LIABILITY OF LANDOWNER FOR CRIMINAL ACTS OF THIRD PARTIES

Can a landowner be held accountable for personal injuries caused by the intentional (or criminal) acts of third parties? In Maryland, the District of Columbia, Virginia and West Virginia, the answer is generally, no. Nevertheless, there are enough exceptions to this general rule that landowners could face extensive liability if proper precautions are not taken.

Maryland

In Maryland, a landowner has a duty to exercise ordinary care to render the premises safe for tenants or invitees. *See Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship*, 375 Md. 522, 537-38, 826 A.2d 443, 452-53 (2003). However, this duty generally does not encompass protection of tenants, their guests, and invitees from criminal activity by third parties. *See Jones v. Godfrey*, No. 04-cv-3379, 2008 U.S. Dist. LEXIS 29600, at * 33 (D. Md. Mar. 31, 2008). This rule is based upon the courts' belief that holding a landowner accountable for actions that are generally beyond his control would be unjust and unfair. *See Hemmings*, 375 Md. at 559-60, 826 A.2d at 465. Moreover, courts do not want to transform landowners into the insurers of persons who are lawfully on the property. *Id*. at 538, 826 Md. at 452; *see also Jones*, 2008 U.S. Dist. LEXIS 29600, at *34 ("questions of duty are to be construed narrowly in general so as to avoid overly broad liability").

Under Maryland case law, however, there are three recognized theories under which a landowner may be held liable when someone is injured by third party criminal activity on his or her premises:

1) an asserted duty to eliminate conditions that contributed to the criminal activity, such as providing security personnel, lighting, locks, and the like and when the asserted duty is based on knowledge of prior similar incidents on the premises;

2) knowledge possessed by the invitor/landlord with respect to prior conduct of the assailant that allegedly made the assault foreseeable and preventable;

3) knowledge of events occurring on the premises, prior to and leading up to the assault, which made imminent harm foreseeable, which triggered the landlord's duty to act.

Under each theory, courts have found that once a landowner has knowledge or should have knowledge that criminal activity on the premises has created a dangerous condition, the landlord must take reasonable measures to eliminate or correct the condition contributing to the criminal activity. *See Hemmings*, 375 Md. at 540, 826 A.2d at 454; s*ee also Scott v. Watson*, 278 Md. 160, 169, 359 A.2d 548, 553 (Md. 1976) ("The duty of a landlord is to exercise reasonable care for the tenant's safety, and traditional principles of negligence regarding proximate or intervening causation will

determine whether the landlord is liable for an injury resulting from a breach of this duty, including an injury caused by criminal acts of third persons"). To state the rule more generally;

> the act of a third person in committing an intentional tort or crime is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which offered an opportunity to the third person to commit such a tort or crime, unless the actor at the time of his negligent conduct realized or should have realized that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a tort or crime.

Jackson v. A.M.F. Bowling Ctrs., Inc., 128 F. Supp. 2d 307, 314 (D. Md., 2001); Restatement (Second) of Torts § 448).

In each of these situations, the key question is foreseeability. "Foreseeability," however, is not merely that criminal activity is *possible*. Instead, it is *probability* that criminal activity will occur. *See Jones*, 2008 U.S. Dist. LEXIS 29600, at *41.

In order to show the application of these principles, it is useful to review some cases in Maryland which have addressed the question of a landlord's liability for a third party's criminal acts on the premises.

Hemmings v. Pelham Wood Ltd. Liab. Ltd. P'ship, for example, involved the first theory of liability, failure to eliminate conditions that contributed to the criminal act. 375 Md. at 522, 826 A.2d at 443. In that case, a burglar entered Plaintiff's second story apartment through a locked sliding glass door and murdered her husband. Plaintiff filed suit arguing that the landlord had breached a duty to provide adequate security by failing to provide adequate exterior lighting and failing to adequately secure the Plaintiff's apartment. Plaintiff provided evidence that an exterior light on the back of the building by the sliding glass door was not functioning at the time of the break-in, leaving the area pitch black. Plaintiff also presented evidence that 29 burglaries or attempted burglaries had occurred at the apartment complex during the previous 2 years.

The Court of Appeals reversed the lower court's grant of summary judgment to the landlord. The court ruled that the landlord had a duty to repair a known dangerous or defective condition under his control to prevent a foreseeable third party attack upon a tenant within the leased premises. *Id.* at 548, 826 A.2d at 458 ("The facts of the present case show that the Landlord provided exterior lighting at [the apartment complex] as a security measure intended to deter criminal activity. Thus, it had a duty to adequately maintain that lighting."). The court also rejected the argument that the landlord could not be liable for an attack that occurred outside of a common area and within the apartment itself. *Id.* at 542, 826 A.2d at 455 ("a landlord is not necessarily immune from liability because a tenant's injury occurs within a leased premises, rather than within common areas, if an uncorrected defect in the common areas adversely affects occupants of the leased premises.").

The Plaintiff in *Moore v. Jimel, Inc.* brought a case against a landowner on a theory similar to the one used in *Hemmings*. 147 Md. App. 336, 809 A.2d 10 (2002). In *Moore*, a young woman was assaulted by a fellow patron in the restroom of a bar. The woman filed suit against the bar for negligently having failed to provide adequate security.

The Court of Special Appeals affirmed the lower court's grant of summary judgment for the landlord. *Id*. at 343, 809 A.2d at 14. The court rejected the Plaintiff's apparent argument that such an attack was foreseeable given the number of criminal incidents in the neighborhood surrounding the bar. *Id.* at 347-348, 809 A.2d at 16-17. According to the court, criminal incidents occurring in the

surrounding neighborhood are irrelevant when determining whether a criminal incident was foreseeable. *Id*. Instead, only those incidents that occurred on the premises itself are relevant. *Id*. The court reasoned that because the landlord can only control conditions on his own premises, only criminal acts occurring on the landlord's premises, of which he knows or should have known, are relevant in determining, in the particular circumstances, the reasonable measures which a landlord is under a duty to take to keep the premises safe. *Id*. Because there was no evidence of any prior crime having been committed on the premises, the assault was not foreseeable and the landlord could not be held liable. *Id*. at 349, 809 A.2d at 17; *see also Corinaldi v. Columbia Courtyard, Inc.*, 162, Md. App. 207, 229, 873 A.2d 483, 495 (2005) (foreseeability must be based on crimes *similar* to the criminal act at issue in case).

Roese v. Keyco, Inc., illustrates the second theory of liability, prior known history of the criminal. No. 06-951, 2008 U.S. Dist. LEXIS 62454, at *1 (D. Md. Aug. 12, 2008). In that case, a bar patron assaulted another patron without prior provocation. The assaulted patron brought a case against the bar's owner on the theory that the owner was aware of the assailant's violent tendencies. In support, Plaintiff offered evidence that the assailant had been previously suspended from the bar for 30 days for getting into an verbal altercation with the bar manager.

The court found that the evidence was insufficient to make the assault foreseeable. *Id*. at *11. The court noted that Plaintiff could only point to one prior "bad" act by the assailant. *Id*. While the court noted that this theory of liability does not require an "unfortunate event" to occur more than once before it finds a duty to act, "especially when the facts and circumstances leading up to the event clearly presage its occurrence," the undisputed evidence was that the prior incident was not physical or violent in nature and that the bar employees did not feel threatened. *Id*. at *9-*11. Thus, the assault was unforeseeable as a matter of law. *Id*. at *11.

Finally, in *Corinaldi v. Columbia Courtyard, Inc.*, a hotel was sued by the family of a man who died when a fellow guest fired a pistol at a party in the hotel. 162 Md. App. at 207, 873 A.2d at 483. The trial court granted summary judgment for the hotel, ruling that as a matter of law the harm to the decedent was unforeseeable.

The Court of Special Appeals overturned the ruling. The court noted that while a landowner's duty may arise based on previous criminal events, it may also arise based on the landowner's knowledge of events that are currently unfolding on the property. *Id*. at 224; 873 A.2d at 492. While the court acknowledged that the hotel had no previous interaction with the shooter, the record showed that the hotel staff was advised at 10:45 p.m. that one of the guests had a gun. Nevertheless, the hotel staff did not call the police until 10:55 p.m. The shooting occurred between 10:53 and 10:55. The court ruled that even though hotel staff waited only ten minutes to call the police, "a reasonable jury could find that imminent harm was foreseeable when appellees were advised that an attendee of the party had a gun." *Id*. at 228, 873 A.2d at 495. Moreover, "[i]n light of the fact that an officer responded within three minutes of the 911 call, a reasonable jury could also find that the harm was preventable if appellees' agents had made the call to police immediately upon discovering that someone had a gun." *Id*.

District of Columbia

As in Maryland, D.C. follows the rule that a landowner may be liable for harm caused by the criminal act of another only if the crime was particularly foreseeable. *Sigmund v. Starwood Urban Retail VI LLC*, 617 F.3d 512 (D.C. Cir. 2010). D.C. also generally recognizes the same three theories under which a landowner may be held liable when someone is injured by a third party's criminal activities on his or her premises as Maryland does. *See e.g., Id.* (failure to eliminate conditions

contributing to a criminal event); *Doe v. Dominion Bank of N.A.*, 963 F.2d 1552 (D.C. Cir. 1992)(prior incidents on or near premises); *G'Sell v. Carven*, 724 F. Supp. 2d 101 (D.D.C. 2010) (knowledge of events currently occurring on premises).

This rule was first recognized in the landmark case of *Kline v. 1500 Massachusetts Ave. Apartment Corp.* 439 F.2d 477 (D.C. Cir. 1970). Prior to that time, courts had stated that "a landlord has no duty to protect a tenant, or a tenant's property from criminal acts of third persons." *See e.g.*, *Ramsay v. Morrissette*, 252 A.2d 509, 512 (D.C. 1969).

In *Kline*, a tenant sustained serious injuries after she was assaulted and robbed in the common hallway of her apartment building. The court noted that the apartment building had entrances facing three busy streets, had nearly 600 individual units, and had a well documented history of similar such assaults and robberies by third parties against tenants in the building. Moreover, the court noted that when Plaintiff moved into her apartment seven years prior to the assault, the building had a 24-hour doorman, a 24-hour desk clerk in the lobby, attendants near one of the side entrances, and both side entrances were locked at night. By the time of the assault, however, these security measures were generally gone.

After the tenant brought a claim against her landlord, the District Court, based on a longstanding rule, held that the landlord had no duty to protect the tenant from a criminal attack by a third person. *Kline*, 439 F.2d at 478. The D.C. Circuit Court overruled the District Court, stating that the rationale for this longstanding rule falters when it is applied to the conditions of modern urban apartment living. *Id*. at 481. According to the court, the modern landlord's relationship with his tenant was closer to that of an innekeeper than that of the medieval landlord on whom the old rule was based, who merely provided access to the land itself. *See Id.* at 482. Because an innkeeper controls his entire premises, he was liable for any attacks on guests if those attacks should have been anticipated. *Id.* Thus, where the landlord has notice of repeated criminal assaults and robberies, has notice that these crimes occurred in the portion of the premises exclusively within his control, has every reason to expect like crimes to happen again, and has the exclusive power to take preventative action, it does not seem unfair to place upon the landlord a duty to take those steps which are within his power to minimize predictable risks to his tenants. *Id*. at 481.

There are, however, some differences between the law in Maryland and the law in D.C. on this issue. First, D.C. seems to have a higher standard to demonstrate foreseeability than Maryland. As another court has noted, the D.C. Court of Appeals has been reluctant to find a Defendant liable for harm caused by the criminal act of a third party. *Workman v. United Methodist Committee*, 320 F.3d 259, 262 (D.C. Cir. 2003). Because of the extraordinary nature of criminal conduct, a "heightened showing" is required, the requirement is a "demanding" one and the proof must be "precise." *Id*; *Sigmund*, 475 F. Supp. 2d at 41. Moreover, foreseeability cannot be predicated merely on "generic information" such as crime rates, or evidence that the Defendant's employees worked in a "criminally active environment." *Workman*, 320 F.2d at 262.

Second, a Plaintiff pursuing a case under the "prior incidents" theory in D.C. is not, as in Maryland, required to show "previous occurrences of the particular type of harm"; the requirement "can be met instead by a combination of factors which give the Defendant an increased awareness of the danger of a particular criminal act." *Sigmund*, 475 F. Supp. 2d at 42. In *Graham v. M & J Corporation*, for example, the court ruled that the landlord's liability for an arson committed by a third party was a question of fact for the jury despite the fact that no arsons or attempted arsons had occurred in the building or in the nearby area. 424 A.2d 103, 108 (D.C. 1980). According to the court, the lack of a lock on the front door of the building, the landlord's knowledge of a recent attempted burglary in the building, and the building's location in a high crime area satisfied Plaintiff's burden of

production and the question of whether the crime was foreseeable should have been given to the jury. *Id*.

In further contrast to Maryland, D.C.'s analysis of forseeability includes consideration of the relationship between the plaintiff and the defendant. As the D.C. Circuit has noted, cases in this area "suggest a sliding scale: If the relationship between the parties strongly suggests a duty of protection, then specific evidence of foreseeability is less important, whereas if the relationship is not the type that entails a duty of protection, then the evidentiary hurdle is higher." *Sigmund*, 475 F. Supp. 2d at 42. When there is a "special relationship" between the plaintiff and defendant that entails a duty of protection, the heightened foreseeability requirement is lessened somewhat, and "can be met instead by a combination of factors which give defendants an increased awareness of the danger of a particular criminal act." *Id.*

In *District of Columbia v. Doe*, for example, the court upheld a judgment against D.C. arising from a case brought on behalf of a young girl who was abducted from her school and raped by an unknown male. 524 A.2d 30, 33 (D.C. 1987). Implicit in *Doe's* holding was the notion that particular care is required by school officials when the safety of young children is involved. *Clement v. People's Drug Store, Inc.*, 634 A.2d 425, 429 (D.C. 1993). A "special relationship" has also been recognized between the owner of a multi-unit apartment building and his or her tenants. *See Graham*, 424 A.2d at 106.

Finally, D.C., unlike Maryland allows for consideration of crimes which have occurred in the surrounding area, not merely the landlord's property, when deciding whether a crime was foreseeable. While foreseeability cannot be based solely on "generic information" such as local crime rates, *Sigmund*, 617 F.3d at 42, evidence of prior criminal activity in the area can be considered as a factor when determining whether a crime was foeseeable. *See e.g., Id.*, at 40 (considering crimes committed within 5 blocks of crime scene); *Graham*, 424 A.2d at 105 ("Both parties admit that the neighborhood was high in criminal activity."); *Doe*, 524 A.2d at 34-35 (evidence of crime in area surrounding school was admissible, but evidence of crime at other city schools was irrelevant).

Virginia

Under Virginia law, ordinarily the owner or occupier of land does not have a duty to protect an invitee from the criminal acts of a third party committed on the owner's premises. *Thompson v. Skate Am., Inc.*, 261 Va. 121, 128, 540 S.E.2d 123, 127 (2001). However, a special relationship between either 1) the owner and the plaintiff or 2) the owner and the alleged criminal actor may exist that creates a duty to warn or protect a plaintiff from the reasonably foreseeable acts of a third party. *Id*. at 129, 540 S.E.2d at 127. The special relationship may arise under the facts presented or it may exist as a matter of law. *Id*. Virginia recognizes that a special relationship exists under the law between a "common carrier and its passengers, an employer and its employees, an innkeeper and its guests, and a business owner and its invitees." *Id.* The existence of a special relationship does not, however, make an owner the insurer of an invitee's safety. *Taboada v. Daly Seven, Inc.*, 271 Va. 313, 323, 626 S.E.2d 428, 433 (2006). Even with a special relationship established, "a business invitor, whose method of business does not attract or provide a climate for assaultive crimes, does not have a duty to take measures to protect an invitee against criminal assault unless he knows that criminal assaults against persons are occurring, or are about to occur, on the premises which indicate an imminent probability of harm to an invitee." *Wright v. Webb*, 234 Va. 527, 533, 362 S.E.2d 919, 922 (1987). An owner's knowledge of crimes against property does not create a duty to anticipate and prevent or warn against assault. *Id*. at 522, 362 S.E.2d at 921. Rather, the "exception requires notice of a specific danger just prior to the assault." *Burns v. Johnson*, 250 Va. 41, 44, 458 S.E.2d 448, 450 (1995). Virginia courts will not find that prior non-violent conduct can lead to an inference of an

imminent probability of physical harm. *Hunt v. Kroger*, 2006 U.S. Dist. LEXIS 44439, *8 (W.D.Va. 2006).

In addition to the requirement that an owner have knowledge of prior violent acts, before a duty can be imposed the Court must consider 1) the extent of the burden placed on the owner to guard against such assaults as well as 2) the consequences of placing that burden on the owner. *Dudas v. Glenwood Golf Club*, 261 Va. 133, 140, 540 S.E.2d 129, 133 (2001). The standard for establishing a duty to warn and a duty to protect appear to be the same. *Yuzefovsky v. St. John's Woods Apts.*, 261 Va. 97, 110, 540 S.E.2d 134, 141 (2001), citing to *Dudas, supra*.

Because the owner's knowledge of prior assaults must indicate an "imminent probability of harm to an invitee" the owner must have notice of a specific danger that exists just prior to an assault and will have no liability if the facts can only establish that it had knowledge of a general background of criminal activity on the premises or in its vicinity. *Webb*, 234 Va. at 533, 362 S.E.2d at 922. Even if previous criminal activity is sufficient to establish that a particular attack was reasonably foreseeable, the appropriate inquiry remains whether the previous criminal activity was sufficient to lead a reasonable person to conclude there was an imminent danger of harm to the plaintiff. *Dudas*, 261 Va. at 140, 540 S.E.2d at 133.

The threshold for establishing facts sufficient to allow a reasonable person to conclude there was an imminent danger of harm to the plaintiff requires the plaintiff to show that either a particular type of crime previously occurred, or that a particular individual committed an assault, on the property shortly before the plaintiff was attacked. *See, Wright v. Webb*, 234 Va. 527, 362 S.E.2d 919 (1987) (holding that where evidence established an average of two larcenies per month in either the hotel's rooms or parking lot and that owner had knowledge of at least some of these larcenies, in addition to a physical assault one year prior in parking lot and double murder two and one half years prior in parking lot, owner of parking lot had no duty to warn or protect invitee against assault from third party because this evidence was insufficient to allow a reasonable person to conclude that physical assault was imminent); *Burns v. Johnson*, 250 Va. 41, 458 S.E.2d 448 (1995) (holding that where evidence established gas station's employee was harassed and propositioned by a drunk, regular customer, but there was no evidence that the drunk had a firearm or otherwise made the employee fear for her safety, owner of gas station had no duty to customer who was kidnapped and raped by drunk customer because evidence was insufficient to establish that employee had any knowledge that assault was imminent); *Yuzefovsky v. St. John's Woods Apts.*, 261 Va. 97, 540 S.E.2d 134 (2001) (assuming without deciding that landlord owed special duty to tenant, but holding that where plaintiff merely alleged there were 656 crimes in the general vicinity of the apartment complex, including an average of 113 crimes against the person in the three years leading to the assault, and that during the three years prior to assault 257 crimes that occurred on the owner's property were reported to police, allegations were insufficient to impose a duty to warn or protect against third party's actions because they did not satisfy the imminence requirement necessary to impose a duty); *Dudas v. Glenwood Golf Club*, 261 Va. 133, 540 S.E.2d 129, (2001) (holding that where it was established that plaintiff was shot on golf course in November 1997 and the parties agreed there were two armed robberies and one attempted robbery in October 1997 and another robbery in May 1996, owner of golf course had no duty to warn or protect against third party's actions because there was no reasonable threat of imminence because although there were assaults in October 1997 there were none in the prior year; the Court also noted that with respect to the owner's burden, the cost of employing security to guard every hole as well as the damage to the owner's reputation that would be incurred if warning signs were posted created an undue burden on the property owner and weighed in favor of finding no duty to warn or protect); *Thompson v. Skate Am., Inc.*, 261 Va. 121, 540 S.E.2d 123 (2001) (holding that where evidence established owner had specific knowledge of a third party's propensity to attack other invitees because he had previously assaulted customers and owner had actually attempted to ban the

third party from its premises, the owner *did* have a duty to protect business invitee; knowledge of similar attacks from the same person established imminence prong and magnitude of burden on owner was negligible because all it had to do was enforce the ban it had previously imposed on the third party); *see also, Gupton v. Quicke*, 247 Va. 362, 442 S.E.2d 658 (1994) (holding that where third party threatened plaintiff in front of defendant's employees, and despite escorting third party out of premises employees allowed third party to re-enter restaurant where employees knew that plaintiff was located, restaurant owed duty to invitee plaintiff because the employees knowledge of the threatened assault created an imminent probability of harm to plaintiff).

The Court has diminished the strict application of the imminent danger prong in certain, limited situations. In *Taboada v. Daly Seven, Inc., supra*, the Virginia Supreme Court analogized the relationship between an innkeeper and a guest to that of a common carrier and a passenger. *Taboada*, 271 Va. at 326, 626 S.E.2d at 434. The Court noted that because of the special relationship between and innkeeper and its guest, the innkeeper has an "elevated duty of 'utmost care and diligence' to protect a guest from the danger of injury caused by the criminal conduct of a third person on the innkeeper's property." *Id*. The Court distinguished between the knowledge required to make a danger reasonably foreseeable and that required to establish an imminent probability of harm, and held that because of the elevated duty present in the innkeeper relationship, in a situation with a defendant innkeeper, a plaintiff only needs to establish that a danger is reasonably foreseeable. *Id*. at 327, 626 S.E.2d at 435. Therefore, with respect to innkeepers, there is a lower threshold necessary for imposing a duty to warn or protect against third party criminal assaults.

West Virginia

Whether a property owner or landlord is liable for injuries an invitee or tenant sustains from criminal acts of a third party is often a question of fact in West Virginia. Recent case law suggests that any property owner or landlord who relies too heavily on the general rule that he does not have a duty to protect others from the deliberate criminal conduct of third parties does so at his own peril.

The Supreme Court of Appeals of West Virginia first addressed this issue in *Miller v. Whitworth*, 193 W. Va. 262, 455 S.E.2d 821 (1995). In that case, the Court noted that in order to establish a case for negligence in West Virginia, it is necessary for the plaintiff to demonstrate that the property owner or landlord has been guilty of some act or omission in violation of a duty owed to the plaintiff. Because no action for negligence will lie without a duty broken, the court must first determine whether or not a property owner or landlord owed a duty to protect an invitee or tenant from the criminal activity of a third party.

The general rule that a property owner or landlord does not owe a duty to protect others from deliberate criminal conduct is supported by various public policy considerations. *Miller v. Whitworth* goes on to explain that a property owner or landlord usually does not owe a duty to protect, because the foreseeability of risk of intentional or criminal misconduct is slight and social and economic consequences of imposing such a duty are significant. There are certain exceptions; however, which could give rise to a duty to protect another from the criminal acts of a third party. Such exceptions include: 1) when a person has a special relationship which gives rise to a duty to protect another person from intentional misconduct or (2) when the person's affirmative actions or omissions have unreasonably exposed another to a foreseeable high risk of harm from the intentional misconduct.

Examples of a special relationship include that of a common carrier to its passengers, an innkeeper to its guests, and a possessor of land who holds it open to the public. In such circumstances, a duty to take reasonable action to protect against unreasonable risk of physical harm is owed. This exception was applied by the West Virginia Supreme Court of Appeals in *Doe v. Walmart*, 198 W. Va.

100, 479 S.E.2d 610 (1996). In that case, a third-party placed a knife at the side of the plaintiff as she was preparing to leave the parking lot of a shopping center in which a Walmart was located. The third party allegedly forced the plaintiff into her car, drove her to a remote area, and sexually assaulted and abandoned her. In reversing the dismissal of the lawsuit against Walmart and the owner of the shopping center, the Court reasoned that, given the allegations of the complaint (none of which are cited or referenced in the opinion), it might be possible for the plaintiff to show that the defendants, by their affirmative actions or omissions had exposed the plaintiff to a foreseeable high risk of harm from the miscreant. The Court also explained that at trial, it would be necessary for the plaintiff to show more than a general knowledge of prior unrelated incidents of criminal activity occurring in the area, such as a specific prior warning from the police, a recent prior threatening note, or some other special circumstance that would warn anyone of a pending crime (*i.e.*, recent crimes of a very similar nature that occurred on the premises or very close thereto).

With respect to affirmative actions or omissions that expose another to a foreseeable high risk of harm, circumstances are determined on a case-by-case basis. Cases in which this exception has been applied include *Hough v. Hough*, 205 W. Va. 537, 519 S.E.2d 640 (1999) and *Strahin v. Cleavenger*, 216 W. Va. 175, 603 S.E.2d 197 (2004).

In *Hough v. Hough*, Mrs. Hough was shot and killed by her estranged husband, who moved into a mobile home directly across the road from Mrs. Hough, shortly after a protective order against him was entered. The incident occurred while Mrs. Hough was mowing the lawn surrounding her mobile home. In that wrongful death action, the plaintiff alleged that the owner of a mobile home park was related to Mr. Hough and should have known about the protective order when he rented the mobile home located across the road from Mrs. Hough to Mr. Hough; failed to take any action after Mrs. Hough informed him that she was terrified of her husband and was concerned for her safety and the safety of her children; and as a result of her fear of her husband, Mrs. Hough refrained from mowing the lawn directly in front of her mobile home until the owner of the mobile home park advised her to either mow the lawn or move from the premises. The West Virginia Supreme Court of Appeals ruled that such allegations were sufficient to state a claim that the mobile home park owner's affirmative actions or omissions unreasonably created or increased the risk of injury to the decedent from the criminal activity of Mr. Hough and that the claim should be determined on the merits at trial.

In *Strahin v. Cleavenger*, the West Virginia Supreme Court of Appeals affirmed a $1,060,556.00 jury award against Earl Sullivan for injuries sustained by the plaintiff when Robert Cleavenger, a third-party, intentionally shot the plaintiff with a high powered rifle on Mr. Sullivan's property. In that case, evidence revealed that Mr. Sullivan knew Mr. Cleavenger and that Mr. Cleavenger had a tendency toward violence, knew that Mr. Cleavenger may be committing acts of vandalism on his property due to anger and jealousy surrounding Mr. Sullivan's relationship with Mr. Cleavenger's ex-girlfriend, and had obtained a gun permit and began concealing a weapon because he feared for his life. In affirming the judgment, the Court ruled that by inviting the plaintiff to his property, Mr. Sullivan placed the plaintiff in jeopardy and thereby created an unreasonable high risk of harm to the plaintiff. In a strongly worded dissent, Chief Justice Maynard argues that "under this rule, if I have had a conflict with another person that has erupted into a verbal or physical altercation, I am charged with presuming that person will commit a criminal and violent act against me. Therefore, I arguably commit negligence by permitting a third party simply to ride in my car or visit my property. This turns the traditional presumption that one will not violate the law into the presumption that one will violate the law and commit a violent crime given the slightest provocation. Apparently, we all should now fear that anyone with whom we have a strained relationship will come looking to gun us down." Because it is the Opinion of the majority that matters most; however, property owners and landlords alike would be prudent to err on the side of caution where there is any indication that intentional acts of harm or criminal conduct may be committed upon their property in West Virginia.