

Georgia Courts Recognize Unique Risk of Criminal Attacks on ATM Customers

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As a general proposition, Georgia courts have held that plaintiffs cannot recover damages against a premises owner for injuries caused by a criminal attack on the premises unless the plaintiff can show the attack was foreseeable to the premises owner. If the criminal attack was not foreseeable to the premises owner, the premises owner is not liable for the criminal attack.

One method that crime victims have used to show that a criminal attack on the premises was foreseeable to the premises owner is to introduce evidence of prior crimes on the property that were substantially similar to the crime at issue. Although evidence of substantially similar prior crimes is not the only way to show a crime was foreseeable to the premises owner, the Georgia Court of Appeals has noted that prior substantially similar crimes will usually be the only possible way to establish that a third-party's criminal act was foreseeable to the premises owner. See Wallace v. Boys Club of Albany, Georgia, Inc., 211 Ga. App. 534, 439 S.E.2d 746 (1993).

I. Crimes Against Automated Teller Machine Customers May be Foreseeable in the Absence of Evidence of Substantially Similar Prior Crimes.

In one narrow set of cases, Georgia appellate courts have accepted the argument that the nature of the defendant's premises made crime

foreseeable without requiring the crime victim to introduce evidence of prior crimes. Courts have determined that crimes are foreseeable, per se, at automated teller machines (ATMs). The genesis of this narrow line of cases is Justice Sears' concurring opinion in SunTrust Banks v. Kilbrew, 266 Ga. 109, 464 S.E.2d 207 (1995). In that opinion, Justice Sears noted the "unique opportunity for criminal activity presented by ATMs" where cash withdrawals are frequently made outdoors, at night, by a lone person.

Subsequent to the Georgia Supreme Court's decision in SunTrust Banks v. Kilbrew, the Court of Appeals, on remand, cited Justice Sears' concurring opinion in support of their holding that there was a genuine issue whether a crime at an ATM was foreseeable to SunTrust, despite the fact there were no substantially similar prior crimes on the premises. See Killebrew v. Sun Trust Banks, Inc., 221 Ga.App. 679, 472 S.E.2d 504 (1996). The Court of Appeals also cited Justice Sears' concurring opinion in Whitmore v. First Federal Savings Bank of Brunswick, 225 Ga.App. 768, 484 S.E.2d 708 (1997), finding a genuine issue of foreseeability in the absence of evidence of substantially similar prior crimes "based on the generally recognized danger associated with ATMs and night depositories."

II. The Rationale of the ATM Cases Has not Been Adopted in Other Settings.

Attempts to expand the inherent dangerous quality of ATMs to other types of premises have not been accepted. For example, in Carlock v. K-Mart Corporation, 227 Ga. App. 356, 489 S.E.2d 99 (1997), the plaintiff argued that there was a generally recognized danger associated with shopping center parking lots. In that case, the Court noted that Georgia law accepts a generally recognized danger associated with ATMs, but also noted that this principal evolved from the "well documented reality" that ATM customers are frequently the subjects of robberies. Id. 227 Ga. App. at 358 (quoting Whitmore, 225 Ga. App. at 770). Because the circumstances present at ATMs are not present in shopping center parking lots, the Court rejected the plaintiff's argument.

An expansion of the ATM rationale was also attempted in Habersham Venture, Ltd. v. Breedlove, 244 Ga. App. 407, 535 S.E.2d 788 (2000), where the plaintiff argued that the ATM rationale should be applied to bars and shopping center parking lots. This Court rejected this assertion, noting that it had already rejected extension of the ATM rationale in the Carlock decision. Id. 244 Ga. App. at 410.

III. Conclusion.

A premises owner is generally not responsible for criminal activity on the premises. A premises owner can be held liable where the owner knows that prior crimes of a similar nature have occurred on the premises or where the owner should have known about similar prior crimes on or near the premises. Because of their well-known propensity to attract crimes, owners of premises on which ATMs are found can be held liable for criminal attacks on ATM customers in the absence of actual or constructive knowledge of prior similar attacks. Thus far, however, the courts in Georgia have not seen fit to extend the ATM exception to other situations.

This article covers one aspects of premises liability in Georgia. This article is, necessarily, a summary with many important matters not covered and nothing contained above should be relied upon as legal advice. The law changes quickly and what was true when this article was written, may not remain true today.