

No. 72856-3

IN THE COURT OF APPEALS

DIVISION 1 OF THE STATE OF WASHINGTON

Gilberto Cano Juarez,  
  
Appellant,  
  
vs.

APPELLANT'S BRIEF

BRAVADO APARTMENTS,  
LLC, a foreign corporation doing  
business in Washington as Buena  
Casa Apartments; JAGENDER  
SINGH, and JANE DOE SINGH,  
a Marital Community;  
GURMEET SINGH and JANE  
DOE SINGH 2, a Marital  
Community; and DOES 1-10,  
Respondent.

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Appeal Originating from the Superior Court, King County,  
The Honorable George Mattson, Presiding

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## I.

### ASSIGNMENTS OF ERROR

A. The trial court erred in failing to find a special relationship existed between the Appellant and Respondents when the court based its findings solely upon a lack of a contractual relationship between Appellant and Respondents.

B. The trial court erred in failing to extend the duty owed by the Respondents (as landowners for common areas over which they retained control) to the Appellant.

C. The trial court erred in failing to determine the duty of a landowner based on foreseeability of the criminal acts of third persons.

## II.

### STATEMENT OF THE CASE

The facts in this case are essentially undisputed. Appellant, Cano-Juarez, resided at Respondents' premises in excess of two years. The property, which is the subject of this action, is located at 25701 27th Place, Kent, Washington, and commonly referred to as Buena Casa Apartments (aka Bravado Apartments). The property is a residential complex consisting of 14 apartment buildings and other structures that encompass a full city block, including addresses on S. 256th Street. This complex is surrounded by an iron fence and access gates for both

pedestrian and vehicular traffic. As acknowledged by Respondents, the security gates have not been in operating condition for a substantial period of time.

On January 20, 2012, at approximately 7:30pm, Gilberto Cano-Juarez, was assaulted and robbed at gunpoint in a common area on Respondents' property. As Cano-Juarez entered the apartment complex through a broken security gate located at the intersection of 27th Place South and S. 256th Street, two gentlemen followed him onto the property due to the broken and non-operational security gate. After entering the area behind Building N, the two men knocked Cano-Juarez to the ground, and assaulted and robbed him. Although Kent Police responded to the apartment complex, they were never able to identify the suspects. Cano-Juarez was taken from the property by ambulance due to the severity of his injuries.

At that time, Mr. Cano-Juarez, was living with a woman and her two minor children in apartment M-110 of Buena Casa Apartments. It is undisputed that Mr. Cano-Juarez had been living at the property for roughly two years, although he was not on any lease. It is also undisputed that the assault occurred on Respondents' property. Instead, Respondents simply argue they are not in a "special relationship" to Cano-Juarez, and thus owe no duty of care. Cano-Juarez, on the other

hand, contends that he as a resident at Respondents' property, was in a special relationship with Respondents, giving rise to a duty of care by the Respondents.

As a result of the incident, Appellant Cano-Juarez filed his Summons and Complaint on January 21, 2014, alleging negligence on the part of the Respondents in failing to provide a safe premises. **CP 1-4.** Cano-Juarez contends that the Respondents knew, or in the exercise of reasonable care should have known, that the property was a breeding ground for criminal acts, including, but not limited to, violent acts of assault, battery, robbery and burglary. Despite this knowledge, Respondents took absolutely no action to protect its residents or others lawfully on the property from becoming victims of such acts.

Respondents Bravado Apartments, LLC, Jagender Singh and Gurmeet Singh, filed their Answer to the Complaint on March 28, 2014, denying the allegations, and alleging as an affirmative defense that the injuries or damages, if any, were caused by the conduct of persons over whom they had no control. **CP 10.**

On October 16, 2014, Respondents moved the Court for summary judgment on the grounds that the Respondents owed no duty to Cano-Juarez to protect against the criminal acts of third parties absent a special relationship. **CP 27-29.** On November 3, 2014, Cano-Juarez

filed his Opposition in Response to the Motion for Summary Judgment, asserting that a special relationship did exist between the parties because he lived on the premises for the two (2) years preceding the assault, regardless of whether or not there was a valid lease agreement. **CP 31-34.** Nonetheless, the Court dismissed Cano-Juarez' Complaint on November 19, 2014, in its entirety, stating that the parties were not in a landlord-tenant relationship, nor was Cano-Juarez a business invitee. **CP 38.**

Thereafter, Cano-Juarez filed his Notice of Appeal.

### **III.**

#### **ARGUMENT**

##### **A. The Trial Court Erred in Determining There was No Special Relationship.**

According to the trial court, there is no dispute that Cano-Juarez was residing at the Respondents' premises in excess of two (2) years. **CP 37A at p. 9, lines 17-23.** However, despite the fact that Cano-Juarez was a resident at the Respondents' property, the trial court found there was no landlord-tenant relationship. **CP 38 at p.2.** Further, the trial court found Cano-Juarez was not a business invitee. **CP 38 at p.2.** Because the trial court did not find a special relationship existed between Cano-Juarez and the Respondents, the trial court stated no duty was owed. **CP 38 at p.2.**

While the Respondents and trial court appear to focus solely on the fact that no contractual relationship existed between the parties, there was a special relationship by virtue of Cano-Juarez' tenancy at the property and the duty owed to the original tenant. It is unclear which facts the trial court relied on in its finding; however, the ruling is not supported by the case law or the facts of this case.

Respondents' position is premised on the fact that the lease agreement was entered into with Maria I. Rodriguez-Hernandez. **CP 29.** No other individuals are listed on the lease agreement as occupying the premises. **CP 29.** Further, Respondents claim to have had no knowledge of Cano-Juarez' presence at the complex for two years. **CP 27 at p. 3.** Therefore, according to the Respondents, without the direct landlord-tenant relationship, they are relieved of any duty to Cano-Juarez. This is a misapplication of the case law. A landlord-tenant relationship existed between the Lessee (Maria I. Rodriguez-Hernandez) and Respondents. The duties regarding those areas over which Respondents retained control and were afforded to the Lessee under the lease agreement transferred to Cano-Juarez.

Cano-Juarez testified in his deposition that he lived with "Elizabeth", whose daughter was "Ivonne Rodriguez", and her minor children. **CP 31.** The Respondents never produced any documentation

from Maria I. Rodriguez-Hernandez that Cano-Juarez did not reside within the unit that had been leased to her. **CP 37A at p. 15.** Neither “Elizabeth” nor her two minor children were identified on the lease agreement. **CP 29.** Nonetheless, all of these persons resided on Respondents’ property. Cano-Juarez admits that he never signed a lease agreement with the Respondents. **CP 27, Exhibit 1.** Regardless of the existence of a written contract, he considered the Buena Vista apartments to be his residence. **CP 37A, p. 9.** As there is no disagreement that Cano-Juarez resided at the property, the trial court should have found Cano-Juarez to be a sub-tenant. As such, he steps into the shoes of the original tenant, who has a special relationship to the Respondents. If the Respondents owed a duty of care to the original Lessee, they would certainly owe that same duty of care to any other resident, regardless of the presence of a contractual relationship.

In *Griffin v. West RS, Inc., etc., et al.*, 97 Wn.App. 557, 984 P.2d 1070 (1999), the Court, for the first time, extended the duty owed by a landlord to protect its tenant against foreseeable criminal conduct on the landlord’s premises. The plaintiff in *Griffin* was a tenant of the defendant who was attacked in her apartment by another tenant that had gained access to her apartment through an attic crawl space. In its decision, the

Court discussed the fact that a **landlord owes the same duty to the guest or subtenant that the landlord owes to the tenant.** *Id.*, at 569-570.

The *Griffin* Court found the landlord-tenant to be a special relationship, subjecting the landlord to liability for the foreseeable criminal acts of others. The Court did not limit its decision to only a contractual relationship, instead stating:

The residential landlord of an urban apartment building retains control over common areas. Thus, the tenant looks to the **landlord to address safety** and other issues that **arise in the common areas** of the leased premises. In this sense, the tenant entrusts the landlord to address those issues. And it is this entrustment aspect of the relationship between landlord and tenant, **not the mere existence of that relationship, that creates the special relationship between the two giving rise to a duty of the landlord to protect the tenant** against criminal actions of third persons. (Emphasis added). *Id.* at 567.

The *Griffin* Court, in applying the Restatement (Second) of Torts § 315 (1965), and following the decisions in *Gurren v. Casperson*, 147 Wash. 257, 265 P.2d 472 (1928); *Miller v. Staton*, 58 Wash.2d 879, 365 P.2d 333 (1961) ; and *Nivens v. Hoagy's Corner*, 133 Wn. 2d 192, 943 P.2d 286 (1997), stated that “[t]here is no principled distinction between the duty owed by the hotel owner to its guest in the *Gurren* case, the innkeeper to its guest in *Miller*, and the landlord to its tenant in this case.” *Griffen, supra* at 566. The existence of a contract is not what gives rise to the duty to protect persons lawfully upon one’s property. *Id.* Rather, the

special relationship would seem to arise from the ability of the landowner to control the common areas of its premises.

In this case, Cano-Juarez considered himself a resident of the Respondents' property, even though there was no contractual relationship between them. He was lawfully upon the premises with the consent of the original tenant. Respondents do not deny a special relationship existed with their tenant, to whom they owed a duty. **CP27A at p. 19.** On the night of the attack, Cano-Juarez was in the common area maintained and controlled by Respondents. Cano-Juarez' presence at the property that night was no different than if Maria I. Rodriguez-Hernandez herself had been the victim of the crime.

Assuming *arguendo* that Cano-Juarez only qualifies as a sub-tenant, and following the law outlined in *Griffin*, a special relationship must be extended to the non-contractual resident or sub-tenant. If the Respondents in this case have a special relationship with the original tenant, then they have a special relationship with the sub-tenant. It is absurd to think that the Court would determine a special relationship exists only by virtue of a contractual relationship. In fact, if the duty of a lessor extends specifically to the guests of the tenant, then it would follow that the same duty would extend to a sub-tenant. *Froberg v. Gordon*, 124 Wn.2d 732, 735, 881 P.2d 226 (1994).

Following this to its logical conclusion, there is no principled distinction between a tenant and a sub-tenant with regards to the existence of a special relationship between the parties. As such, the trial court should have found a special relationship to exist between the parties. The Respondents' claimed lack of knowledge of Cano-Juarez' residence simply does not obviate their responsibility or alter the landlord-tenant relationship that exists by virtue of that tenancy.

**B. The Trial Court Erred in Finding There was No Duty Owed by Respondents.**

Despite the lack of a contractual agreement, the Respondents, by virtue of their relationship to the actual tenant, still owed a duty of care to any sub-tenant or guest of the original tenant. The case law does not require that the landlord know that a specific tenant may be at risk, or that a specific tenant be the person to whom a duty is owed. However absurd that proposition, that is precisely what the Respondents suggest. Their assertion that they have no duty to Cano-Juarez must fail because Cano-Juarez was in the same position as any other tenant on the property.

Although the *Griffin* Court stated it was basing its decision on the law of torts, the Court specifically stated that its ruling was consistent with the Restatement (Second) of Property, quoting, 'A landlord...is subject to liability to his tenant and **others lawfully upon the leased property with**

**the consent of the tenant or a subtenant** for physical harm caused by a dangerous condition upon that part of the leased property retained in the landlord's control...' (Emphasis added). *Id.* at 569. There is absolutely no dispute that Cano-Juarez was on the property lawfully.

The lease agreement itself does not create the duty on the part of the landlord—particularly when the issue involves a common area over which the landlord maintains control. According to the Court in *Youngblood v. Schireman*, 53 Wn.App. 95, 103-104, 765 P.2d 1312 (1988), the Courts have recognized a duty on the part of landowners where the landlord expected persons like the plaintiff to be on the premises and knew or should have known that the criminal activity could be reasonably anticipated. Cano-Juarez was lawfully on the property; Respondents could certainly anticipate that their tenants and guests would use the common areas of the property; and, Respondents knew or in the exercise of reasonable care should have known, or reasonably anticipated the criminal conduct of the very nature committed here. **CP 31, 32 and 33, and Exhibits thereto.**

Respondents further contend that when the tenant subleased the apartment to Cano-Juarez, it created a new landlord-tenant relationship. **CP 27 at p. 7.** Respondents mistakenly believe, and apparently the trial court agreed, that this removed their duties under the original lease as

related to the common areas of the property. While it is true that the subtenancy created a new landlord-tenant relationship between Cano-Juarez and Rodriguez-Hernandez, it did not change the rights of the original landlord to the possession and control over the common areas. Nor did it change the Respondents' duty as related to those common areas. Cano-Juarez suggests that if the Respondents' duty to the original tenant would not change, it should not change as it applies to Cano-Juarez simply because his name does not appear on a piece of paper. The Respondents acknowledge and agree they owed a duty to their tenant. They cannot simply side-step their duty to others similarly situated. As such, Respondents owed a duty of care to Cano-Juarez.

**C. The Trial Court Erred in Failing to Determine the Duty of a Landowner Based on Foreseeability of the Criminal Acts of Third Persons.**

While it is true that a special relationship is necessary in a landlord-tenant relationship, the duties and liabilities of a landowner for the criminal acts of third persons on their property has developed over time. A recent Washington Supreme Court decision specifically states that foreseeability as a question of whether a duty is owed is ultimately for the court to decide. *McKown v. Simon Property Group, Inc., etc.*, WASC 87722-0 (March 5, 2015). Foreseeability limits the scope of the duty

owed, and plays a role in both the legal and factual inquiries regarding duty and its scope. *Id.* According to the Court, the language of Restatement (Second) of Torts §344 (1965) requires an inquiry into whether or not the “specific acts in question were foreseeable rather than whether the landowner should have anticipated any act from a broad array of possible criminal behavior...” The Court also stated that “[i]f a particular type of crime has occurred repeatedly on its premises in the recent past, a business may have reason to anticipate that such a crime will happen again.” *Id.*

In this case, Cano-Juarez presented to the Court multiple incidents involving assaults and robberies on Respondents’ property in the months and years leading up to the incident involving Cano-Juarez. In fact, just 30 days before the assault on Cano-Juarez, an identical assault and robbery occurred in nearly the exact same location. **CP 30, 31, 32, and Exhibits thereto.** The trial court specifically stated that “certainly there are many facts here with regard to foreseeability. I would like to let that issue go to the jury.” **CP 37A at page 20.** Restatement (Second) of Torts §344 specifically states: “A possessor of land who holds it open to the public for entry for his business purposes is subject to liability **to members of the public while they are upon the land for such purpose...**” (Emphasis added). *McKown, supra.* In this case, Respondents held their business

open to the general public for the purpose of renting their property. Cano-Juarez was a member of the public to whom the land was open for the purpose of leasing and residing thereon. Again, there is no evidence to suggest that Cano-Juarez was not lawfully on the property. According to the *McKown* Court, “while the existence of a special relationship triggers a legal duty to protect, the *Restatement* recognizes limits on the scope of that duty. Liability cannot be imposed unless the landowner is on notice of likely harm.” Thus, the issues of relationship, duty and foreseeability are intertwined and cannot be decided separately. In this case, there is sufficient evidence showing that the Respondents knew, or in the exercise of reasonable care should have known, that there was a high probability of similar acts of robbery and assault that would occur on their property. Ironically, the last recorded assault and battery prior to Cano-Juarez, occurred in the same location of the property. **CP 31, Exhibit O.**

#### IV.

#### CONCLUSION

There is no dispute that Cano-Juarez was lawfully upon the property of the Respondents at the time of the assault. It is clear that Cano-Juarez was, at the very least, a sub-tenant of Maria I. Rodriguez-Hernandez, the tenant who signed the lease agreement with the Respondents. Respondents had a special relationship with their tenant,

which they acknowledge. As a sub-tenant, Cano-Juarez stepped into the shoes of the original tenant. The Respondents owed a duty of care to the original tenant to provide a safe common area, which duty transferred to Cano-Juarez, creating a special relationship with the Respondents. Summary Judgment denying a finding of a special relationship, and refusing to extend the duty to the sub-tenant does not comport with the case law in this State. Cano Juarez, therefore, requests the summary judgment be vacated, and the case remanded to the Superior Court.

Respectfully submitted this 24<sup>th</sup> day of April, 2015.

**LAW OFFICES OF  
STEVEN D. WEIER, INC., PS**

A handwritten signature in black ink, appearing to read "Theresa M. Buchner". The signature is fluid and cursive, with a large initial "T" and "B".

Theresa M. Buchner, WSBA #29573  
Attorney for Appellant

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DOES 1-10,

Appellees.

Case No.: 72856-3

**PROOF OF SERVICE**

17 Attached are true and correct copies of Appellant's Brief on:

18 Debra Dickerson  
19 Preg O'Donnell & Gillett PLLC  
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DATED this 27<sup>th</sup> day of April, 2015.

**THE LAW OFFICES OF  
STEVEN D. WEIER, INC.**



Theresa M. Buchner, WSBA # 29573  
Attorney for Appellant

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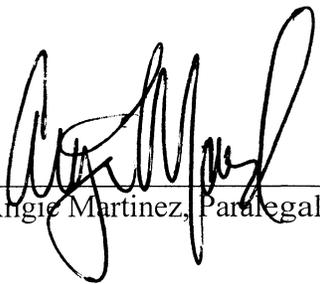
CERTIFICATE OF SERVICE

I certify that on the 16<sup>th</sup> day of January, 2015, I caused a true and correct copy of this

**Proof of Service** to be served on the following in the manner indicated below:

Counsel for Appellees	( )	U.S. Mail
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Preg O'Donnell & Gillett PLLC	(X)	ABC Legal Messenger
901 Fifth Avenue, Suite 3400		
Seattle, WA 98164		

**DATED** this 27<sup>th</sup> day of April, 2015.




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Angie Martinez, Paralegal

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