SUMMER 2017 NEWSLETTER

PREMISES LIABILITY UPDATE

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***UDR Texas Properties, LP v. Petrie*, 2017 WL 382426 (Tex. January 27, 2017)(Brown, J.)**

In *UDR*, the Texas Supreme Court examined for the first time the "reasonableness" factors necessary to hold a property owner liable for criminal conduct injuring a visitor to an apartment complex. The Court ultimately reversed the judgment entered by the court of appeals and held against the visitor because the visitor failed to present evidence that the risk of being assaulted in the apartment's visitor parking lot was unreasonable.

The Court recognized that property owners have no general legal duty to protect persons from third-party criminal acts. However, if the property owner controls the premises, then he does have a duty to protect invitees from such criminal activity "if he knows or has reason to know of an unreasonable and foreseeable risk of harm to the invitee." The Court further noted, "we have consistently said the risk must be foreseeable *and* unreasonable [in order] to impose a duty on a property owner." (Emphasis in original.)

The Court then recognized that in *Timberwalk Apartments, Partners, Inc. v. Cain*, 972 S.W.2d 749 (Tex. 1998), five factors were discussed when determining imposing a duty. The *UDR* court then explained those five factors only went to "foreseeability" of the harm. "We designed the *Timberwalk* factors to measure foreseeability; their application cannot, without more, determine the reasonableness of a risk of harm…. Unreasonableness 'turns on the risk and likelihood of injury to the plaintiff … as well as the magnitude and consequences of placing a duty on the defendant.'" "If the burden of preventing the harm is unacceptably high, the risk of the harm is not unreasonable."

The court of appeals errored when it stated, "unreasonableness and foreseeability of harm is considered as a whole, not as separate elements requiring independent proof." Since the Plaintiff visitor provided no separate evidence of the burden on the apartment complex to make the property safe, the Supreme Court revered and rendered in the Defendant apartment complex's favor.

4Front Engineered Solutions, Inc. v. Rosales, 505 S.W.3d 905 (Tex. December 23, 2016)(Boyd, J.)

In *4Front*, a subcontractor sued the premises owner for personal injuries the subcontractor suffered while working with a contractor on the premises. 4Front owned the property, and they hired Reyes, a licensed electrician, to repair a lighted sign. Reyes, in turn, subcontracted with Plaintiff Rosales to assist him. Reyes and the Plaintiff used 4Front's forklift to raise the Plaintiff and lift a sign. On the second morning, Ryes drove the lift off the side walk's edge while the Plaintiff was on it. The Plaintiff fell and was severely injured. The jury found 4Front 75% negligent, Reyes 15% negligent, and the Plaintiff 10% negligent. The jury found Plaintiff's actual damages at roughly $8 million.

The Court rejected the Plaintiff's premises liability theory because "the jury found that 4Front negligently caused the accident because a 'condition [of the premises] posed an unreasonable risk of harm,' that 4Front had 'actual knowledge of the danger,' and that 4Front failed to adequately warn Rosales of the condition or make the condition reasonably safe." The Supreme Court noted the court of appeals' mistake by stating "when (as here) the danger arises from the contemporaneous use of the tangible property, the claim is for negligent "use" of property, not for premises liability."

The Court further noted, "even if the sidewalk's edge was dangerous and did proximately cause the accident, 'we have declined to impose a duty for premises conditions that are open and obvious, regardless of whether such conditions are artificial or naturally occurring." Thus, the Supreme Court held there was no evidence supporting the finding of premises liability.