

# boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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## There's Been A Murder In The Trailer Park Tonight

By Mark Masters

In *Cuolahan v. Stamper*, unpublished decision of the Michigan Court of Appeals, Nicholas Cuolahan was killed by his friend, Mark Ludwig, in Defendant's home. Ludwig, evidently believing his shotgun was unloaded, aimed it at Nicholas and pulled the trigger, apparently in an attempt to scare him as a practical joke. Unfortunately, the gun was actually loaded and fired a bullet that fatally injured Nicholas. At the time, Nicolas and Ludwig were both residing in Defendant's mobile home.

Plaintiff asserted a claim against Defendant based on a premises liability theory framed in terms of Defendant's failure to protect Nicholas from Ludwig. The parties agreed that Nicholas was an invitee since the purpose of his trip was to contribute funds for household expenses, thus conferring a pecuniary benefit on Defendant.

The Court of Appeals reversed the trial court's denial of Defendant's motion to dismiss. The Court noted that the duty a possessor of land owes to his invitees is not absolute, as he is not an insurer of their safety. A landlord must exercise reasonable care to protect his tenants from foreseeable criminal activities in common areas inside the structures that the landlord controls. This duty "exists only when the landlord created a dangerous condition that enhances the likelihood of exposure to criminal assaults." The landlord's duty is limited to the common areas because "a landlord exercises exclusive control over the common areas of the premises," and therefore the only one who can take reasonable precautions to ensure these areas are safe.

In this case, Ludwig and Nicholas were long-time friends who moved in with Defendant approximately two weeks before the shooting incident, the specific third-party criminal act at issue.

### SECRET WARDLE NOTES:

Landlord liability for criminal acts of third-parties continues to be an area of significant exposure. Over the last several years, decisions from the Michigan appellate courts have limited liability of most landowners in many situations from these sorts of claims. In this case, there was no liability of the landlord since there were no actions by the landlord which increased the risk or facilitated the crime committed.

To reduce liability claims for third-party criminal acts, landlords must reasonably protect their tenants by evaluating (and correcting) the property for conditions in common areas which may increase the likelihood of criminal acts. Such conditions could include poor lighting, an absence of proper locks, or "blind" areas which are shielded from view.

## CONTINUED...

Ludwig kept his gun under the couch in the living room. There was no evidence that the living room of Defendant's home was a common area as the couch also served as Ludwig's bed. Further, the shooting actually occurred in a bedroom. The Court held that even if all areas of Defendant's mobile home were considered common areas, Defendant owed no duty to Nicholas because Defendant did not create the condition which led to the criminal act.

Moreover, a landowner owes no duty to an invitee to protect him from known dangers unless the landowner should anticipate the harm despite such knowledge. The evidence showed that Nicholas had been present on at least one prior occasion where Ludwig had been playing with the gun pretending to shoot people and was aware of this proclivity.

The Court further held that, despite the fact that Ludwig had been playing with the gun in the moments before approaching Nicholas, Ludwig's act of shooting Nicholas was not foreseeable. Ludwig had brought the gun out on previous occasions without incident and there was no reason for Defendant to foresee that the gun was actually loaded.

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