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IN THE STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA

JEONG JAE KIM,	§	
	§	
Plaintiff,	§	
	§	**CIVIL ACTION**
vs.	§	
	§	**FILE NO. 14 A 53008-2**
SANG HO NA and RIVERDALE ACE COIN LAUNDRY, INC.,	§	
	§	
	§	
Defendants.	§	

ORDER GRANTING DEFENDANT SANG HO NA'S MOTION FOR SUMMARY JUDGMENT

The above-styled matter came before this Court on Defendant Sang Ho Na's ("Na") Motion for Summary Judgment.

HAVING READ, REVIEWED AND CONSIDERED Na's Motion for Summary Judgment, Plaintiff Jeong Jae Kim's ("Plaintiff") Opposition to Na's Motion for Summary Judgment, Plaintiff's Supplemental Citation of Authorities, the parties' briefing, all pleadings, applicable law, all matters of record and the arguments presented during the hearing before this Court on July 8, 2015, this Court finds as follows:

STANDARD OF REVIEW

To prevail at summary judgment, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the non-moving party, warrant judgment as a matter of law. Lau's Corp. v. Haskins, 261 Ga. 491, 405 S.E.2d 474 (1991). "A *defendant* may do this by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient

to create a jury issue on at least one essential element of plaintiff's case." Id. (emphasis in original).

FACTS

This is a premises liability case involving a third party criminal assault on Plaintiff. On October 3, 2011, Plaintiff was completing his shift at Riverdale Ace Coin Laundry ("RACL"). RACL is a coin laundry store located at 5695 Riverdale Road, College Park, Georgia. RACL is part of a small shopping plaza. The shopping plaza is owned by Na. On June 1, 2006, Na as landlord, and Maria Choe ("Choe") as tenant, entered into a Commercial Lease Agreement for the premises described as 5695 Riverdale Road, College Park, Georgia. Pursuant to the Commercial Lease Agreement, Na fully parted with possession of RACL. The Commercial Lease Agreement was in effect at the time of this incident on October 3, 2011.

On October 3, 2011, Plaintiff was scheduled to work at RACL from 8:00 a.m. to 11:00 p.m. (Depo. of Plaintiff, p. 27). Plaintiff arrived to RACL for work at 8:00 a.m. (Depo. of Plaintiff, p. 73). He parked his car in the parking lot of the plaza. At 11:00 p.m., Plaintiff decided to move his car to a closer parking spot. (Depo. of Plaintiff, p. 75-76). After Plaintiff moved his car, he walked back into RACL to finish his closing duties. At 11:05 p.m., Plaintiff looked out the window of RACL and observed his clothing on the ground. (Depo. of Plaintiff, p. 78). The clothing had previously been in his car. Id. When Plaintiff observed his clothes on the ground, Plaintiff knew that someone had broken into his car within the last five minutes. (Depo. of Plaintiff, pp. 78-79). Despite knowledge that someone had broken into his car within the last five minutes, Plaintiff went outside to investigate. Id. During the course of his investigation, Plaintiff discovered that his briefcase had been stolen from his car. (Depo. of Plaintiff, p. 80). Plaintiff admits that at that time, he knew "robbers" were on the premises and had taken his

briefcase. (Depo. of Plaintiff, p. 31). Plaintiff chose to walk around the parking lot to find his briefcase. (Depo. of Plaintiff, p. 84). Plaintiff was assaulted by two males while walking around the parking lot area with knowledge of "robbers" on the premises. (Depo. of Plaintiff, pp. 78-80, 31, 83).

FINDINGS

1. **The intervening criminal act of the third party in this case is treated as the proximate cause of the injury because there is no evidence that the criminal act was a reasonably foreseeable consequence of Na's conduct.**

The duty to an invitee is to exercise ordinary care in keeping the premises and approaches safe. O.C.G.A. § 51-3-1. Pursuant to O.C.G.A. § 51-3-1, an owner is bound to exercise ordinary care to protect the invitee from unreasonable risks of which he or she has superior knowledge. An independent, intervening criminal act of a third-party, without which the injury would not have occurred, is treated as the proximate cause of the injury superseding any negligence of the defendant owner, unless the intervening criminal act is a reasonably foreseeable consequence of the defendant's negligent act. Brown v. All-Tech Investment Group, 265 Ga. App. 889, 595 S.E.2d 517 (2004). Accordingly, the general rule in Georgia is that the intervening criminal act of a third party will insulate a property owner from liability. Sturbridge Partners, Ltd. v. Walker, 267 Ga. 785, 482 S.E.2d 339 (1997). An exception to the general rule exists only where the act was foreseeable. Id. Evidence of a prior substantially similar act is one way to establish foreseeability. McCoy v. Gay, 165 Ga.App. 590, 302 S.E.2d 130 (1983). It is conceivable however that a danger could be so obvious that an issue for jury determination could exist regarding foreseeability despite the absence of a prior similar incident on the premises. And in some cases, the defendant may even acknowledge that he/she/it knew of the specific danger.

Piggly Wiggly Southern Inc. v. Snowden v. Piggly Wiggly Southern Inc., 219 Ga.App. 148, 464 S.E.2d 220 (1995).

In applying the controlling case law, to survive summary judgment, Plaintiff must show that the incident was foreseeable. Sturbridge Partners, Ltd. v. Walker, 267 Ga. 785, 482 S.E.2d 339 (1997). The only evidence presented by Plaintiff in this regard was a computer printout of alleged crimes in the area that was allegedly obtained from the police department. The contents of the document itself were not ascertainable because the document contained abbreviations and symbols that were not otherwise defined or explained within the document. Further, the document was not certified and no proper foundation was made for the introduction of the document. This document is not admissible. As such, Plaintiff has failed to establish that the incident was foreseeable and has failed to present a jury question with regard to the dangerous condition which resulted in the litigated incident. Also, even if this document were somehow deemed admissible, it does not prove the existence of prior crimes occurring in the parking lot of the plaza. McCoy v. Gay, 165 Ga.App. 590, 302 S.E.2d 130 (1983). Therefore, there is no evidence to create a jury question on the foreseeability of the criminal act. The general rule that the intervening criminal act of a third party will insulate a property owner from liability applies in this case. Sturbridge Partners, Ltd. v. Walker, 267 Ga. 785, 482 S.E.2d 339 (1997).

2. Defendant Na did not have superior knowledge of the dangerous condition.

In a premises liability action, the basis of an owner's liability for personal injury to an invitee is the owner's superior knowledge of a condition that may expose invitees to unreasonable risk of harm. O.C.G.A. § 51-3-1; see also, Brad Bradford Realty Inc. v. Callaway, 276 Ga. App. 648, 624 S.E.2d 179 (2005). "Recovery is only allowed when the proprietor had knowledge and the invitee did not." Id. Where the plaintiff has equal or superior knowledge of

the danger, plaintiff cannot recover as a matter of law. Davis v. Crum, 263 Ga. App. 682, 588 S.E.2d 849 (2003).

In this case, Plaintiff admits that he had knowledge of the danger on the premises. Plaintiff admits that he knew that someone had been in his car without his permission and disturbed his belongings. (Depo. of Plaintiff, pp. 78 – 79). Plaintiff admits that he knew "robbers" were on the premises and had taken his briefcase. (Depo. of Plaintiff, p. 31). Plaintiff admits that he was aware of the theft within 5 minutes of when it occurred. (Depo. of Plaintiff, pp. 78 – 79). However, despite Plaintiff's knowledge of the danger on the premises, he admits that he failed to notify the police, Choe or Na. (Depo. of Plaintiff, pp. 31 – 32). Instead, Plaintiff voluntarily encountered the known risk when he walked around the parking lot with knowledge of "robbers" on the premises. (Depo. of Plaintiff, p. 84).

While there is absolutely no evidence that Na had any knowledge (actual or otherwise) of the assailants that assaulted Plaintiff in this case or of any prior substantially similar crime in the parking lot of the plaza, even if Na had any such knowledge, Plaintiff's equal knowledge of the risk precludes his recovery in this case. Brad Bradford Realty Inc., *supra*. Plaintiff's recovery is also precluded under the superior knowledge rule for a second reason. In Georgia, where a Plaintiff voluntarily encounters the danger causing injury, then the Plaintiff is deemed to have superior knowledge of the danger and cannot recover. Deese v. NationsBank of Georgia, 222 Ga. App. 275, 474 S.E.2d 18 (1996).

Based on the foregoing, Plaintiff cannot establish superior knowledge on behalf of Na.

3. Plaintiff has not shown any legally attributable causal connection between Na's conduct and the alleged injury.

Plaintiff may not recover unless plaintiff proves that the alleged security shortcomings proximately caused the attack at issue. Fallon v. Metropolitan Life Ins. Co., 238 Ga. App. 156,

518 S.E.2d 170 (1999) citing Brown v. Amerson, 220 Ga. App. 318, 469 S.E.2d 723 (1996); Stevens v. Clairmont Center, 230 Ga. App. 793, 498 S.E.2d 307 (1998); Godwin v. Olshan, 161 Ga. App. 35, 288 S.E.2d 850; see, Post Property, Inc. v. Doe, 230 Ga. App. 34, 495 S.E.2d 573 (1997). "A mere possibility of such causation is not enough; and when the matter remains one of pure speculation or conjecture, or the probabilities are at best evenly balanced, it becomes the duty of the court to grant summary judgment for the defendant." Futch v. Super Discount Markets, Inc., 241 Ga. App. 479, 482, 526 S.E.2d 401 (1999). The plaintiff therefore, must show that other security measures could reasonably be implemented and that such measures would have prevented the incident producing injury to the specific plaintiff. Post Properties v. Doe, 230 Ga. App. 34, (1998). "Negligence is predicated on what should have been anticipated rather than on what happened." Thomas v. Food Lion, LLC, 256 Ga. App. 880, 882, 570 S.E.2d 18 (2002).

Georgia Courts have recognized the problem with causation in negligent security cases "because of the extraordinary speculation inherent in the subject of deterrence of men bent upon criminal ventures." Fallon v. Metropolitan Life Insurance Company, 238 Ga. App. 156, 158, 518 S.E.2d 170 (1999) (quoting Godwin v. Olshan, 161 Ga. App. 35, 37, 288 S.E.2d 850 (1982)). In Post Properties v. Doe, 230 Ga. App. 34, 495 S.E.2d 573 (1997), for example, the plaintiff brought suit against the owners of her apartment complex for injuries resulting from rape that occurred in the premises. The plaintiff claimed that that the attack was foreseeable and could have been prevented if the owner had kept the premises safe. The plaintiff presented an expert witness who gave numerous reasons why he believed the owner was negligent. The expert testified as to the lack of or inadequacy of the landscaping, lighting, fencing, entry gate system, failure to warn, previous criminal incidents and vehicle access that allowed criminals easy access into the common areas of the complex. The Court of Appeals held that the record

was "devoid of competent evidence that the attack was proximately caused by any act or omission of Post." Id. at 34. In so holding, the Court noted that the reasons given by the expert were merely "guesses" as to how or why the incident occurred and that plaintiff did not show how any act or omission of the property owner was the proximate cause of her injuries. Id. The Court held that her claim was

> Defeated by her failure to produce evidence concerning how her assailant entered the property, whether he was lawfully there, and how he entered her apartment. The evidence presented by her does not sufficiently link any of the array of her witness's allegations to the activity that occurred on the night of Doe's attack. To conclude that those allegations show a sufficient link to causation between Post's acts or omission and Doe's attack would require a jury to engage in pure speculation and guesswork. This is neither required nor allowed in this state. "Guesses or speculation which raises merely a conjecture for possibility are not sufficient to create even an inference of fact for consideration on summary judgment. [CITS.]" Brown v. Amerson, 220 Ga. App. 318, 320 (1996). *Id.* at 39.

In this case, the record is devoid of competent evidence that the attack was proximately caused by any act or omission of Na. The Affidavit of Plaintiff's expert does not show how the assault was caused by any act of Na.

4. Plaintiff failed to show how security could have been or should have been different to prevent the injuries forming the basis of this lawsuit.

To establish proximate cause, the Plaintiff must show that the security, or an alleged lack thereof, was the direct and proximate cause of his alleged injury. This is one of the elements necessary to prove a cause of action in Georgia. Fallon v. Metropolitan Life Insurance Co., 238 Ga. App. 156, 157 (1999). In the case of Hillcrest Foods, Inc. v. Kiritsy, 227 Ga. App. 554 (1997), the Georgia Court of Appeals reversed the denial of a Motion for Summary Judgment to a Waffle House owner who was accused of failing to have adequate security to have prevented a drive-by shooting at one of its restaurants. In addition to the Court's finding that "the shooting

was a transitory act that could have been carried out at any time and place that the intended victim happened to be," the plaintiff's claim was also defeated because "[A]lthough Kiritsy's security expert averred that Hillcrest was negligent in failing to hire security guards, the expert did not indicate how a security guard would have been a deterrent for a drive-by shooting." Id. at 559.

In the case at bar, Plaintiff has not shown how different security could have prevented the attack against him.

CONCLUSION

Based upon the above findings of fact and conclusions of law, this Court finds that there are no genuine issues of material fact and that summary judgment for Defendant Sang Ho Na is warranted as a matter of law.

IT IS HEREBY ORDERED AND ADJUDGED that Defendant Sang Ho Na's Motion for Summary Judgment is hereby GRANTED.

SO ORDERED this 21st day of July, 2015.

Stacey Hydrick

THE HONORABLE STACEY K. HYDRICK
Judge, State Court of DeKalb County

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