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## Landlord liability for assaults on tenants: Saelzler v Advanced Group, 2001

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**Landlord liability for assaults on tenants:**  
***Saelzler v Advanced Group, 2001***  
**Roger Bernhardt**

**Assault victim failed to prove that lack of security at apartment building resulted in entry of assailants and proximately caused her assault.**

*Saelzler v Advanced Group 400* (2001) 25 C4th 763, 107 CR2d 617

Sherwood Apartments, a 300-unit complex in a rough Los Angeles neighborhood, is well known for frequent criminal activity, including sexual assaults on women. The owners of the complex knew of the rampant violence but took no precautions to secure the complex other than hiring night security guards. Marianne Saelzler, a Federal Express employee, was assaulted and nearly raped by three young men in the common area while delivering a package to a resident during daytime. The assailants were never apprehended or identified.

Saelzler sued the owners of the complex for her injuries, alleging negligence and premises liability. She presented evidence that the attack would not have occurred if daytime security guards had been present and better efforts had been made to keep gates and fences repaired and closed. The trial court found that, because crimes against persons in the common areas were highly foreseeable, the owners had a clear duty to take security precautions and had clearly breached that duty in this case. Because the assailants were never identified, however, Saelzler could not prove that they were outsiders, as opposed to residents of the complex. As a result, the trial court found that Saelzler failed to prove that the lack of security proximately caused her assault, and granted summary judgment for the owners.

The court of appeal reversed, holding that the causal connection between the lack of daytime security and the assault was a jury question inappropriate for summary judgment. A landlord's duty of maintenance includes the duty to take reasonable steps to secure the common areas against *foreseeable* third party crimes that are likely to occur in the absence of such precautionary measures. The appellate court held that the high degree of foreseeability in this case justified even burdensome measures to prevent future harm from criminal assailants.

The supreme court reversed, predicated its 4–3 decision on the causation issue. After balancing the competing policy concerns—society's interest in compensating persons injured by another's negligence and its reluctance to impose unrealistic financial burdens on apartment owners—the court concluded that Saelzler had failed to prove that additional security precautions would have prevented her assault. Because Saelzler could not prove that her assailants were unauthorized to enter the premises (surmising that they may have been tenants), her evidence that the use of round-the-clock security guards would have prevented her injuries was merely speculative. The court explained (25 C4th at 762):

No matter how inexcusable a defendant's act or omission might appear, the plaintiff must nonetheless show the act or omission caused, or substantially contributed to, her injury. Otherwise, defendants might be held liable for conduct which actually caused no harm, contrary to the recognized policy against making landowners the *insurer* of the absolute safety of anyone entering their premises.

The court also held that the burden of proving causation did not shift from Saelzler to the defendants, noting that the appellate court's burden-shifting approach conflicted with California's summary judgment statute (CCP §437c(o)(2)).

►**THE EDITOR'S TAKE:** In commenting on the court of appeal decision in this case last year (see *Saelzler v Advanced Group 400* (2000) 77 CA4th 1001, 92 CR2d 103, reported in 23 CEB RPLR 102 (Mar. 2000), which violently disagreed with other district courts on this issue), I observed, "This clearly needs a supreme court resolution, although I expect that the high court may be no less divided on the issue." Well, I was right on both scores: We did get a high court ruling, and it was as fractured as the lower courts' have been. Indeed, every time I think about the point, I flip-flop around it and change sides. On the one hand, how can one blame the landlord for not fixing a fence when, for all we know, the assailant was an insider who didn't need to sneak through the fence? On the other hand, isn't there some sort of *res ipsa loquitur* notion that a landlord who doesn't provide security should have some responsibility for what happens in his or her building?

Those rhetorical observations aside, the California outcome is clear, at least until there is a change of personnel on the bench (not counting a replacement for Justice Mosk, since he was a dissenter in this case). When the assailant has not been identified, the plaintiff is going to lose most of the time. When there are potentially bad people inside as well as outside the premises, proof of failure to maintain a good external security system won't accomplish anything in and of itself. The plaintiff will also have to show that the assailant, more likely than not, was an outsider rather than an insider.

How can she do that? I doubt that much will be accomplished by testimony that she knew all of the other tenants and that the assailant didn't look like any of them, because it still leaves open the too-broad possibility that the assailant entered as a friend of a tenant. Evidence that someone broke the lock on the front door that same evening might justify letting the jury decide whether the assailant was more likely an outsider than an insider; but in that case, is it negligent for the landlord to fail to fix the lock at once, if he knew it was broken? And as the lock stays broken longer and longer, the increased likelihood of negligence is equally offset by the increasing unlikelihood of establishing proximate cause.

This decision, along with the earlier decision in *Ann M. v Pacific Plaza Shopping Ctr.* (1993) 6 C4th 666, 25 CR2d 137, constitutes a double whammy for tenants and invitees seeking to recover for the criminal injuries they suffer on another's premises. *Ann M.* made proof of negligence significantly more difficult by requiring prior similar events in order to establish foreseeability. Now, when that hurdle is surmounted, the plaintiff is confronted with what may be the even higher proximate-cause requirement of showing that the negligence was a substantial, rather than a merely speculative, factor in the injury. —Roger Bernhardt