

SCAW

**SHORT FORM ORDER**

**SUPREME COURT - STATE OF NEW YORK**

**Present:**

**HON. THOMAS P. PHELAN,**

*Justice*

TRIAL/IAS, PART 16  
NASSAU COUNTY

ILONA ERLICH, individually and as Administratrix  
of the Estate of ALAIN ERLICH,

Plaintiff(s),

-against-

ORIGINAL RETURN DATE: 08/11/00  
SUBMISSION DATE: 11/09/00  
INDEX No.: 3794/98  
XXX

GREENACRE ASSOCIATES, THE EQUITABLE  
LIFE ASSURANCE SOCIETY OF THE UNITED  
STATES, KRAVCO, INC., ROBERT T.  
GIRLING AND BROADWALL MANAGEMENT CORP.,

MOTION SEQUENCE #5

Defendant(s).

GREENACRE ASSOCIATES, BROADWALL  
MANAGEMENT CORP.,

Third-Party Plaintiff(s),

-against-

ANTHONY WILLIAMS and JERMAINE SMALLS,

Third-Party Defendant(s).

The following papers read on this motion:

Notice of Motion.....	1
Answering Papers.....	2
Reply.....	3

Motion by defendants Greenacre Associates and Broadwall Management Corp. for an order pursuant to CPLR 3212 granting them summary judgment dismissing the complaint and all cross-claims against them is granted and the complaint and all cross-claims against them are dismissed.

This is an action to recover for the wrongful death of plaintiff's decedent, her husband, who was shot and killed on July 31, 1996 at 10:55 P.M. during a robbery attempt by third-party defendants in the parking lot of the apartment building where decedent lived. The apartment complex, located at 240 Green Acres Road in Valley

Stream, was owned by defendant Greenacre Associates and managed by defendant Broadwall Management Corp. Plaintiff alleges that their failure to provide adequate security measures was a proximate cause of her husband's death. Defendant property owner and manager have brought a third-party action against the assailant and his accomplice.

"A property owner is obligated to take reasonable precautionary measures to minimize the risk of criminal acts and to make the premises safe for visitors when the owner is aware from past experience that there is a likelihood of conduct on the part of third parties that would endanger visitors (see, *Nallan v. Helmsley-Spear, Inc.*, 50 NY2d 507, 519-520; *Novikova v. Greenbriar Owners Corp.*, 258 A.D.2d 149, 151)." (Alonso v Branchianelli, \_\_\_ AD2d \_\_\_, 715 N.Y.S.2d 761; see also, *Burgos v Aqueduct Realty*, 92 NY2d 544, 548; *Davila v 1750 Realty Associates*, 268 AD2d 553; *Lind v Suffolk County Water Authority*, 251 AD2d 295, lv to app den, 92 NY2d 810). "[A]mbient neighborhood crime alone is insufficient to establish foreseeability (citations omitted). Rather, to establish foreseeability, the criminal conduct at issue must be shown to be reasonably predictable based on the prior occurrence of the same or similar criminal activity at a location sufficiently proximate to the subject location." (*Novikova v Greenbriar Owners*, 258 AD2d 149, 153).

"Whether knowledge of prior criminal activities is sufficient to make an injury to a plaintiff foreseeable to an owner or possessor of land 'must depend on the location, nature and extent of those criminal activities and their similarity, proximity or other relationship to the crime in question' (*Jacqueline S. v City of New York*, 81 NY2d 288, 295)." (Cayo v Supermarkets General Corporation, 247 AD2d 421, lv to app den, 92 NY2d 802). "Where 'there is little evidence of criminal activity in the building, there are insufficient facts to base a finding of foreseeability' (*Camacho v Edelman*, 176 AD2d 453, 454)." (*Todorovich v Columbia University*, 245 AD2d 45, lv to app den, 92 NY2d 805).

The building superintendent, property manager and owner all testified at their examinations before trial that they had no notice of any criminal activity at or around the apartment complex. Thus, defendant property owner and manager established prima facie that they had no notice of criminal activity on the premises, thereby shifting the burden to plaintiff to raise an issue of fact.

Plaintiff has failed to do so. A record of criminal activity at the Green Acres Mall located across the street from the apartment complex does not suffice to put defendants on notice of criminal activity at the apartment complex. Nor do the police records of criminal activity which occurred at unspecified locations along Green Acres Road suffice to give rise to the requisite notice

needed to impose a duty on defendant property owner and manager at this location. (See, Alonso v Branchianelli, supra; Donohue v Seaman's Furniture Corporation, 270 AD2d 451; Novikova v Greenbriar Owners Corp., supra; Todorovich v Columbia University, supra; Rohzik v 1600 Ocean Parkway Associates, 208 AD2d 913, 914, lv to app den, 85 NY2d 807).

In any event, even if a duty were established, there is insufficient evidence of a breach thereof or that such breach was a proximate cause of decedent's death. (See, Miller v State of New York, 62 NY2d 506; Nallan v Helmsley Spear, Inc., supra; Skouras v Phyllis Realty Co., 261 AD2d 389; Rohzik v 1600 Ocean Parkway Associates, supra).

Defendants Greenacre Associates and Broadwall Management Corp.'s motion for summary judgment is granted and the complaint and all cross-claims against them are dismissed.

As this action has previously been discontinued against defendants Equitable Life Assurance Society of the United States and Kravco Inc., and it does not appear that a claim remains against defendant Robert T. Girling, an alleged partner of defendant Greenacre Associates, the within action is concluded.

This decision constitutes the order of the court.

Dated: 1-09-01

THOMAS P. PHELAN

J.S.C.  
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ENTERED

JAN 16 2001

NASSAU COUNTY  
COUNTY CLERK'S OFFICE