

Assault in Parking Garage: Inadequate Security Measures Did Not Cause Plaintiff's Loss

Jocelyn-Rose Brogan
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Courts have been hesitant to find a defendant liable for damages caused by the intentional tort of a third party. This notion was reinforced in [*Teglas v. City of Brantford et al.*](#), 2020 ONSC 7408 ("*Teglas*"), a case which involved an assault in a parking garage.

Justice Turnball found that even though the owner of the parking garage and a security company breached a duty of care owed to the plaintiff, the breach did not cause the plaintiff's damages.

The Action

Teglas involved a personal injury action commenced by the plaintiff, Mihaly Teglas, arising from an unprovoked assault by two unidentified assailants in the stairwell of a parkade on February 24, 2012.

Mr. Teglas alleges that the defendants, The Corporation of the City of Brantford (the "City"), and Romex Security Inc. ("Romex Security"), were negligent for their failure to take proper security measures to keep the parkade safe for customers.

Damages were settled before trial. The action proceeded to trial on liability only.

Security at the Parkade

The City contracted with Romex Security for security services of a parkade, consisting of a three level parking garage, which included about 950 parking spaces, located in downtown Brantford, Ontario.

The system of security described by the City and Romex Security appeared to be quite thorough. Highlights of their security system included security staff on site 24/7, patrols conducted of the parkade every 45 to 60 minutes, a sophisticated electronic tracking system to monitor the exact time and location of the guard conducting the patrols, 24

unmonitored video cameras, an additional guard during busier times, and signage posted to notify that video cameras were in operation.

However, given that the altercation occurred in the stairwell, an obvious weakness in the security system was that no video cameras or signage were in the stairwell.

The Plaintiff's Expert

David Black was qualified as an expert for the plaintiff to provide evidence with respect to threat/risk assessments. He explained that a threat/risk assessment mainly consists of identifying threats and making recommendations to eliminate or minimize such threats.

After his examination of the parkade, he concluded that no risk assessment had previously been conducted. He advised that this was in breach of a 2009 amendment to the *Occupational Health and Safety Act* R.S.O. 1990 c. O.1 ("OHSA"), which imposes an obligation on employers to conduct workplace analyses to identify risks which might lead to workplace violence or harassment.

He outlined various problems with the parkade, and specifically the stairwells, and opined on what could have been done to reduce risk, such as installing security cameras in the stairwells.

Analysis at Trial

At trial, the court considered the following issues:

1. Did the defendants owe the plaintiff a duty of care?
2. Did the defendants breach that duty of care?
3. Was it reasonably foreseeable that a breach of the duty of care might cause someone injury or loss?
4. Was the breach of a duty of care the cause of the plaintiff's loss?

Duty of Care

Justice Turnball found that a duty of care was owed because both defendants assumed responsibility to see that persons entering into the parkade were reasonably safe while on the premises and that there was sufficient proximity to the members of the public who use the parkade.

Breach of Duty of Care

Justice Turnball found that both defendants breached their duty of care to the plaintiff because they failed to take reasonable care to carefully consider and recommend and/or implement reasonable measures to make the stairwells of the parkade safe for lawful users. Therefore, they failed to meet the standard of care to mitigate the foreseeable risk created by potential torts of a third party.

Justice Turnball found that the parkade was frequently attended by loiterers and homeless people. Moreover, based on police incident reports, the parkade was a regular concern on almost a weekly basis to the police.

Measures that should have been implemented included installing security cameras in the stairwells and installing sensors so that supervisors could confirm that the stairwells were being examined by security guards on a somewhat regular basis.

Reasonable Foreseeability

Justice Turnball found that it was reasonably foreseeable that the staircases in the parkade were a place of potential danger. He said that the nature of the specific occurrence need not be foreseeable. Instead, it is sufficient that the general nature of the occurrence be foreseeable.

Justice Turnball referred to *Rankin (Rankin's Garage & Sales) v. J.J.* 2019 SCC 19, where it was held that whether something is “reasonably foreseeable” is an objective test. In other words, the test is whether a third person in the position of the defendants would have reasonably foreseen the type of incident which could lead to injury or loss by a lawful user of the premises.

Causation

The plaintiff's action failed on causation.

Justice Turnball found that even if the defendants had taken all the proper steps to fulfill their duty of care, the incident could not have been prevented.

In reaching his decision, Justice Turnball was guided by the Alberta Court of Appeal's decision in *McAllister v. Calgary (City)* 2019 ABCA 214 (“*McAllister*”). In *McAllister*, the plaintiff was injured in an unprovoked New Year's Eve assault as he was crossing a walkway towards a train station. The assault lasted 22 minutes. The two security guards monitoring the security cameras failed to notice it.

The Court of Appeal in *McAllister* found that even if all the proper steps had been taken by the defendant's employees, at least 10 minutes would have passed before the police and/or security personnel could have arrived at the scene. Therefore, the defendant was responsible for some of the plaintiff's damages because its security personnel did not respond in a timely way, but was not responsible for the damages sustained in the first 10 minutes of the assault.

In comparison, Justice Turnbull reasoned that, based on the evidence, the entire altercation between Mr. Teglas and the assailants took about 30 seconds. He stated that even if video cameras were installed with a central monitoring system, it was very unlikely that the security guards could have responded in a timely way to prevent Mr. Teglas from suffering his injuries.

In addition, Justice Turnbull was not satisfied that the presence or knowledge of video cameras would have deterred the assailants, as there was no evidence of loitering in the stairwell.

Commentary

In tort actions, it is important to remember that a breach of a duty of care is not sufficient to prove liability on a defendant. The plaintiff must also show that the breach caused his or her losses. To put it another way, in order to establish causation, the plaintiff must prove, on a balance of probabilities, that but for the conduct of the defendant, the plaintiff would not have suffered injury or loss.

This case also serves as a reminder to occupiers of their duty to ensure that people entering onto their premises are reasonably safe. Occupiers are not required to eliminate all risks. However, if it is reasonably foreseeable that someone on the premises can be physically harmed due to a violent act, an occupier must carefully consider and implement reasonable security measures.