

**ISAAC CASTILLO, Plaintiff and  
Appellant,**

**v.**

**CINNAMON TREE HOMEOWNERS  
ASSOCIATION, Defendant and  
Respondent.**

**G052338**

**COURT OF APPEAL OF THE STATE OF  
CALIFORNIA FOURTH APPELLATE  
DISTRICT DIVISION THREE**

**February 28, 2017**

**NOT TO BE PUBLISHED IN OFFICIAL  
REPORTS**

**California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.**

(Super. Ct. No. 30-2014-00729596)

**OPINION**

Appeal from a judgment of the Superior Court of Orange County, Frederick Paul Horn, Judge. Motion to augment record granted. Affirmed.

California Lawyers Group, Inc., Mitra Chegini and David J. Castenholz for Plaintiff and Appellant.

Law Office of Priscilla Slocum, Priscilla Slocum; Law Office of Andrew W. Macrae and James Grafton Randall for Defendant and Respondent.

\* \* \*

Plaintiff and appellant Isaac Castillo resided at a large condominium complex owned and managed by defendant and

respondent Cinnamon Tree Homeowners Association (Cinnamon Tree). Late one night Castillo was smoking a cigarette in a common area outside of his unit when two assailants suddenly attacked him from behind and shot Castillo in the chest. Tragically, the attack rendered Castillo a quadriplegic. Although he had no previous contact with them, Castillo's assailants also lived in Cinnamon Tree's condominium complex.

Castillo sued Cinnamon Tree, alleging it failed to provide adequate security to prevent the attack. Cinnamon Tree moved for summary judgment on the ground Castillo could not establish either the duty or causation elements essential to each of his negligence-based causes of action. The trial court agreed and granted Cinnamon Tree summary judgment. We affirm because Cinnamon Tree did not owe a duty to prevent this random, unprovoked attack.

A landlord or property owner like Cinnamon Tree is not an insurer of its tenant's safety as against third party criminal conduct. Although a landlord generally must maintain its property in a reasonably safe condition, a landlord only has a duty to take reasonable steps to prevent *foreseeable* criminal acts by third parties that are likely to occur. To establish the existence of a duty, a plaintiff therefore must identify a specific precautionary step the landlord should have taken that would have prevented the criminal conduct, and also show the foreseeable criminal conduct required imposing on the landlord the social and financial burdens associated with taking that specific action. The greater the burden placed on the landlord, the more foreseeable the criminal conduct must be. When one tenant commits a third party criminal act against another tenant, as opposed to a random outsider committing a criminal act, foreseeability turns on whether the landlord had notice of the tenant's violent propensity. Finally, the existence and scope of a landlord's duty is a question of law for the court.

No triable issue exists on the duty element of Castillo's negligence-based causes of action because he failed to identify any specific action Cinnamon Tree should have taken that would have prevented the attack. Castillo contends the security measures Cinnamon Tree employed were inadequate because they fell below the standard of care, but that is not the governing standard for cases involving third party criminal conduct. Castillo also contends Cinnamon Tree had a duty to conduct a security audit to identify security measures that could have prevented the attack. A security audit, however, is simply an intermediate step that may or may not have identified a security measure capable of preventing the attack. The burden was on Castillo to identify a specific measure that would have stopped the attack and could be analyzed under the foregoing standard. He failed to do so, and he may not shift that burden to Cinnamon Tree by arguing it should have evaluated whether unspecified measures existed that would have prevented the assault.

Moreover, Castillo failed to present any evidence that showed an attack by Castillo's assailants was foreseeable. The governing case law requires evidence of similar acts by Castillo's assailants that provided Cinnamon Tree with notice of their violent propensities. Castillo presented evidence of complaints about the assailants' nonviolent conduct, including being drunk in public, using drugs, and loudly partying at the complex, but failed to show the landlord received any complaints about the assailants' possible violent propensities. Castillo also presented evidence of other crimes at or near the complex, but this failed to show the assailants were violent because none of those crimes involved the assailants.

## I

### FACTS AND PROCEDURAL HISTORY

Cinnamon Tree owns and operates a large condominium complex located in

Placentia, California. It contracts with Patrol Masters, Inc., to provide security services for the complex. For a portion of each day, Patrol Masters assigns a single, unarmed guard who patrols the complex on foot. It takes the guard approximately one hour to walk the entire complex. There are 16 surveillance cameras scattered throughout the complex that the guard or management can view from the office. The complex also has two additional closed-circuit cameras. There is no fence or gate limiting access to the complex from the surrounding community.

Castillo lived in a unit at the complex. About 1:00 a.m. in late March 2014, he stood outside his apartment smoking a cigarette when two men quickly approached him from behind. One of the men shot him without saying a word. Castillo later testified the shooting happened quickly and without warning, and he did not know why the men shot him. The shooting rendered Castillo a quadriplegic. He later learned the men who attacked him also lived at the Cinnamon Tree condominium complex. The shooting happened near the end of the Patrol Masters guard's shift, but he did not hear the shooting or learn of it until he reported for his next shift.

In June 2014, Castillo filed this lawsuit against Cinnamon Tree and Patrol Masters alleging claims for premises liability based on a negligence theory, general negligence, and negligent hiring.<sup>1</sup> He alleges Cinnamon Tree "knew or had reason to know that the area in which the residential complex was located was crime ridden and dangerous, and by failing to provide proper security for the residents, that it would be foreseeable that anyone lawfully upon the premises would and could be injured."

Cinnamon Tree moved for summary judgment, arguing all of Castillo's claims failed as a matter of law because Cinnamon Tree had no duty to prevent unforeseeable criminal activity by other tenants, and any

duty Cinnamon Tree breached was not a proximate cause of the attack on Castillo. In support, Cinnamon Tree submitted declarations by its property manager and the Patrol Masters guard, who both declared they were unaware of any similar incidents at the complex since they began working there in 2013. Cinnamon Tree also submitted Castillo's deposition testimony about the attack and his assailants' identity as residents of the complex.

In opposition, Castillo argued Cinnamon Tree breached its duty to prevent the attack because it knew about ongoing criminal activity in and around the condominium complex, and it knew the assailants had caused other problems in the complex. To show Cinnamon Tree's knowledge, Castillo submitted numerous police reports and logs concerning crimes in the area during the preceding 10 years that ranged from disturbing the peace to attempted murder. Castillo also submitted testimony from the Patrol Masters guard that he had been warned to watch the unit where the assailants lived because they had caused problems in the past and Cinnamon Tree had fined them for rules violations. Finally, Castillo submitted a declaration from a security expert who opined that the security measures Cinnamon Tree took fell below the standard of care in the industry, and Cinnamon Tree should have had Patrol Masters conduct a security audit or assessment to determine the measures necessary to reduce crime at the complex.<sup>2</sup>

The trial court granted Cinnamon Tree's motion. It found Castillo "ha[d] a problem" with the duty element because the police records Castillo submitted to establish Cinnamon Tree's knowledge about prior similar incidents were based on inadmissible hearsay. The court explained the reports generally were admissible under the hearsay exception for business or official records, but the witness statements in the reports that allegedly established the prior incidents also

were hearsay and Castillo failed to show another hearsay exception applied to those statements. The court also found Castillo could not establish causation because the statements by Castillo's expert that a security audit likely would have prevented the attack was unsubstantiated speculation.

The trial court entered judgment in Cinnamon Tree's favor and this appeal followed.

## II DISCUSSION

### A. *Governing Summary Judgment Standards*

"A defendant moving for summary judgment bears the initial burden to show the plaintiff's action has no merit. [Citation.] The defendant can meet that burden by either showing the plaintiff cannot establish one or more elements of his or her cause of action or there is a complete defense to the claim. [Citations.] To meet this burden, the defendant must present evidence sufficient to show he or she is entitled to judgment as a matter of law. . . . [¶] Once the defendant meets that burden, the burden shifts to the plaintiff to present evidence establishing a triable issue exists on one or more material facts." (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 889 (*Carlsen*)). "The plaintiff opposing the motion, however, has no burden to present any evidence until the defendant meets his or her initial burden." (*Swanson v. Morongo Unified School Dist.* (2014) 232 Cal.App.4th 954, 963.)

"An issue of fact can only be created by a conflict of evidence. It is not created by "speculation, conjecture, imagination or guess work." [Citation.] Further, an issue of fact is not raised by "cryptic, broadly phrased, and conclusory assertions" [citation], or mere possibilities [citation]. "Thus, while the court in determining a motion for summary judgment does not 'try' the case, the court is

bound to consider the competency of the evidence presented." [Citation.] [Citation.] Responsive evidence that 'gives rise to no more than mere speculation' is not sufficient to establish a triable issue of material fact." (*Carlsen, supra*, 227 Cal.App.4th at pp. 889-890.)

We review the trial court's decision to grant summary judgment de novo. We are not bound by the trial court's stated rationale, but independently determine whether the record supports the trial court's conclusion as a matter of law. (*Wills v. Superior Court* (2011) 195 Cal.App.4th 143, 161.)

#### B. Cinnamon Tree Did Not Owe a Duty to Prevent the Attack

Each of Castillo's negligence claims requires a showing that Cinnamon Tree owed him a legal duty, it breached the duty, and the breach proximately caused Castillo's injuries. (*Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1188 (*Sharon P.*), disapproved on other grounds in *Reid v. Google, Inc.* (2010) 50 Cal.4th 512, 527, fn. 5 (*Reid*), and in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853, fn. 19.) Cinnamon Tree argued Castillo's claims failed as a matter of law because he could not establish either that Cinnamon Tree owed him a duty to prevent the attack or that Cinnamon Tree's breach of duty proximately caused his injuries. We conclude Castillo cannot establish Cinnamon Tree owed him a duty to prevent the attack, and therefore we do not address the issue of causation.

##### 1. Governing Duty Principles

"[I]t is well established that landowners must maintain their premises in a reasonably safe condition, and that in the case of a landlord, the general duty of maintenance includes 'the duty to take reasonable steps to secure common areas against *foreseeable* criminal acts of third parties that are likely to occur in the absence of such precautionary

measures.'" (*Sharon P., supra*, 21 Cal.4th at p. 1189; see *Castaneda v. Olsher* (2007) 41 Cal.4th 1205, 1213 (*Castaneda*); *Delgado v. Trax Bar & Grill* (2005) 36 Cal.4th 224, 237 (*Delgado*); *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 675 (*Ann M.*), disapproved on other grounds in *Reid, supra*, 50 Cal.4th at p. 527, fn. 5.)

"The existence of a duty is a question of law for the court. [Citations.] Likewise, '[f]oreseeability, when analyzed to determine the existence or scope of a duty, is a question of law to be decided by the court.'" (*Sharon P., supra*, 21 Cal.4th at p. 1188; see *Castaneda, supra*, 41 Cal.4th at p. 1213; see *Delgado, supra*, 36 Cal.4th at p. 237.)

Courts must consider several factors in determining a duty's existence and scope: ""[T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved." [Citations.] *Foreseeability and the extent of the burden to the defendant are ordinarily the crucial considerations*, but in a given case one or more of the other *Rowland [v. Christian]* (1968) 69 Cal.2d 108] factors may be determinative of the duty analysis." (*Castaneda, supra*, 41 Cal.4th at p. 1213, italics added; see *Delgado, supra*, 36 Cal.4th at p. 237 & fn. 15; *Sharon P., supra*, 21 Cal.4th at p. 1189 & fn. 2.)

The Supreme Court has explained, "our cases analyze third party criminal acts differently from ordinary negligence, and require us to apply a heightened sense of foreseeability before we can hold a defendant liable for the criminal acts of third parties.

[Citation.] There are two reasons for this: first, it is difficult if not impossible in today's society to predict when a criminal might strike. Also, if a criminal decides on a particular goal or victim, it is extremely difficult to remove his every means for achieving that goal. . . . *Robison [v. Six Flags Theme Parks Inc.* (1998) 64 Cal.App.4th 1294, 1301] made the distinction between acts of ordinary negligence and criminal acts by noting that "[t]he burden of requiring a landlord to protect against crime everywhere has been considered too great in comparison with the foreseeability of crime occurring at a particular location to justify imposing an omnibus duty on landowners to control crime." (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1149-1150 (*Wiener*).

"Turning to the question of the scope of a landlord's duty to provide protection from foreseeable third party crime, . . . [the Supreme Court has] recognized that the scope of the duty is determined in part by balancing the foreseeability of the harm against the burden of the duty to be imposed. [Citation.] "[I]n cases where the burden of preventing future harm is great, a high degree of foreseeability may be required. [Citation.] On the other hand, in cases where there are strong policy reasons for preventing the harm, or the harm can be prevented by simple means, a lesser degree of foreseeability may be required." (*Castaneda, supra*, 41 Cal.4th at p. 1213; *Delgado, supra*, 36 Cal.4th at pp. 237-238, 243.)

"The duty analysis [the Supreme Court has] developed requires the court in each case (whether trial or appellate) to identify the specific action or actions the plaintiff claims the defendant had a duty to undertake. 'Only after the scope of the duty under consideration is defined may a court meaningfully undertake the balancing analysis of the risks and burdens present in a given case to determine whether the specific obligations should or should not be imposed

on the landlord.' [Citation.] The Court of Appeal in *Vasquez [v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 280, 285] accurately described the full analytical process in this way: 'First, the court must determine the specific measures the plaintiff asserts the defendant should have taken to prevent the harm. This frames the issue for the court's determination by defining the scope of the duty under consideration. Second, the court must analyze how financially and socially burdensome these proposed measures would be to a landlord, which measures could range from minimally burdensome to significantly burdensome under the facts of the case. Third, the court must identify the nature of the third party conduct that the plaintiff claims could have been prevented had the landlord taken the proposed measures, and assess how foreseeable (on a continuum from a mere possibility to a reasonable probability) it was that this conduct would occur. Once the burden and foreseeability have been independently assessed, they can be compared in determining the scope of the duty the court imposes on a given defendant. The more certain the likelihood of harm, the higher the burden a court will impose on a landlord to prevent it; the less foreseeable the harm, the lower the burden a court will place on a landlord.'" (*Castaneda, supra*, 41 Cal.4th at p. 1214.)

For example, in *Castaneda*, the plaintiff sued the owner of the mobilehome park where he lived after the plaintiff was struck by a stray bullet from a gang confrontation involving another park resident who lived next to the plaintiff. (*Castaneda, supra*, 41 Cal.4th at pp. 1210-1211.) Applying the foregoing duty analysis, the Supreme Court began by identifying the specific actions the plaintiff claimed the park owner should have taken to prevent the plaintiff from being shot in a gang confrontation. The plaintiff argued the owner had a duty not to rent to known gang members and to evict them when they

harassed other tenants. (*Id.* at pp. 1209, 1215.)

Next, the court considered the financial and social burdens of imposing that duty on the owner, concluding the duty would be "extraordinarily burdensome" because of the difficulty in definitively identifying gang members and their families, the liability risks the owner would face in either renting or refusing to rent to potential gang members, the financial costs associated with evicting a tenant and a unit sitting vacant while a replacement tenant is found, and the potential physical risks of evicting a hostile tenant suspected of being a gang member. These burdens led the *Castaneda* court to require a high degree of foreseeability before imposing the duty the plaintiff urged the court to adopt. (*Castaneda, supra*, 41 Cal.4th at pp. 1216-1217, 1219.)

Finally, the Supreme Court determined the high degree of foreseeability necessary to impose this duty did not arise because the evidence failed to show either that the landlord knew the plaintiff's neighbor was a gang member when the owner rented the unit to the neighbor, or that a gang confrontation in the park involving the neighbor was highly foreseeable. (*Castaneda, supra*, 41 Cal.4th at pp. 1218, 1221.) Although the evidence showed there had been two other gang incidents near the mobilehome park and other tenants had complained about the plaintiff's neighbor, the other gang incidents did not involve the neighbor nor did they occur in the mobilehome park, and the complaints about the neighbor did not involve him using or displaying a firearm or engaging in violence. (*Id.* at p. 1221.) The *Castaneda* court emphasized the heightened foreseeability necessary to impose a duty on a landlord to prevent third party criminal conduct requires prior similar criminal incidents. The court explained prior similar incidents would have alerted the landlord that third party crime was likely to occur, but there was no evidence of other incidents

similar to the gang confrontation involving the plaintiff's neighbor. (*Ibid.*)

## 2. Castillo Failed to Identify a Specific Action Cinnamon Tree Should Have Taken and Failed to Show the Attack Was Foreseeable

Castillo contends Cinnamon Tree had "a duty to provide preventative security measures" because the assault on him was foreseeable based on Cinnamon Tree's knowledge of "prior similar criminal incidents" at the condominium complex. We disagree. Castillo fails to apply the proper legal standard to establish Cinnamon Tree had a duty to prevent the assailants' attack, and the evidence Castillo presented fails to create a triable issue on the duty element when analyzed under the governing standard.

As the Supreme Court instructs, we must begin our analysis by identifying the specific measures Castillo claims Cinnamon Tree had a duty to undertake to prevent the assailants' attack. (*Castaneda, supra*, 41 Cal.4th at p. 1214.) Castillo, however, fails to identify any specific actions Cinnamon Tree should have taken. Indeed, his complaint simply alleges Cinnamon Tree failed to provide proper security for the condominium complex without identifying a single security measure Cinnamon Tree should have taken to prevent the assailants' attack.

Castillo's failure to identify any specific action Cinnamon Tree should have taken simplified Cinnamon Tree's showing to satisfy its initial burden of negating the duty element for Castillo's claims. Because Castillo did not identify any specific action, Cinnamon Tree was not required to present evidence showing the burdens associated with, the feasibility of, or the likely success of any particular action to prevent the assailants' attack. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1253 [to meet its initial burden, "defendant moving for summary judgment need address only the issues raised by the complaint"].)

Cinnamon Tree therefore met its initial burden by presenting evidence showing Castillo was attacked by other residents who had the right to be on the premises, and it had no knowledge of any similar violent attacks by these assailants or any other residents of the complex against another resident.

In opposition to Cinnamon Tree's motion and in his appellate briefs, Castillo also fails to identify any particular security measure he claims Cinnamon Tree should have taken to prevent the assailants' attack. For example, Castillo does not contend that Cinnamon Tree should have provided an armed security guard or a greater number of guards (see, e.g., *Ann M.*, *supra*, 6 Cal.4th at p. 673 [plaintiff claimed landlord had duty to provide security guard to prevent rape at shopping center]), or that Cinnamon Tree should have evicted the assailants before the attack based on the previous problems Cinnamon Tree experienced with the assailants (see, e.g., *Castaneda*, *supra*, 41 Cal.4th at p. 1209 [plaintiff claimed landlord had duty to evict known gang member to prevent injury to other residents from gang activities]).

Castillo simply contends the guard, cameras, lightening, and other security measures Cinnamon Tree provided were inadequate to prevent the assailants' attack because they fell below the standard of care. The adequacy of the existing security measures, however, is not the proper test for determining whether a landlord had a duty to prevent specific third party criminal conduct. As explained above, cases involving third party criminal acts must be analyzed differently than cases involving ordinary negligence. (*Wiener*, *supra*, 32 Cal.4th at pp. 1149-1150.) A landlord is not an insurer of its tenants' safety from criminal acts. (*Delgado*, *supra*, 36 Cal.4th at p. 238; *Sharon P.*, *supra*, 21 Cal.4th at pp. 1190, 1195.) Courts will impose a duty on a landlord to prevent a third party's foreseeable criminal act only when the act is likely to occur in the absence of specific precautionary measures proposed by the

injured plaintiff. (*Delgado*, at p. 237; *Sharon P.*, at p. 1189.) The controlling question is whether the burden of imposing a duty to take a specific action to prevent criminal conduct is warranted based on the foreseeability of the specific conduct. (*Castaneda*, *supra*, 41 Cal.4th at pp. 1213-1214.)

Rather than identify a particular security measure he contends Cinnamon Tree had a duty to implement, Castillo broadly contends Cinnamon Tree should have conducted a security audit to identify the security measures necessary to prevent the attack. In support, Castillo provides a declaration from his security expert opining that a security audit is standard industry practice, but Castillo concedes his expert did not describe what a security audit would entail or how it would identify measures capable of preventing the attack. A general undefined security audit is not sufficient to support Castillo's claims or otherwise create a triable issue of fact on the duty element.

As the plaintiff seeking to impose liability on a landlord for failing to prevent third party criminal conduct, the burden was on Castillo to identify the specific actions Cinnamon Tree had a duty to take that would have prevented the attack. (*Castaneda*, *supra*, 41 Cal.4th at p. 1214.) An undescribed security audit is not a specific measure capable of preventing third party criminal conduct, and Castillo's reliance on an audit merely seeks to shift the burden to the landlord to identify what allegedly should have been done to prevent the assault. At best, an audit is an intermediate step that may or may not identify specific security measures capable of preventing the specific third party criminal conduct at issue. The governing legal standard, however, requires the plaintiff to identify a specific action so that the court may determine the financial and social burdens associated with imposing a duty on the landlord to take that specific action. The court must first identify the burdens of imposing a duty before it can

determine the degree of foreseeability required to impose on the landlord a duty to act. (*Ibid.*) It is not enough to allege the landlord had a duty to act, the plaintiff must identify the specific action the landlord allegedly had a duty to take. Castillo failed to do so.<sup>3</sup>

Castillo's failure to identify any specific actions he claims Cinnamon Tree had a duty to undertake also prevents us from conducting the second step of the Supreme Court's governing duty analysis. Indeed, without a specific action Castillo claims Cinnamon Tree had a duty to undertake, we cannot analyze how financially and socially burdensome the proposed measure would be to a landlord, and what degree of foreseeability is required to impose a duty to take that action. (See *Castaneda, supra*, 41 Cal.4th at p. 1214.)

As described above, the third step of the Supreme Court's duty analysis requires us to identify the nature of the third party criminal conduct at issue and assess its foreseeability. (*Castaneda, supra*, 41 Cal.4th at p. 1214.) The degree of foreseeability required to impose a duty on a landlord to take a particular action to prevent third party criminal conduct varies depending on the burden associated with imposing that duty. The greater the burden, the more foreseeable the criminal conduct must be. (*Id.* at pp. 1213-1214.) As noted above, we cannot identify the burden associated with imposing a duty on Cinnamon Tree to take a particular action because Castillo failed to identify a particular action he claims Cinnamon Tree had a duty to take to prevent the assailants' attack. Regardless of what degree of foreseeability is required to impose a duty on Cinnamon Tree to prevent the assailants' attack, Castillo also failed to present sufficient evidence to create a triable issue on whether the assailants' attack was foreseeable.

Here, the third party criminal conduct at issue is an unprovoked and sudden assault by

two residents of the complex on a third resident. "[W]hen the third party crime is committed by a tenant, foreseeability turns on whether the landlord had 'notice of [the tenant's] propensity for violence.'" (*Barber v. Chang* (2007) 151 Cal.App.4th 1456, 1464 (*Barber*); see *Andrews v. Mobile Aire Estates* (2005) 125 Cal.App.4th 578, 596 (*Andrews*); *Madhani v. Cooper* (2003) 106 Cal.App.4th 412, 416 (*Madhani*); *Sturgeon v. Curnutt* (1994) 29 Cal.App.4th 301, 308 (*Sturgeon*).) Indeed, when the landlord's tenant commits the criminal conduct rather than a random outsider, the plaintiff must show the specific tenant's crime was foreseeable by showing the landlord knew the same tenant had committed prior similar acts. (*Castaneda, supra*, 41 Cal.4th at pp. 1220-1221.)

For example, in *Madhani*, the Court of Appeal concluded the defendant landlord had a duty to take reasonable steps to protect the plaintiff tenant from an attack by another tenant, including evicting the attacking tenant, because "[i]t is difficult to imagine a case in which the foreseeability of harm could be more clear." (*Madhani, supra*, 106 Cal.App.4th at p. 415.) The plaintiff lived across the hall from the tenant who had verbally assaulted and threatened her on several occasions and also shoved the plaintiff and roughly bumped into her in the hallway. The plaintiff complained to the landlord about the tenant's conduct on six occasions, but the landlord did nothing to address the tenant's conduct. The plaintiff sued the landlord after the tenant approached the plaintiff one night as she was entering her apartment, grabbed the plaintiff by her hair, and threw her down a stairwell. (*Id.* at pp. 413-415.) The *Madhani* court concluded the landlord owed the plaintiff a duty to prevent this third party criminal conduct because the landlord knew about the tenant's "proclivity for making verbal and physical assaults on [the plaintiff]," and it therefore was foreseeable the tenant's "violent outbursts and physical assaults would eventually result



in serious injury to [the plaintiff]." (*Id.* at p. 416.)

In contrast, the *Andrews* court concluded the defendant mobilehome park owner had no duty to prevent one resident from battering another because the defendant owner had no notice of the resident's propensity for violence, and therefore the battery was not foreseeable. (*Andrews, supra*, 125 Cal.App.4th at pp. 595-596.) The owner was aware the plaintiff and other resident had a history of disagreements because the plaintiff had complained to the owner that the other resident repeatedly had splashed mud on his newly washed car, had aimed a video camera into the plaintiff's living room, had subjected the plaintiff to racial epithets and other verbal abuse, and had driven his car at the plaintiff's oncoming vehicle. (*Id.* at p. 584.) The Court of Appeal concluded none of these incidents provided notice of the resident's propensity for violence because none of them involved an assault, battery, or other type of violent conduct.<sup>4</sup> A history of disagreement between the residents and other nonviolent complaints did not make the battery foreseeable. (*Id.* at pp. 595-596; see *Sturgeon, supra*, 29 Cal.App.4th at p. 308 [although landlord knew tenant misused alcohol and possessed firearms, it was not foreseeable tenant would accidentally shoot visitor while intoxicated because there was no evidence tenant had violent propensities or handled firearms unsafely while drinking].)

The assailants' attack on Castillo likewise was not foreseeable because Castillo failed to present evidence showing Cinnamon Tree had notice the assailants had any propensity for violence. Although the attack was tragic, the evidence shows it was a random, unprovoked violent act that Cinnamon Tree could not have been foreseen.

Castillo contends the assailants' attack was foreseeable because Cinnamon Tree knew the assailants were "trouble makers" and it had fined them in the past for various rules

violations. Castillo also contends the attack was foreseeable because the assailant who shot him had a criminal record. The evidence, however, showed all of the complaints Cinnamon Tree received about the assailants involved disturbing the peace by partying late at night, being drunk in public, and using drugs. None of the complaints involved violence or physical altercations with other tenants, and therefore did not give Cinnamon Tree notice these tenants harbored any violent propensities. (*Andrews, supra*, 125 Cal.App.4th at pp. 595-596.) Similarly, the evidence showed the shooter's criminal history was for vandalism, resisting or delaying a peace officer, driving under the influence of alcohol, and underage driving without a license. None of his crimes was a violent crime. Moreover, Castillo presents no evidence to show Cinnamon Tree knew about the shooter's criminal history, as opposed to community complaints.

Castillo also contends the assailants' attack on him was foreseeable because the condominium complex had a lengthy history of violent crimes and the surrounding neighborhood was a high crime area. In support, Castillo submitted numerous police reports and logs about crime reports in and around the complex during the 10 years preceding the attack. Castillo also submitted his expert's declaration reporting various crime statistics that showed the neighborhood where the complex is located experienced crimes at a rate well above the national average. None of this establishes the assailants' attack on Castillo was foreseeable.

The reports to the police about possible crimes at or near the condominium complex are irrelevant because they are not crimes involving the assailants who attacked Castillo. As explained above, this case involves an attack on one resident by two other residents. To establish foreseeability, Castillo therefore needed to submit evidence showing the assailants committed other similar crimes because the issue is whether to impose a duty

to prevent an attack by a specific resident, not the duty to prevent an attack by random outsiders. (See *Castaneda, supra*, 41 Cal.4th at p. 1221; *Barber, supra*, 151 Cal.App.4th at p. 1464.) Moreover, although these police reports establish the potential occurrence of other crimes, they do not establish Cinnamon Tree's knowledge of those crimes.<sup>5</sup> Finally, the crime statistics Castillo provides also are irrelevant because they do not report on similar incidents—an attack by a fellow resident. (*Sharon P., supra*, 21 Cal.4th at p. 1198; *Ann M., supra*, 6 Cal.4th at p. 680.)

Consequently, Castillo cannot show Cinnamon Tree owed him a duty to prevent the assailants' attack not only because Castillo failed to identify a specific action Cinnamon Tree should have taken to prevent the attack, but also because Castillo failed to show the assailants' attack was foreseeable.

III  
DISPOSITION

The judgment is affirmed. Cinnamon Tree shall recover its costs on appeal.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

MOORE, J.

-----

Footnotes:

<sup>1</sup> Castillo dismissed his claims against Patrol Masters while this appeal was pending, and therefore we do not address those claims.

<sup>2</sup> We grant Castillo's unopposed motion to augment the record to include his expert's declaration.

<sup>3</sup> In addition to a security audit, the declaration of Castillo's expert also vaguely

refers to "an anytime day or night search conducted jointly by the probation department and Placentia Police Department" as a possible security measure to reduce crime. Castillo, however, forfeited any argument based on this measure because he does not rely on this measure in his appellate briefs. (*Jones v. Jacobson* (2011) 195 Cal.App.4th 1, 19, fn. 12 ["issues and arguments not addressed in the briefs on appeal are deemed forfeited"].) Moreover, this vaguely asserted security measure is insufficient to support a duty to prevent the attack because Castillo presents no evidence the probation department or Placentia Police Department would participate in "an anytime day or night search" or whether it could do so legally.

<sup>4</sup> The *Andrews* court dismissed the incident involving the cars as an instance of careless driving rather than violence. (*Andrews, supra*, 125 Cal.App.4th at p. 596.)

<sup>5</sup> The trial court also found the witness statements in these police reports and logs about other crimes were inadmissible hearsay even though the reports were admissible under the business or official records hearsay exceptions. Because we conclude these alleged other crimes are insufficient to establish foreseeability, we need not address Castillo's claim the trial court erred by excluding these statements.

-----