that is an older, larger home that has been divided into four apartments. The common areas for the property are the porch, front yard, and driveway and parking area. Assume that ACE Realty receives a call at 9:30 on a Saturday night from the tenant in Unit 3 whose second floor apartment overlooks the driveway and parking area. The tenant in Unit 3 advises ACE Realty that a group of young men are in the parking area, and that the young men are yelling at each other and making threats. One of the young men is continually sticking his hands in his jacket as if he has a gun in the pocket. The tenant cannot tell the property manager whether any of the young men in the driveway and parking area are tenants or guests of tenants. Has the property manager

control over the goings on in Unit 5, they have no duty to do anything. However, there is certainly a chance that 15-20 minutes later, the participants will leave Unit 6 and take their fight outside to a common area. As a matter of good practice, should the property manager attempt to preempt that possibility by immediately calling 911 and asking that a police car be dispatched to Unit 6? The answer could well be yes.

This decision by the Michigan Supreme Court may be very workable as a practical matter in large apartment complexes where the owners and property managers provide security guards who patrol the premises. It would appear that it is going to be much more difficult for those owner-managed properties that have only a few tenants and no security guards, but presumably the same possibility for large damages in the event of a death or major injury to a tenant or invitee. It does not seem unreasonable to assume that the police will be receiving a lot more calls in the future. **MAR**

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