



Anderson & Kriger
ATTORNEYS AT LAW

HOA DIVISION

Joel M. Kriger, APC

Venus

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Association and Security Company Not Liable

Resident Drunk Driver Kills Passenger – Association Sued

BY LAURI CROCE, ESQ.



According to California's Fourth District Court of Appeal sitting in Riverside County, a community association and its private security company did not owe an affirmative duty to control the conduct of a drunk-driving community resident responsible for the death of his passenger.

James Hauser was a passenger in a car driven by Jack Incorvia within the community of Canyon Lake. Incorvia, who was intoxicated, drove the car off a road into a tree, killing Hauser. Hauser's child brought a premises liability action against the Canyon Lake Property Owners Association and Barton Protective Services, Inc. Both the Association and Barton were able to secure a dismissal of the claims against them, which dismissals were recently upheld in *Titus v. Canyon Lake Property Owners Association* (filed May 18, 2004).

The Canyon Lake CC&Rs empowered the Association to levy fines, set speed limits, enforce curfews on minors, make arrests, detain individuals, and limit, curtail, or prohibit conduct that violates the CC&Rs or the Association's rules and regulations. The Association hired Barton Protective Services to maintain the community in a safe and secure condition and to enforce the Association's rules and regulations upon owners, residents and visitors of the Canyon Lake community. Barton had previously ticketed Incorvia for speeding, evading arrest, and "running stops." Incorvia had also been arrested or convicted of possession, use and sale of controlled substances, public drunkenness, trespassing, and reckless and erratic driving. The Association and Barton had actual notice that Incorvia and other minors

within the community consistently violated the CC&Rs and rules and regulations, in addition to violating traffic and criminal laws outside the Canyon Lake community.

The Plaintiff contended that the Association and Barton owed a duty to protect the community against drunken drivers like Incorvia, and should have "ejected" Incorvia from the community before he could cause serious harm. The Association's motion to dismiss was based primarily upon the ground that the complaint did not allege facts showing a legal duty to Hauser or that any legal duty was breached. Barton also contended it should be dismissed because it did not own, control, or possess the property on which the incident occurred.

The Riverside Superior Court granted the defendants' motions, stating that the complaint failed to allege any facts showing that (a) Barton or the Association had any knowledge of Incorvia's intoxication on the night of the accident, (b) they had the ability to stop Incorvia from driving while drunk, or (c) they had a duty to do so. The Court of Appeal agreed with the Superior Court in its published decision.

The Court of Appeal considered the following factors in upholding the dismissals:

- There was only a remote connection between Incorvia and Hauser, on the one hand, and the Association, on the other. "At best, all that is or can be alleged is that both individuals reside in the Community. There is no contractual relationship between them and the homeowners association. No promise was made to either Incorvia or Hauser upon which they relied."

- Neither the Association nor Barton created the peril — Incorvia's

drunk-driving — nor did they act to increase the already existing risk of harm to which Hauser exposed himself.

- Neither the Association nor Barton provided Incorvia with either the car or the alcohol, and they did not cause Hauser to become a passenger in Incorvia's car.

- The CC&Rs might have created affirmative obligations to provide for security within the community, but those obligations did not, without more, create a "special relationship" requiring the Association or Barton to take specific actions to protect community residents from a drunken Incorvia.

- Incorvia's conduct prior to the accident did not present a "high degree of foreseeability" of harm to community residents. "[W]hile it was foreseeable that Incorvia could become intoxicated, drive a car, and cause an accident, 'almost any result was foreseeable with the benefit of hindsight.'" The court went on to explain that although Incorvia's previous drug and alcohol use and reckless driving satisfied a low threshold for legal foreseeability in its analysis of duty, the risk of harm was significantly less certain than a clear foreseeability of harm, as in a case involving months of verbal and physical assaults, threats, and intimidation against the plaintiff by the defendant's tenant in *Madhani v. Cooper* (2003) 106 Cal.App.4th 412. There were no allegations here that Incorvia had previously harmed, assaulted, or threatened anyone.

- Even assuming the Association could "eject" a resident from the community or bar him from using its streets, such a remedy would be substantially more burdensome than evicting a tenant from an apartment