



Arkansas Association of Defense Counsel

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Does a Bar Owner have a Duty to Provide Security Guards Outside the Premises to Protect Patrons at Night

Arkansas courts have long held that “a tavern keeper or bar operator is not an insurer of the safety of his patrons.” *Indus. Park Businessmen's Club, Inc. v. Buck*, 479 S.W.2d 842, 848 (Ark. 1972); *Burns v. Boot Scooters, Inc.*, 965 S.W.2d 798, 800 (Ark. App. 1998). However, because bar patrons are considered business invitees, tavern owners do have a “duty to use reasonable care and vigilance to protect guests or patrons from reasonably foreseeable injury, mistreatment or annoyance at the hands of other patrons.” *Buck*, 479 S.W.2d 842 at 848. The courts have expanded on the requirements of this duty by stating the following:

Of course, the proprietor is not required to protect the patrons of a bar or tavern from unlikely dangers, or improbable harm, but he is required to take affirmative

action to maintain order when harm to patrons is reasonably foreseeable, and certainly whenever the circumstances are such as to indicate that the danger of harm to patrons by other patrons should have been anticipated by one reasonably alert.

Id. Thus, as with most negligence liability actions, foreseeability is key. The Supreme Court of Arkansas has also held that “there will be no duty upon business owners to guard against criminal acts of a third party unless they know or have reason to know that acts are occurring or about to occur on the premises that pose imminent probability of harm to an invitee.” *Boren v. Worthen Nat. Bank of Arkansas*, 921 S.W.2d 934, 940 (Ark. 1996).

In one case, a fight broke out on the dance floor of a Hot Springs bar. *Burns v. Boot Scooters, Inc.*, 965 S.W.2d 798, 799 (Ark. App. 1998). The security personnel assaulted one of the drunken patrons while removing him from the premises, causing an

uproar that resulted in a woman falling and breaking her ankle. *Id.* The Court found the security guards breached the above-described duty to use reasonable care to protect patrons because they were instructed by the club owners to use physical force only in self-defense and to restrain attackers. *Id.* This case illustrates how the owner of a bar can breach his duty to patrons of the establishment through the actions of his security guards, but it does not directly address the issue in question of whether the owner of a bar has a duty to provide security outside the premises for the protection of customers and employees. On that point, an opinion from the Arkansas Court of Appeals is more on point.

In 1993, Kenneth Cross was shot while sitting at a table in the Ebony Country Club, a drinking establishment in Stuttgart, Arkansas. *Henderson v. Cross*, CA97-1286, 1998 WL 566691, at *1 (Ark. App. Sept. 2, 1998). Cross sued the owner of the club

alleging he was “negligent in failing to provide adequate security measures for the safety of his patrons” and for allowing an armed man into the club. *Id.* Evidence presented at trial was that every customer was given a security check upon entering the establishment, and Plaintiff himself testified he was frisked and his wife’s purse was searched. *Id.* Plaintiff was also unable to establish the shooter was actually in the club when the shooting occurred. *Id.* The Court noted “a business owner has a duty to protect patrons from criminal attacks where the owner or his agent was aware of the danger presented by a particular individual” and also a duty to “exercise proper care after an assault has commenced.” *Id.* at *2. The Court ruled in favor of the club owner because evidence did not establish the shooting was committed inside the building, and there was no evidence the owner should have known of the shooter’s presence outside the building, though still on the

premises. *Id.* at *3. The Court was also persuaded by the fact the owner employed security checks at the front door of the facility. *Id.* “To hold a business owner liable under the particular proof presented in this case,” the Court reasoned, “would make the owner in essence an insurer of his patrons’ safety. We do not extend the concept of negligence that far in Arkansas.” *Id.*

Based on the above precedent, it is believed Arkansas’ appellate courts would likely find a parking lot assault not to have been reasonably foreseeable such as to impose upon a bar owner a duty to protect against attacks, absent the owner’s knowledge prior to the attack of criminal activity on the part of the attacker. To date, there has been no Arkansas case law holding a club or bar owner to have a duty to provide a security officer monitoring its parking lot to protect patrons. To do so would, as the *Henderson* Court found, would make a club or bar owner the insurer of its patrons’

safety. To date, Arkansas appellate courts have declined to extend such responsibility to club and bar owners.

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