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CERTIFIED FOR PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

ERNEST CASTANEDA,

Plaintiff and Appellant,

v.

GEORGE OLSHER et al.,

Defendants and Respondents.

D043383

(Super. Ct. No. 94275)

APPEAL from a judgment of the Superior Court of Imperial County, Jeffrey B. Jones, Judge. Reversed.

Sutherland & Gerber and Lowell F. Sutherland for Plaintiff and Appellant.

Horvitz & Levy, David M. Axelrad, Kim L. Nguyen; Hollins Schechter and Bruce Lee Schechter for Defendants and Respondents.

I.

INTRODUCTION

Plaintiff Ernest Castaneda appeals from a judgment entered in favor of defendants George Olsher, Paule Olsher and P&G Enterprises (collectively Olsher) after the trial court granted Olsher's motion for nonsuit as to Castaneda's premises liability action. Castaneda was injured by a stray bullet shot during a gang fight in the mobile home park where he lived. Castaneda sued Olsher, the owner of the mobile home park, for negligence, alleging that Olsher breached his duty to take reasonable steps to ensure the safety of the park's residents. At the close of Castaneda's case, the trial court granted Olsher's motion for nonsuit on the basis that Castaneda failed to present evidence sufficient to establish that Olsher had a duty to Castaneda, or that any breach of such a duty, if it did exist, was a proximate cause of Castaneda's injuries.

Viewing the evidence in the light most favorable to Castaneda, as we must in a case involving the granting of a motion for nonsuit, we conclude that there are sufficient facts to establish that this gang shooting was reasonably foreseeable. Olsher knew that gang members were living and congregating in the park, and specifically, that they had been congregating in the space from which the bullet that injured Castaneda was shot. Olsher also was aware that gang-related crimes and other activity had occurred on the premises. The evidence was thus sufficient to establish that Olsher had a duty to undertake additional security measures to protect the residents of the mobile home park from gang violence. Further, there was sufficient evidence on the issue of causation for this case to go to the jury for determination.

II.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Factual background*

1. *The shooting incident*

On November 9, 1996, Castaneda, who was then 17 years old, and three friends left a party at approximately 2:00 a.m. to return to the mobile home Castaneda shared with his grandmother and sister in the Winterland-Westways Mobile Home Park (Park). Upon arriving at his mobile home, Castaneda went inside to tell his sister that he and his friends were there. A few minutes after Castaneda went inside, another car with four people in it pulled up behind the car that was parked in front of Castaneda's mobile home. The occupants of the second car had been at the same party as Castaneda and his friends. One of the individuals in the second car claimed affiliation with the Westside Gang.

At some point after the second car arrived, two men emerged from the mobile home located on space 23, the lot across from Castaneda's mobile home. The two exchanged rival gang slurs with the individuals in the second car. Christina Sandoval, a long-time friend of Castaneda's, and another individual from the first car, then headed toward Castaneda's mobile home. At the same time, Castaneda came back outside. He was standing on the steps of his mobile home when one of the men standing outside the mobile home on space 23 fired shots. A stray bullet injured Castaneda.

After the shooting, police officers found Paul Levario inside the mobile home located at space 23. Levario was a documented Northside Gang member. Police later

determined that Manuel Viloría was the individual who fired the shot that injured Castaneda. Viloría was also a documented member of the Northside Gang.

2. Park background

George Olsher purchased the 60-space Park in or around 1991. As the landowner, he leased the spaces to mobile home owners on a yearly basis. Olsher hired Beverly Rogers and her son, Rodney Hicks, to manage the Park. Rogers and Hicks walked around the Park each day to identify and correct safety problems and other maintenance issues, and to paint over graffiti.

Residents and guests socialized outside their mobile homes, either in front yards or at portable basketball nets set up throughout the Park. If the groups became too rowdy or played music too loudly, Rogers or Hicks would attempt to get them to disperse.

Rogers began to suspect that certain teenagers or young adults who lived in mobile homes at spaces 2, 3, 6, 25, and 29 were members of neighborhood gangs. However, according to Rogers, because the parents of these suspected gang members paid rent to Olsher in a timely manner, Olsher was not interested in evicting them.

From 1993 to 1995, Hicks witnessed drugs sales taking place within the Park. He reported the drug sales to Olsher, who instructed him to call the police. Rogers stated that one family that lived in the park had been under surveillance by the DEA for nearly a year.

In August 1995, someone fired a gunshot into the Park from approximately one and one-half blocks away. The bullet penetrated the walls of two mobile homes in the Park. The person who fired the gun was never identified.

In early 1996, a Park resident fired a gun in a lot adjacent to the Park and then ran into the Park and attempted to hide the gun. Hicks had been told that this shot was fired during a gang fight. Park management attempted to evict the shooter's family. The record does not disclose the ultimate resolution of this issue.

Carmen Levario leased space 23 in 1996. Rogers testified that Carmen never actually resided in the mobile home located on space 23. Although the mobile home was vacant for a period of three or four months after it was rented, Paul Levario, Carmen's son, apparently began "hanging out there" a few months prior to the shooting incident in which Castaneda was injured.

One or two months before Castaneda was shot, individuals ranging in ages from 17 to 21 began congregating and socializing in front of space 23. Paul Levario was seen congregating with others outside the mobile home on space 23 on more than one occasion. The people who congregated in the yard of space 23 would whistle and hoot at Castaneda's older sister Diana, throw rocks at other children or teens, and agitate a dog so it would bark at passersby. Diana testified that the people "hanging out" in space 23 frightened her, and that she would try to avoid them as much as possible by rushing to and from her car. Residents had complained to Rogers about the "gang bangers that were hanging out at space 23."

Because of her concern about the groups of people congregating in front of the mobile homes in the Park past 11 or 12 o'clock at night, Monica Lankford, another tenant, circulated a petition seeking "to get the lights fixed, to take care of the graffiti, [and] to initiate some sort of curfew" Other tenants told Lankford that they were

intimidated and afraid to sign her petition, and that they "didn't want[] any problems." Lankford eventually moved out of the Park before she was able to get the requisite number of signatures. Before she moved, someone smashed the windows of her car. She was informed by other tenants that it was "the boys in . . . Space 23" who had broken her car windows. Lankford discussed all of these events with Rogers. Rogers told Lankford that upon learning of Lankford's concerns, Olsher said that nothing could be done and that Lankford could move if she was having problems with other Park residents.

Approximately two or three months before Castaneda was shot, Castaneda's grandmother, Joyce Trow, complained to Rogers about gang members hanging around the Park. Rogers said to Trow, "Well, guess what? We got one more batch moving in. This will be the fifth batch of gang members and they are moving right across from you." When Trow asked Rogers whether there was anything she could do about it, Rogers told her that she had spoken with Olsher about whether or not he should rent to gang members and that Olsher had said something like, "Go ahead and rent to them. Their money is as good as yours."

B. *Procedural background*

In September 1997, Castaneda sued Olsher for premises liability. A jury trial took place in September 2003, and after five days of testimony, Castaneda rested his case-in-chief. At the close of Castaneda's case, counsel for Olsher made an oral motion for nonsuit, arguing that Castaneda had failed to establish duty and causation.

The trial court tentatively ruled in favor of Olsher on the motion for nonsuit, but allowed Castaneda to reopen his case to present additional offers of proof as to duty and

causation. Castaneda offered evidence of a police disturbance log and requested that the court take judicial notice of the nature of gangs and gang violence.

Accepting Castaneda's offers of proof as true, the trial court ruled that he had still failed to present evidence sufficient to establish that Olsher had a duty to take additional security measures, or that Olsher's alleged inaction had proximately caused Castaneda's injuries. After the trial court entered judgment for Olsher, Castaneda timely appealed.

III.

DISCUSSION

A. *Standards on review of nonsuit*

"A motion for nonsuit is a procedural device [that] allows a defendant to challenge the sufficiency of plaintiff's evidence to submit the case to the jury. [Citation.]"

(*Campbell v. General Motors Corp.* (1982) 32 Cal.3d 112, 117.) Because a motion for nonsuit challenges the sufficiency of the plaintiff's evidence, "[a] nonsuit in a jury case or a directed verdict may be granted only when disregarding conflicting evidence, giving to the plaintiff['s] evidence all the value to [which] it is legally entitled, and indulging every legitimate inference which may be drawn from the evidence in plaintiff['s] favor, it can be said that there is no evidence to support a jury verdict in [his] favor." (*Elmore v. American Motors Corp.* (1969) 70 Cal.2d 578, 583.) A motion for a nonsuit at the close of the plaintiff's case must be denied "'if there is . . . any substantial evidence, [that], with the aid of all legitimate inferences favorable to the plaintiff' . . . [citation]" tends to support a plaintiff's verdict. (*Golceff v. Sugarman* (1950) 36 Cal.2d 152, 153.) "'If there

is *any doubt*, it is the duty of the court to let the case go to the jury.' [Citation.]" (*Ibid.*, italics added.)

"[A]ppellate review of trial court orders granting nonsuits, directed verdicts, or judgments notwithstanding the verdict—orders that finally terminate claims or lawsuits—is quite strict. All inferences and presumptions are against such orders." (*People v. Ault* (2004) 33 Cal.4th 1250, 1266.) "Unless it can be said as a matter of law that no other reasonable conclusion is legally deducible from the evidence and that any other holding would be so lacking in evidentiary support that a reviewing court would be compelled to reverse on appeal, or a trial court to set it aside, the trial court is not justified in taking the issue from the jury." (*Aetna Life & Casualty Co. v. City of Los Angeles* (1985) 170 Cal.App.3d 865, 876.)

B. *Premises liability*

1. *Principles of the law pertaining to negligence*

An action in negligence traditionally requires a showing that the defendant owed the plaintiff a legal duty, that the defendant breached the duty, and that the breach was a proximate or legal cause of injuries suffered by the plaintiff. (See *Ann M. v. Pacific Plaza Shopping Center* (1993) 6 Cal.4th 666, 673 (*Ann M.*.) Generally, the question whether or not a duty exists is to be resolved by the court rather than a jury. (*Id.* at p. 674.) The requirement of duty enables courts to limit liability "for reasons of social policy [citation], lest the theoretically infinite reach of tort liability paralyze society with a rule that any action eventually leading to harm, no matter how remotely, is actionable." (*Sharon P. v. Arman, Ltd.* (1999) 21 Cal.4th 1181, 1203 (*Sharon P.*), disapproved on

another ground in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853, fn. 19.)

In any given case, then, the imposition of a duty is "an expression of the sum total of those considerations of policy which lead the law to say that a particular plaintiff is entitled to protection." [Citation.]" (*Dillon v. Legg* (1968) 68 Cal.2d 728, 734.) The courts, through the common law, have determined that an actor has no legal duty to avoid harm that is not foreseeable. (See *Ann M.*, *supra*, 6 Cal.4th at p. 678.)

2. *Landowner liability for injuries occurring on his land*

The principle governing the duty of landowners in California is that "[e]very one is responsible . . . for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property" (Civ. Code, § 1714, subd. (a).)

"It has long been recognized that 'a possessor of land who holds it open to the public for entry for business purposes is subject to liability to members of the public while they are upon the land for such a purpose, for physical harm caused by the accidental, negligent or intentionally harmful acts of third persons . . . and by the failure of the possessor to exercise reasonable care to (a) discover that such acts are being done or are likely to be done, or (b) give a warning adequate to enable the visitors to avoid the harm, or otherwise to protect them against it.' [Citations.] (*Peterson v. San Francisco Community College Dist.* (1984) 36 Cal.3d 799, 807.) "The duty of a proprietor of a business establishment to business invitees generally includes a 'duty to take affirmative action to control the wrongful acts of third persons [that] threaten invitees where the occupant has reasonable cause to anticipate such acts and the probability of injury resulting therefrom.'

[Citation.]" (*Kentucky Fried Chicken of California, Inc. v. Superior Court* (1997) 14 Cal.4th 814, 819.)

"California law requires landowners to maintain land in their possession and control in a reasonably safe condition." (*Ann M., supra*, 6 Cal.4th at p. 674.) "Out of the generic obligations owed by landowners to maintain property in a reasonably safe condition, the law of negligence in the landlord-tenant context has evolved to impose a duty of reasonable care on the owner of an apartment building to protect its tenants from foreseeable third party criminal assaults." (*Vasquez v. Residential Investments, Inc.* (2004) 118 Cal.App.4th 269, 279-280.) The California Supreme Court has held that "the scope of the duty is determined in part by balancing the foreseeability of the harm against the burden of the duty to be imposed. [Citation.]" "[D]uty in such circumstances is determined by a balancing of 'foreseeability' of the criminal acts against the 'burdensomeness, vagueness, and efficacy' of the proposed security measures. [Citation.]" (*Ann M., supra*, 6 Cal.4th at pp. 678-679.)¹ This has resulted in a "sliding scale balancing formula" in which the imposition of a high burden on a landowner requires heightened foreseeability, whereas a minimal burden may be imposed upon a showing of a lesser degree of foreseeability. (*Delgado v. Trax Bar and Grill* (2005) 36 Cal.4th 224, 243 (*Delgado*).)

¹ Despite the fact that the question whether a duty exists is generally expressed in terms of a broad proposition regarding the expectations placed upon one class of persons vis-à-vis another class of persons, the law of premises liability based upon third party *criminal* acts has evolved differently, and requires plaintiffs and the court to specifically define the parameters of the duty alleged to exist and to have been breached.

In applying this formula, the Supreme Court has held that a high degree of foreseeability of criminal acts occurring on a piece of property is required to impose on a property owner a duty of care that includes the hiring of security guards. This degree of foreseeability cannot be established in the absence of "prior similar incidents of violent crime or other indications of a reasonably foreseeable risk of violent criminal assaults in that location." (*Sharon P*, *supra*, 21 Cal.4th at page 1199; see also *Ann M.*, *supra*, 6 Cal.4th at p. 679.)

In *Ann M.*, the court concluded that an employee of a store located in a shopping center who was raped at her place of employment by an unknown assailant had not established that the violent assault was sufficiently foreseeable to impose a duty on the landowner to hire security guards. (*Ann M.*, *supra*, 6 Cal.4th at pp. 670-671.) The *Ann M.* court reasoned:

"Pacific Plaza did not have notice of prior similar incidents occurring on the premises. Ann M. allege[d] that previous assaults and robberies had occurred in the shopping center, but she offer[ed] no evidence that Pacific Plaza had notice of these incidents. While a landowner's duty includes the duty to exercise reasonable care to discover that criminal acts are being or are likely to be committed on its land [citation], Pacific Plaza presented uncontroverted evidence that it had implemented 'a standard practice . . . to note or record instances of violent crime' and that Pacific Plaza's records contain[ed] no reference to violent criminal acts prior to Ann M.'s rape. Moreover, even assuming that Pacific Plaza had notice of these incidents, Ann M. concede[d] that they were not similar in nature to the violent assault that she suffered. Similarly, none of the remaining evidence presented by Ann M. [was] sufficiently compelling to establish the high degree of foreseeability necessary to impose upon Pacific Plaza a duty to provide security guards in the common areas. Neither the evidence regarding the presence of transients nor the evidence of the statistical crime rate of the

surrounding area [was] of a type sufficient to satisfy this burden."
(*Id.* at pp. 679-680.)

Similarly, in *Sharon P.*, *supra*, 21 Cal.4th at page 1191, the Supreme Court held that a violent third party sexual assault in a commercial underground parking garage was not sufficiently foreseeable to impose a duty on the owner of the garage to hire security guards or to provide adequate lighting and/or other security measures. Although a bank on the ground floor of the office building above the garage had been robbed on multiple occasions in the two years prior to the sexual assault, no assaults had occurred in the underground garage during the 10 years prior to the attack on the plaintiff. (*Id.* at pp. 1185-1186.) Following *Ann M.*, the Supreme Court determined that the "defendants' duty of care did not include the hiring of security guards for the garage because the bank robberies were not sufficiently similar to the sexual assault crime to establish a high degree of foreseeability." (*Sharon P.*, *supra*, 21 Cal.4th at p. 1195.)

The *Sharon P.* court also rejected the plaintiff's argument that the "defendants were under a 'minimal obligation' to keep the tenant garage brightly lit and clean, to hook up a previously installed security camera located over the elevator of the garage, and to require existing personnel to periodically walk through the garage" because "absent any prior similar incidents or other indications of a reasonably foreseeable risk of violent criminal assaults in that location, we cannot conclude defendants were required to secure the area against such crime." (*Sharon P.*, *supra*, 21 Cal.4th at pp. 1196, 1199.)

Recently, in *Delgado*, *supra*, 36 Cal.4th at page 243, the Supreme Court revisited the issue of foreseeability in the context of a landowner's duty to protect invitees against

third-party criminal acts. Expressing the continuing vitality of the "sliding scale balancing formula," the court specifically rejected a legal rule that would require a showing of heightened foreseeability in all premises liability cases that involved the criminal acts of third parties "regardless of the extent of the burden sought to be imposed upon the defendant." (*Id.* at p. 244.)

The *Delgado* court also reiterated that a plaintiff can establish the heightened degree of foreseeability necessary to impose a duty to take additional burdensome security measures such as hiring security guards not only by presenting evidence of prior similar criminal incidents occurring on the property, but also, in the alternative, by presenting evidence of "*other* indications of a reasonably foreseeable risk of violent criminal assaults in that location" (*Delgado, supra*, 36 Cal.4th at p. 239, italics added.) Expounding on the significance of the phrase "or other indications of a reasonably foreseeable risk of violent criminal assaults in that location" as used in *Sharon P.*, the *Delgado* court explained: "The disjunctive phrase was employed to acknowledge that, even in the absence of evidence of prior similar crimes on the defendant's premises, *other* circumstances—for example, similar violent crime occurring on the premises of a nearby and substantially similar business establishment [citation]—might provide the requisite heightened degree of foreseeability." (*Delgado, supra*, 36 Cal.4th at p. 240, fn. 19.)²

² We note that even though the Supreme Court had used the language "any prior incidents or other indications of a reasonably foreseeable risk of violent criminal assaults in that location" (*Delgado, supra*, 36 Cal.4th at p. 239) in opinions prior to *Delgado*, the

C. 1. *A gang-related shooting at the Park was foreseeable*

At trial, Castaneda argued that Olsher should have taken steps to secure the Park against a shooting incident such as the one that occurred in this case by (1) refusing to rent space 23 to the Levarios when his manager warned him that members of the family had gang affiliations; (2) evicting residents, including the Levarios, who had family members that had been identified as gang members; and/or (3) taking additional security measures such as maintaining and improving the lighting in common areas or hiring security guards to patrol the Park.

Castaneda presented evidence showing that prior to the shooting incident in which he was injured, Olsher was aware that the Park had experienced substantial crime problems and that there was gang activity occurring on and near the premises. The Park was marked with gang graffiti on a daily basis, and drug sales were a weekly event. In fact, in the five years prior to the incident, there were 26 reported incidents of theft, assault, arson or vandalism occurring on the property.

Park residents were fearful of certain groups of people who would congregate for hours in front of mobile homes, including the one located on space 23. The lights in the Park were constantly broken and in need of repair or replacement. Rogers, the manager

court had given no guidance as to what these "other indications of a reasonably foreseeable risk of violent criminal assaults" (*ibid.*) might include. The court did not discuss any such other indications in *Ann M.* or *Sharon P.*, but instead, focused heavily on the existence of prior similar incidents. Thus, prior to *Delgado*, there was no clear authority that anything other than a prior similar incident occurring on the property would be sufficient to indicate a "reasonably foreseeable risk of violent criminal assaults. . . ." (*Delgado, supra*, 36 Cal.4th at p. 239.)

of the Park, was concerned about gang activity on the premises. She acknowledged to Castaneda's grandmother that the tenants who would be moving to space 23 had gang affiliations. Rogers also testified that she had received complaints from tenants about gang activity in the Park for a number of years prior to the shooting, and that she had discussed these complaints with Olsher. According to Rogers, sometimes Olsher would respond to the complaints and other times he would not.

In addition to the general gang-related activity at the Park, there were two prior similar incidents that occurred in or around the Park in the year and a half prior to the shooting incident in this case. A little over a year before the incident, someone fired a gunshot into the Park from approximately one and one-half blocks away. The bullet penetrated the walls of two mobile homes in the Park. In early 1996, a Park resident who was a suspected gang member fired a gun in a lot adjacent to the Park. The shooter then ran back into the Park with the gun in his possession. Although neither shooting took place in the Park, the shootings were closely connected to the Park, in both proximity and in effect.

Viewing the evidence in the light most favorable to Castaneda, there was sufficient evidence from which a reasonable jury could conclude that (1) Olsher knew about the presence of gang members and the illicit, sometimes violent, gang activities occurring on his property, including gang graffiti, drug sales, harassment, property damage, and at least one sexual assault; (2) Olsher was aware of other shootings affecting and/or involving the Park and its residents, including one in which a bullet was shot into

the Park and penetrated two mobile homes; and (3) Olsher knew that at least one of the individuals who was congregating in space 23 was a gang member.

2. *Because a gang-related shooting at the Park was foreseeable, Olsher had a duty to take steps to attempt to prevent such an incident*

The fact that this case involves a gang shooting makes the circumstances of this case qualitatively different from the circumstances of the third-party crimes involved in cases such as *Ann M.* and *Sharon P.* In the usual case alleging landlord liability for the criminal acts of third parties, the crime in question is random and unexpected. For this reason, such acts are generally considered to have been unforeseeable in the absence of prior similar acts occurring on the property.

Gang-related crimes are different from random criminal acts of third parties. It is well known that criminal and often violent activities are inherent to the gang lifestyle. Courts have recognized that "the congregation of gangs poses a foreseeable risk of harm to the public." (*Medina v. Hillshore Partners* (1995) 40 Cal.App.4th 477, 486.) "When rival gangs clash today, verbal taunting can quickly give way to physical violence and gunfire. No one immersed in the gang culture is unaware of these realities, and we see no reason the courts should turn a blind eye to them." (*People v. Montes* (1999) 74 Cal.App.4th 1050, 1056; see also Pen. Code, § 186.21 [activities of "violent street gangs" present a "clear and present danger to public order and safety"].)

Where, as here, the property owner knows that gang members are congregating on his property and that gang activity and gang-related crimes are occurring there, a gang-related shooting is much more foreseeable than is a random violent criminal act. For this

reason, courts may more readily impose on a landlord a duty to attempt to protect tenants from gang violence attributable to the known presence of gang members and gang activity on the landowner's property than a duty to protect people from random criminal acts by an otherwise random and transient third party. When a landlord is on notice of the presence of gang members and gang activity on his property, it is reasonable to expect the landlord to make efforts to increase security measures on the premises.³ This could be done in any number of ways, including increasing the security presence to more than a property manager and her son, providing security personnel with specialized training in how to identify and deal with potentially dangerous situations, imposing and enforcing strict rules as to resident conduct in common areas, or providing a means by which to warn residents of troublesome areas. Such efforts could also include simply ensuring that the existing lighting in the Park is maintained in working order.⁴

³ The manager of the Park was so concerned about gang activities on the premises that she had asked Olsher if she could evict gang members from the Park and requested approval from Olsher to hire security guards. She told an expert for Castaneda that she had been trying to hire security officers for over a year before Castaneda was shot, but that Olsher had never approved her request.

⁴ We are not convinced that there is a sufficient factual basis in this case to impose either a duty to evict, or a duty not to rent, to gang members. However, it is possible that if a landlord undertakes additional security measures and those measures are not sufficient to alleviate the problem, there may be a duty to take steps to evict and/or not rent to those who the landlord has reason to know may pose a threat to fellow residents.

Olsher was aware not only that gang members were congregating in the Park on a regular basis, but also that gang-related criminal activity was occurring there. He knew two prior shootings had taken place just outside the Park and that those shootings impacted the Park. The multiple incidents of gang activity in the Park, including gang members congregating in the Park and intimidating other residents, drug sales, assaults, and shootings just off of Park property all constitute "other indications of a reasonably foreseeable risk" that a violent, gang-related criminal assault would occur in the Park. (See *Claxton v. Atlantic Richfield Co.* (2003) 108 Cal.App.4th 327, 333 [noting incidents of recurring gang graffiti on property, previous incidents of theft and intimidation, and gang loitering, assaults, robberies, and homicides in a park adjacent to property in question].) Where other such indicators of a reasonably foreseeable risk of a violent gang assault exist, the landlord has a duty to undertake precautions to protect Park residents from criminal activity attributable to the gang presence. In this case, Olsher had a duty to take appropriate measures to attempt to protect residents from gang violence on the premises.

D. *A jury should determine whether or not Olsher's failure to act was a proximate cause of Castaneda's injuries*

In addition to concluding that Olsher owed no duty to Castaneda, the trial court concluded that Castaneda had presented insufficient evidence to support a jury determination that Olsher's alleged breach of a duty to maintain the premises in a reasonably safe condition proximately caused his injuries. We conclude that Castaneda

presented sufficient evidence of causation for the case to have been sent to the jury for determination.

To demonstrate causation, a "plaintiff must show that the defendant's act or omission was a 'substantial factor' in bringing about the injury." (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 774 (*Saelzler*)). "[The] actor's negligent conduct is not a substantial factor in bringing about harm . . . if the harm would have been sustained even if the actor had not been negligent." (*Viner v. Sweet* (2003) 30 Cal.4th 1232, 1239 (italics omitted) (*Viner*)). However, in the context of a nonsuit, the court does not weigh the evidence itself to determine whether the plaintiff's evidence sufficiently establishes that but for the absence of additional protective measures, the plaintiff would not have been injured. Rather, the court simply determines whether there is any sufficient evidence by which a reasonable jury could reach such a conclusion. In this case, there was sufficient evidence to support sending the causation issue to the jury.

It was uncontradicted that at least one resident of space 23 was a gang member, and that the shooter was also a gang member. There was testimony that the shooting in this case was not random, but rather, that it was gang-related.

An expert on gangs and security testified that in his opinion, but for the lack of security and lighting in the Park, the shooting would not have occurred. The expert testified that security in the park was "non-existent except for during the daytime." This allowed the Park to become a fertile ground for gang "turf wars" and ultimately led to a gang-related shooting.

The expert also opined that gangs tend to congregate in the "shadows" and that they carry out much of their gang activity in the dark so that they will not be identified. There was evidence that the installed lighting in the Park was not maintained in working order so that large areas of the Park were, effectively, left in the dark at night. There was also evidence that on the night of the shooting, there were no lights at all. The common area light at space 23 was not working and had not been working for a "long time."

The expert testified that improved lighting, a security presence, and other measures, including the creation of a Neighborhood Watch Program, had been effective in deterring gang crimes in other mobile home parks and that managers of other mobile home parks had indicated to the expert that these measures had reduced the gang problems other parks had been experiencing.

This evidence is sufficient for a jury to conclude that if the landlord had warned residents, taken additional security measures, and/or ensured that the light fixtures in the Park were in working order, this particular shooting would not have occurred.

IV.

CONCLUSION

A landlord owes a duty to his tenants to take reasonable actions to protect them from the reasonably foreseeable criminal conduct of third parties. Castaneda presented evidence that Olsher was aware that he was renting spaces in his mobile home park to gang members and that there had been a variety of gang-related criminal activity and other similar crimes occurring on and near the premises. Olsher thus had a duty to undertake additional security measures in the Park to attempt to protect residents from

potential violence occurring on the property. Castaneda presented sufficient evidence that Olsher's breach of this duty was a substantial factor in bringing about his injuries for this case to be decided by a jury.

V.

DISPOSITION

The judgment of the trial court is reversed and the case is remanded for trial. At the conclusion of the trial, the court shall instruct the jury that a property owner who is aware of ongoing criminal gang activity occurring on his property has a duty to take reasonable and appropriate measures to attempt to protect residents from potential gang violence. Appellant is awarded costs on appeal.

CERTIFIED FOR PUBLICATION

AARON, J.

WE CONCUR:

McINTYRE, Acting P. J.

IRION, J.