THE IDC MONOGRAPH:

OWNER BEWARE:

A RESIDENTIAL LANDLORD’S
LIABILITY FOR THE CRIMINAL ACTS
OF THIRD PARTIES

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1. Introduction

One cold St. Patrick’s Day in Chicago, a 21-year-old woman retired for the evening in her third floor apartment. The apartment was located in an 80-year-old building in a popular north side neighborhood. The building contained four apartments and two retail spaces on the ground floor. The rear door of the woman’s apartment opened onto a staircase that ran down the rear of the building to a parking lot. The rear staircase and parking lot were lit with three floodlights and a mercury vapor light. An additional incandescent light was located over the woman’s rear door and was operated by a switch inside the apartment. The woman’s kitchen window was located next to the rear door, and was covered by a set of steel security bars that were bolted into the building’s brick and mortar.

At approximately five o’clock in the morning, the young woman awakened to the sound of rustling fabric. Upon fully waking up, the woman realized that she was not alone. A stranger was in her apartment. The man raped her, tied her up, shocked her with a stun gun, and stole many of her possessions. Eventually he was caught and arrested by the police, convicted of his crimes, and sentenced to prison.

After being arrested, the perpetrator described his *modus operandi* and his entry into the woman’s apartment. The perpetrator gained access to the victim’s rear porch by climbing the rear exterior staircase. He claimed that he chose the victim’s apartment on the night in question because it was “not as well lit” as the other two apartments that were accessible from the rear stairs. He came prepared with a crowbar, which he used to pry the burglar bars off of the building. He then opened the window and entered the apartment.

The women filed a complaint against the owner and landlord of the building alleging that the building had been negligently maintained. She also alleged that the landlord owed her a duty to protect
her from the criminal acts of third parties and that the landlord’s breach of those duties was a proximate cause of the attack upon her and her subsequent damages.

II. Landlord Liability Generally

As a general rule in the State of Illinois, there is no duty requiring one person to protect another from the criminal acts of a third party, absent a “special relationship” between the parties. Such a relationship has been found to exist between (1) a common carrier and its passenger, (2) an inn keeper and his guest, (3) a business inviter and her invitee, and (4) in those situations where one person has voluntarily taken custody of another, under circumstances so as to deprive the other of his normal opportunities for protection. Illinois courts have long held that the relationship between a landlord and a tenant is not a “special” one and, as a general rule, a landlord owes his tenants no duty to protect them from the criminal acts of third parties. However, in the last 30 years, the Illinois courts have carved out two recognized exceptions to this general rule of no duty.

The purpose of this article is to analyze the case law which has given rise to these exceptions, and to provide the practicing defense counsel with useful tips in handling a case involving a residential landlord’s liability for the criminal acts of third parties. Section III provides broad definitions of these two exceptions. Parts A and B of Section III will provide an in-depth analysis of the case law in this area to clarify the definitions. Section IV provides the defense attorney with practical tips for handling a case of this nature. And finally, Section V provides a discussion of the outcome of the case outlined in the introduction.

III. The Exceptions to the General Rule of No Liability

The first exception to the general rule is when a landlord voluntarily undertakes to provide security services. In that event, he assumes a duty not to be negligent in the performance of that undertaking. If the landlord voluntarily undertakes to provide security services, and he does so negligently, and that negligence proximately causes a tenant’s injury, he can be held liable. The extent of any liability imposed under the first exception to the general rule is strictly limited by the scope of the undertaking.

A second exception to the general rule arises when a landlord is negligent in maintaining a portion of the property which he has a duty to maintain and the condition of the premises facilitates a criminal act. Furthermore, to be held liable under the second exception, the landlord’s activities must not only facilitate the criminal act of the third party, but the act must be reasonably foreseeable. “Reasonably foreseeable” means more than a mere possibility; the criminal act must have been foreseeable by a reasonable person. Foreseeability, as Illinois courts have often noted, is established through prior similar criminal activity on the premises that is connected with the physical condition of the property and known by the landlord to have occurred on the property.

A. Performance of a Voluntary Undertaking to Provide Security

There have only been four cases in which the courts of this state have allowed a plaintiff to proceed under the first exception to the general rule: Pippin v. Chicago Housing Authority, 78 Ill. 2d 204, 399 N.E.2d 596 (1979); Cross v. Wells Fargo Alarm Services, 82 Ill. 2d 313, 412 N.E.2d 472 (1980); Phillips v. Chicago Housing Authority, 89 Ill. 2d 122, 431 N.E.2d 1038 (1982) and Sockow v. Whitmore, 1984 U.S. Dist. LEXIS 23815 (N.D. Ill. 1984); but see Rowe v. State Bank of Lombard, 125 Ill. 2d 203, 531 N.E.2d 1358, 1365 (1988).1

In Pippin, the Chicago Housing Authority (CHA) contracted with Interstate Service Corporation (Interstate) to provide security guard services and other protective services at various CHA properties. On the morning of January 10, 1973, Loretta Haywood, a resident of a CHA facility, fatally stabbed a social guest on the premises, Frederick Pippin. Pippin’s mother subsequently brought a lawsuit against
the CHA and Interstate for the death of her son. The trial court entered summary judgment in favor of the defendants. On appeal, the Illinois Supreme Court recognized that liability can arise from the negligent performance of a voluntary undertaking. However, since the CHA did not undertake to perform guard services itself, the court held that it could not have had a duty to protect Pippin from the criminal acts of a third party. Rather, the court held that the CHA’s duty was limited to the extent of the undertaking, (i.e., to use reasonable care in engaging Interstate to provide guard services). According to the court, since the plaintiff alleged in her complaint that the CHA employed Interstate without properly investigating Interstate’s credentials, a question of fact arose regarding whether or not the CHA was liable for the negligent hiring of Interstate. As a result, the Supreme Court held that summary judgment should not have been granted in favor of the CHA.

In Cross, the CHA hired Wells Fargo to provide security services until 1:00 a.m. at various CHA buildings. The plaintiff in the Cross case was attacked in the lobby of one of the buildings at 1:15 a.m. He pled specific facts in his complaint that supported his theory that by providing security services until 1:00 a.m., the CHA had created a marked increase in crime after 1:00 a.m. The plaintiff also pled specific facts that indicated that crime had remained constant during all hours of the evening before security was provided from 6:00 p.m. to 1:00 a.m. The First District Appellate Court held that this was sufficient to state a cause of action and found that the Chicago Housing Authority negligently performed its duty to provide security services.

In Phillips, the CHA closed, locked off and secured certain floors of a high-rise apartment building to prevent the commission of crimes therein. However, the CHA kept the keys to those locked off floors in a public area, which was easily accessible to anyone who wished to enter those floors to commit mayhem. The Illinois Supreme Court found that the affirmative acts to provide security services, i.e., locking off and securing various floors, and leaving the keys to those locked floors readily accessible, established the CHA’s negligence in its provision of security services.

In Sockow, the plaintiffs rented a ground-level apartment in the defendants’ apartment complex in October of 1982. After they moved into their apartment the plaintiffs discovered their windows would not lock. They repeatedly requested that the window locks in the bedroom and dining room be repaired. In early November of 1982, one of the plaintiffs noticed that the bathroom window lock had not been repaired, and secured a promise from the defendants that the necessary repairs would be made. Subsequent requests for repairs led to more promises, but no action. On the evening of November 29, 1982, the plaintiffs’ apartment was broken into by individuals who gained access to the apartment through the bathroom window. The next morning one of the plaintiffs informed the defendants of the break-in and demanded that the bathroom window lock be repaired. The defendants again promised action, but no repairs were made that day. That same evening, one of the plaintiffs was raped by assailants who entered the apartment through the bathroom window. The rapists were allegedly the same individuals who had broken into the apartment the night before.

In denying the defendants’ motion to dismiss the plaintiffs’ complaint, the district court noted that window locks in working order are important security devices, especially on ground floor apartments. According to the court, the defendants voluntarily undertook to provide security measures when they promised to fix the bathroom lock after learning that intruders had broken into the plaintiffs’ apartment through their bathroom window. Based on the alleged voluntary undertaking on the part of the defendants, the court refused to dismiss the plaintiffs’ negligence cause of action.1 Defense counsel can learn just as much, if not more, from studying those cases where the court has refused to allow a plaintiff to proceed under the first exception to the general rule than he can from reviewing the handful of cases where liability was imposed. One of the earliest cases to discuss the first exception to the general rule was Stelloh v. Cottage 83, 52 Ill. App. 2d 168, 201 N.E.2d 672 (1st Dist. 1964). In the Stelloh case, the plaintiff alleged that the defendant operated a private housing
project containing approximately 69 apartment buildings. The plaintiff further alleged that the defendant maintained a private police force which was represented to the tenants of the project “as giving a special and added protection to the security and safety of the occupants.” The plaintiff also alleged that on August 31, 1960, a man was arrested underneath her apartment window for carrying a concealed knife. Approximately three weeks later, that same man entered the plaintiff’s apartment through the first floor window, assaulted, and forcibly raped her. The plaintiff filed suit against the defendant landlord alleging that by employing a private police force the defendant assumed a duty to warn the plaintiff of dangerous activity occurring on the property and to use reasonable care to protect her from criminal activities.

According to the appellate court, although liability may be based on a voluntary undertaking, the allegations of duty and breach of that duty must mesh and the pleadings must show on their face that the negligence alleged falls within the scope of the alleged undertaking. In the Stelloh case, the court believed that the undertaking alleged – that the defendant’s private police would give a special and added protection to the security and safety of its tenants – could not reasonably be construed to ensure absolute protection against crime. According to the court, the heart of the plaintiff’s complaint was that when her assailant was arrested near her window on the charge of carrying a concealed weapon, the defendant should have warned the plaintiff of the incident yet failed to do so. Since the plaintiff failed to allege that the defendant knew of the assailant’s prior arrest, and since providing a private police force is no guarantee of absolute protection against crime, the court upheld the dismissal of the plaintiff’s complaint.

In Smith v. Chicago Housing Authority, 36 Ill. App. 3d 967, 344 N.E.2d 536 (1st Dist. 1976), the plaintiff’s decedent lived with his family as a tenant in a public housing project owned and operated by the CHA. The housing project was the locale of numerous acts of violence, including shooting incidents and gang warfare. On August 7, 1972, as the plaintiff’s decedent was entering the building in which he lived, he was shot and killed by a person loitering upon the premises. The plaintiff filed suit against the defendant alleging that the defendant failed to provide adequate security for the premises and that the defendant’s failure to secure the premises was the proximate cause of the death of the plaintiff’s decedent. The Circuit Court of Cook County dismissed the plaintiff’s complaint, holding that there was no duty on the part of the CHA to provide security for tenants living on the premises.

On appeal, the appellate court recognized that there is no general duty in the State of Illinois to hire and provide guards or watchmen to protect persons on the premises on a regular and continuing basis. According to the court, since the decedent’s death had no physical or causal connection to the premises itself, and since the condition of the premises did not in any manner contribute to the harm inflicted upon the plaintiff, the plaintiff’s complaint was properly dismissed. The court found “there is no requirement, reasonable or otherwise, which any court could impose upon property owners which could conceivably prevent occurrences such as described in plaintiff’s complaint. This type of crime springs from complex social and other causes far beyond rectification by any court. To impose liability in the case before us would unjustly place upon defendant as a property owner a legal duty which is impossible of performance.” Smith, 344 N.E.2d at 540.

The case of Krautstrunk v. Chicago Housing Authority, 95 Ill. App. 3d 529, 420 N.E.2d 429 (1st Dist. 1981), involved an elevator repairman who was employed by the Otis Elevator Company. The plaintiff was dispatched to repair an elevator in the Cabrini-Green housing project on March 29, 1977. The plaintiff claimed in his fourth amended complaint that he was working on the vacant 15th floor of an apartment building in the Cabrini-Green complex when he was attacked by an individual who shot him in the head. The plaintiff alleged that the defendant had closed off the 15th floor in order to render it inaccessible to the public and to prevent loitering and criminal activity.

The plaintiff’s fourth amended complaint also set forth, in some detail, the history of protective services at Cabrini-Green. According to the plaintiff, in 1957, the defendant executed an agreement
with the Chicago Police Department, which recited that Cabrini-Green residents would receive the same level of police protection provided to other Chicago residents. The complaint further stated that the CHA, aware of an increase in security problems at Cabrini-Green, later supplemented the municipal police protection with a private security guard force. In 1974, the defendant and the Chicago Police Department executed a new agreement whereby the police would increase patrols at Cabrini-Green, and the CHA would pay the city the amount it had previously spent on private security services. The plaintiff argued in his complaint that the CHA had bargained and paid for a level of services greater than that afforded other Chicago residents and that this “optional” protection amounted to a voluntary undertaking on the defendant’s part to protect individuals on the premises from the criminal acts of third parties.

On appeal, the appellate court held that although the plaintiff alleged a voluntary undertaking on the part of the defendant, he set forth no facts in his complaint which would lead to the conclusion that any act on the part of the CHA or the Chicago Police Department actually increased the risk of criminal attack over the danger level that would have existed without the defendant’s voluntary security measures. In other words, the court followed the prior cases regarding this issue, (i.e., Pippin and Cross), which require a plaintiff to plead and prove that in the provision of security services a defendant has actually increased the risk of harm to its tenants. According to the court, since none of the plaintiff’s allegations with respect to the defendant’s undertaking to provide security provided a basis for finding a duty to provide impenetrable security, it was appropriate for the trial court to dismiss the plaintiff’s complaint based on this theory.2

The case of Hill v. Chicago Housing Authority, 233 Ill. App. 3d 923, 599 N.E.2d 1118 (1st Dist. 1992), arose from the shooting of the plaintiff, Mark Hill, in the lobby of 1158 North Cleveland, Chicago, Illinois. The building where the plaintiff was shot was part of the CHA’s Cabrini-Green housing project. The plaintiff filed a one-count complaint against the CHA. In that complaint, the plaintiff alleged that the CHA had a duty to exercise reasonable care and diligence to keep the building at 1158 North Cleveland in a reasonably safe condition and to take necessary precautions to prevent loitering in the common areas of the building. The plaintiff further alleged that, in furtherance of that duty, the CHA retained the services of a private security firm to protect and patrol the building.

Following a period of discovery, the CHA filed a motion for summary judgment. The Circuit Court of Cook County granted the motion, and the plaintiff appealed.

On appeal, the appellate court again recognized that an exception to the general rule of no liability exists when a landlord voluntarily undertakes to provide security services, in which event he assumes the duty not to be negligent in the performance of that undertaking. The court reiterated the principal that the extent of any liability is strictly limited by the scope of the undertaking. The court held that summary judgment was properly entered in favor of the CHA because the CHA produced unrefuted affidavits of security firm personnel clearly indicating that the agreement between the CHA and the private security firm involved a provision for the protection of the CHA’s property only. There was no agreement between the CHA and the private security firm to provide protection to the residents themselves. As a result, the appellate court held that the CHA had no duty to protect the plaintiff from the criminal acts of third parties and that summary judgment was therefore properly granted in favor of the defendant. An identical result, based on nearly identical facts, was reached by the appellate court in the case of Simmons v. Chicago Housing Authority, 267 Ill. App. 3d 545, 641 N.E.2d 915 (1st Dist. 1994).

In Morgan v. 253 East Delaware Condominium Association, 231 Ill. App. 3d 208, 595 N.E.2d 36 (1st Dist. 1992), the plaintiff, Donna Morgan, resided in an apartment building owned by the defendant and managed by Joseph Moss Realty. On September 18, 1986, at about 8:30 p.m., the plaintiff walked from her class at Loyola University’s downtown campus to her building where she entered the lobby, checked her mail and then entered the elevator. Her assailant, whom the plaintiff
observed talking to the doorman when she first entered the building, followed her into the elevator. When the elevator arrived at the tenth floor, the assailant poked a gun into the plaintiff’s back, forced her off the elevator and into the stairwell. The assailant then pushed the plaintiff down to the ninth floor landing and robbed and beat her in the face with the gun causing severe injuries.

In her complaint, the plaintiff alleged that the defendant was negligent in failing to protect her from the criminal acts of a third party because the defendant voluntarily undertook to provide security but performed that undertaking in a negligent manner. The defendant filed an answer denying any allegations of negligence and then moved for summary judgment. The motion was granted and the plaintiff appealed.

The court on appeal recognized that liability can be imposed in a third-party assault case when a landlord voluntarily undertakes to provide security measures, the undertaking is performed negligently, and the negligence is the proximate cause of the injury to the plaintiff. The court also recognized that when a landlord voluntarily undertakes to provide certain security precautions, any duty which arises out of that undertaking is limited by the extent of the undertaking.

According to the court, the extent of the undertaking in the Morgan case was limited to the screening of guests; the defendant did not provide a security force or private police, nor was there an undertaking by the defendant to become the absolute insurer for harm done to tenants by the criminal attacks of third persons. The court upheld the entry of summary judgment in favor of the defendant because all of the evidence in the case clearly indicated that the doorman stopped all visitors to the building – including the plaintiff’s assailant – and made sure that a tenant authorized each visitor’s entry (the doorman rang the tenant in Unit 13G at the request of the assailant and was told to “let him up”). Since the doorman followed the building’s procedures by inquiring of the assailant as to the tenant he was there to see and by use of the in-house phone system to inform the tenant that his guest had arrived, the court found that the defendant had performed the full extent of its voluntary undertaking. Thus, judgment for the defendant was proper.

Finally, in the case of Ernst v. Parkshore Club Apartments Ltd. Partnership, 863 F. Supp. 651 (N.D. Ill. 1994), the court addressed similar issues concerning a luxury high-rise apartment building located in Chicago, Illinois. The plaintiff, Christine Ernst, was a tenant in the Parkshore apartment building. During the morning of February 5, 1992, Ernst Zarate, a maintenance employee at the apartment building, unlocked the plaintiff’s unit with a passkey and entered her apartment. Plaintiff was showering at the time and Zarate surprised her in the shower. He slashed at her with a six-inch diver’s knife, cutting her knee. Following the attack, the plaintiff filed a negligence action against the building owner, the developer, two management companies, and the individual involved in hiring her attacker to work as a maintenance man at the building. Following the completion of discovery, the defendants moved for summary judgment.

The plaintiff alleged in the third count of her amended complaint that the defendants were negligent in providing security at the building in question. Specifically, the plaintiff alleged the defendants were negligent in giving her attacker access to her apartment because they “knew or should have known” that her apartment was not secure from the attacker. The court again recognized that Illinois law allows a landlord to be held liable for the criminal acts of third parties when the landlord voluntarily undertakes to provide security services, performs that undertaking negligently and that negligence proximately causes the plaintiff’s injury. However, on the negligent security count, the court noted that the plaintiff in this case presented no evidence whatsoever that suggested that the defendants were negligent with respect to the security measures provided. According to the court, the plaintiff’s complaint of negligent security was tantamount to a complaint that the defendants were negligent in hiring and retaining the plaintiff’s attacker as a maintenance worker at the building. Since the court had already granted summary judgment to the defendants on a negligent hiring claim, summary judgment was also proper for defendants on the negligent security claim.
B. Liability for Reasonably Foreseeable Criminal Acts Facilitated by Defective Conditions on the Premises

Illinois courts have been more liberal in the application of the second exception, in which an owner can be held liable for reasonably foreseeable criminal acts that were facilitated by defective conditions of the premises.

The seminal case for this second exception is *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 531 N.E.2d 1358 (1988). There, the Illinois Supreme Court recognized that where the operator of a building has become aware of the risks associated with prior criminal acts, he has a duty either to warn tenants of such a danger, or to take reasonable precautions to guard against such foreseeable acts.

In the early morning hours of April 24, 1978, Lori Rowe and Bonnie Serpico were attacked and shot by an intruder while working at an office park in Glen Ellyn, Illinois. Ms. Serpico was killed by the assailant, later identified as James Free. Free had previously worked at the office park for the park’s former owner, Leland Stahelin. Rowe and the administrator of Serpico’s estate brought suit against Stahelin, as well as Paramount, (the current owner), Todd Fennessey, (the current managing agent), and the State Bank of Lombard (trustee of the property).

The Circuit Court of DuPage County dismissed the action against the State Bank of Lombard on the basis that it had no involvement in the management of the property, and granted summary judgment in favor of Stahelin, on the basis that Stahelin had no duty to protect the plaintiffs against criminal assault since he no longer owned the building. With regard to Paramount and Fennessey, the court found that they did not assume a duty to protect the plaintiffs from the criminal actions of Mr. Free, and granted their motion for summary judgment. The appellate court affirmed these holdings.

The Illinois Supreme Court, however, reversed the entry of summary judgment for Paramount and Fennessey based on the second exception to the general rule. In exercising control over the leased premises, Paramount and Fennessey issued a number of master and grandmaster keys to facilitate entry into the building units and offices. The facts showed that a number of these keys were missing. In addition, the affidavits submitted by the plaintiffs showed that several burglaries with no forced entry had occurred in recent months prior to this occurrence. The court ruled that since Fennessey and Paramount could have reasonably foreseen the possibility of unauthorized entries due to the use of the missing keys—especially in light of the repeated burglaries—they had a duty to warn the building’s tenants or take reasonable precautions to prevent those entries. The court reversed and remanded the case as to these defendants for a determination as to whether proper control was exercised over these keys.

While the *Rowe* case does not involve the residential landlord-tenant relationship, but rather centers on a commercial office unit, it is nonetheless the seminal case regarding the second exception to the general rule. In acknowledging the second exception, the Illinois Supreme Court clearly held that in order for a landlord to be liable under that exception, there must be prior criminal activity, of which the landlord was aware, that was facilitated by the same defective condition the plaintiff currently complains of. Although *Rowe* is the controlling precedent in Illinois, it is helpful to analyze how the state appellate courts have addressed this second exception, both before and after the *Rowe* decision.

The First District Appellate Court imposed liability on a landlord under the second exception prior to *Rowe* in *Stribling v. Chicago Housing Authority*, 34 Ill. App. 3d 551, 340 N.E. 2d 47 (1st Dist. 1975). The plaintiffs were tenants in the Robert Taylor Homes operated by the defendant, the CHA. On January 7, 1974, the plaintiffs’ apartment was burglarized when intruders broke a hole through the wall between the plaintiffs’ apartment and the vacant apartment next door. The plaintiffs complained to the defendant. However, the housing authority failed to respond to the complaints, and the plaintiffs’ apartment was burglarized again one month later in the same manner as the first. After making the same complaints regarding the hole in the wall, the plaintiffs were burglarized yet again.
The plaintiffs’ complaint alleged that the defendant was liable for the three burglaries. The trial court dismissed the matter. On appeal, the First District Appellate Court, noting the egregious nature of the facts, found that although the defendant did not have a duty to prevent the first burglary, it did have a duty to prevent the subsequent burglaries. The court reasoned that once the defendant was put on notice of the first burglary, it “owed the plaintiffs a duty to guard against the second and third burglaries.” *Stribling* at 50. According to the appellate court, these subsequent burglaries were reasonably foreseeable based on the landlord’s knowledge of the prior criminal activity (*i.e.*, the first burglary) which was facilitated by the same defective condition (*i.e.*, the hole in the wall).

Also prior to *Rowe*, the First District Appellate Court imposed liability under the second exception in *Duncavage v. Allen*, 147 Ill. App. 3d 88, 497 N.E.2d 433 (1st Dist. 1986). In the early morning hours of August 4, 1982, an intruder entered the plaintiff’s apartment from a courtyard window with the aid of a ladder which the defendant neglected to adequately store. The lights in and around the courtyard had burned out some time prior to the attack. Once inside the plaintiff’s apartment, the intruder raped and killed the tenant, Marybeth Duncavage. The administrator of Ms. Duncavage’s estate brought suit against the landlord sounding in negligence, consumer fraud, and products liability.

In regard to the negligence count, the plaintiff’s complaint alleged that the ladder used in the incident had been used to effectuate a burglary in the same apartment prior to this occurrence. The complaint also alleged that the defendant knew about this incident from tenant complaints, his own inspection, and a citation from the City of Chicago. Further, the intruder was eventually apprehended and admitted that he chose the decedent’s apartment because of the conditions of the courtyard. Based on these facts, as well as the burned out lights, the plaintiff alleged that the defendant had a duty to warn Ms. Duncavage of the dangerous situation and failed to take reasonable steps in protecting the decedent and other tenants from any repeat occurrence.

The defendant conceded that he did owe the tenant a duty of reasonable care. However, he argued that his breach of the duty was not the proximate cause of the plaintiff’s injuries. The appellate court disagreed. The court examined whether the first wrongdoer (the landlord) should have reasonably foreseen the acts which led to the decedent’s injury as a natural and probable cause of his negligence. The court answered this question in the affirmative. The court concluded that improper maintenance of the premises, in light of the past criminal activity, was the proximate cause of the tenant’s injury.

Although *Stribbling* and *Duncavage* were both decided prior to *Rowe*, the decisions follow the Supreme Court’s reasoning in *Rowe*. In order for a landlord to be liable under the second exception, the criminal acts giving rise to the plaintiff’s injuries must be reasonably foreseeable. The plaintiff must show that the acts were reasonably foreseeable by proving the occurrence of prior similar criminal activity facilitated by the same defective conditions that allegedly led to the plaintiff’s attack.

Despite the clear language of *Stribbling*, *Duncavage* and *Rowe*, one appellate court case following *Rowe* follows a different rationale. *Shea v. Preservation Chicago, Inc.*, 206 Ill. App. 3d 657, 565 N.E.2d 20 (1st Dist. 1991), is clearly an aberration in the line of cases in which liability has been imposed under the second exception. In *Shea*, the plaintiff alleged that she was injured when an intruder entered her building and criminally assaulted her. When the plaintiff signed her lease with the defendant (only a month before the incident), the landlord represented to her that the safety locks on her door and another door were in a defective condition, and that they would be repaired. Thus, the plaintiff complained that the defendant’s failure to repair the locks was the proximate cause of her injury, and, therefore, the landlord was negligent. The defendant, in attempting to refute the plaintiff’s claims, argued that under *Rowe* and *Duncavage* there must be a prior incident involving the same defective condition in order to find a duty on the part of the landlord. Since this had not been alleged, the plaintiff’s complaint must be dismissed. The court disagreed with this argument. In holding that the plaintiff had stated a cause of action, despite allegations of prior, similar criminal activity on the premises, the court stated that “the proper inquiry is to consider all relevant circumstances in order to
determine whether the landlord had assumed a duty, under the facts of each particular case, to protect a tenant from reasonably foreseeable third-party criminal attacks.” Shea at 25.

Shea is clearly in conflict with Stribling, Duncavage, and the controlling case by the Illinois Supreme Court, Rowe. Despite this conflict, and the controlling authority of the Illinois Supreme Court’s decision in Rowe, many plaintiffs rely on Shea in making the argument that notice of defective conditions alone, without the occurrence of prior criminal acts, may give rise to a duty on behalf of a landlord to warn or guard against criminal acts.

Three cases subsequent to Shea support the argument that Shea is an aberration, in light of the Illinois Supreme Court’s holding in Rowe. First, in Petruskas v. Wexenthaller Realty Management, Inc., 186 Ill. App. 3d 820, 542 N.E.2d 902 (1st Dist. 1989), the plaintiff, Kathy Petruskas, brought a complaint against her landlord alleging that the landlord’s negligence in keeping the fire escape doors open in order to ventilate the building was the proximate cause of an intruder entering her apartment and raping her. The First District Appellate Court affirmed the trial court’s dismissal of her complaint. In doing so, the court stated that the allegations pertaining to the fire escapes and the “high crime” in the area surrounding the building did not go so far as to give rise to the imposition of a duty on the defendant. The court stated that since there were no prior criminal incidents of which the landlord knew or should have known, no duty arose.

N.W. v. Amalgamated Trust and Savings Bank, 196 Ill. App. 3d 1066, 554 N.E.2d 629 (1st Dist. 1990), also supports the requirement of prior criminal activity set out in Rowe. The plaintiff was raped after an intruder gained access to her apartment. In her complaint, the plaintiff alleged that the defendant landlord assumed a duty when he was put on notice of her concerns regarding her safety, specifically in regard to having the locks to her apartment maintained. She further alleged that the landlord’s negligence in maintaining the locks to her apartment doors was the proximate cause of her injuries. However, she conceded that neither she nor the previous tenant ever witnessed an intruder or any other criminal activity on the premises prior to the night of her injuries. The appellate court agreed with the trial court’s dismissal of her complaint. Although recognizing that the second exception to the general rule of no duty does exist, the court found that the criminal act at issue was not reasonably foreseeable. The court held that since the plaintiff failed to show the existence of prior occurrences of criminal activity, she also failed to show that the activity which led to her injuries was reasonably foreseeable by the landlord.

In Ignarski v. Norbut, 271 Ill. App. 3d 522, 648 N.E.2d 285 (1st Dist. 1995), the plaintiff, the executor of the estate of the deceased, brought suit against the defendant, a law firm, for malpractice relating to its representation of the plaintiff in an action brought under the second exception. Charles Ignarski was injured while visiting a Kentucky Fried Chicken restaurant (KFC) by the criminal act of a third party. He thereafter hired the defendant law firm to represent him in a negligence action against the owner of the franchise, John Heublin. Heublin was never found. The plaintiff then hired a second law firm to represent him, and this firm filed a complaint against KFC National Management Corporation. However, this complaint was not filed within the statute of limitations. Thus, the plaintiff brought a malpractice suit against Norbut alleging that had it not been for the defendant’s failure to name the proper party, he would have prevailed in his negligence action.

The appellate court stated that in order to prevail in his action against the defendant, the plaintiff was required to show that KFC had a duty to protect him from the criminal acts of the third parties. The court found that since the plaintiff did not allege in his initial complaint against Heublin, nor his second complaint against KFC, that prior criminal acts were known by the landlord to have been committed on the premises no cause of action was stated by the plaintiff. Thus, the defendant could not be found to have committed malpractice.

Several other cases are notable for the fact that liability was not imposed under the second exception. In Martin v. Usher, 55 Ill. App. 3d 409, 371 N.E.2d 69 (1st Dist. 1977), the plaintiff, Toni
Martin, brought an action against her landlord alleging that he was negligent in failing to make necessary repairs and keep up with maintenance to the building’s locks and common areas. The complaint alleged that as a result of this failure, an intruder entered the plaintiff’s apartment, shot Ms. Martin, and attempted to rape her. Thus, under the second exception, the plaintiff asked the court to impose liability on the basis of the defendant’s failure to maintain a condition of the premises which led to the commission of a criminal act. The First District Appellate Court dismissed the complaint on the grounds that no legal duty existed between the landlord and the plaintiff. The court affirmed earlier cases stating that “to impose liability in the case before us would unjustly place upon defendant as a property owner a legal duty which is impossible of performance.” Martin, 371 N.E.2d at 70.

In Burks v. Madyun, 105 Ill. App. 3d 917, 435 N.E.2d 185 (1st Dist. 1982), the plaintiff was a babysitter who was attacked and injured by a third party while in the home of the defendant. The court found that the plaintiff’s status as a babysitter gave rise to an inviter-invitee relationship. Therefore, a duty could arise out of the relationship if the attack upon the plaintiff was found to be reasonably foreseeable. However, according to the court, the defendant’s knowledge regarding threats her children had received from various gang members did not equate to more than a mere possibility of an attack on the plaintiff. Since the attack was not reasonably foreseeable, the court held that no duty was owed by the defendant-inviter to the plaintiff-invitee.

In Carrigan v. New World Enterprises, 112 Ill. App. 3d 970, 446 N.E.2d 265 (3rd Dist. 1983), a tenant, Brenda Carrigan, brought an action against the defendant landlord arising out of injuries sustained when an intruder broke into her apartment and raped her. Prior to signing a lease, the landlord represented to Ms. Carrigan that a burglar alarm was located in the apartment. The burglar alarm had not worked for six months, and the plaintiff testified that the defendant was aware of this fact prior to her attack. The plaintiff also testified that she did not always activate the alarm when leaving her apartment or when retiring for the evening. The Third District Appellate Court reversed a jury verdict in favor of the plaintiff. The court stated that “the installation of a burglar alarm cannot be construed as absolute protection against crime.” Carrigan, 446 N.E. at 267. The court also emphasized that the plaintiff failed to show that the defendant’s omission in failing to repair the system was the proximate cause of her injury. The court believed that in order to support a verdict in favor of the plaintiff, the jury had to speculate whether the plaintiff would have set the alarm on the night of the incident and, just as importantly, would have had to speculate that had the alarm been functioning, and set, the perpetrator would have been scared away when the alarm went off. Based on the foregoing, the plaintiff simply could not prove her case and judgment was entered in favor of the defendants.

Morgan v. Dalton Management Co., 117 Ill. App. 3d 815, 454 N.E.2d 57 (1st Dist. 1983), involves criminal conduct by one tenant of an apartment building directed at another tenant. There was a brief history of animosity between the plaintiff, Erlene Morgan, David Hunter, (a co-defendant in the matter), and another man living with Mr. Hunter. The plaintiff reported the threatening actions of Mr. Hunter to her landlord, Dalton Management, prior to her injury. On October 31, 1979, Mr. Hunter threw acid at the plaintiff while both were riding in the elevator, resulting in personal injuries and disfigurement to Ms. Morgan. The plaintiff brought suit against Mr. Hunter and Dalton. Her complaint against Dalton was dismissed by the circuit court on the basis that no duty flowed from Dalton to the plaintiff to prevent this action. In affirming the circuit court’s dismissal, the First District Appellate Court held that in order to impose a duty on Dalton to protect against such acts, the injury sustained must have been reasonably foreseeable. The court found that the plaintiff’s injury was not foreseeable. The court also found that a landlord has no duty to serve as an intermediary in disputes arising between tenants. The court dismissed the plaintiff’s argument that a duty was created on the defendant’s behalf by a provision in the lease which stated that no tenant shall act in an injurious manner towards another tenant. According to the court, this statement in the lease did not amount to an affirmative action on the part of the landlord to guard against such an attack.
Finally, in *Beck v. Rossi Brothers*, 125 Ill. App. 3d 874, 466 N.E.2d 1124 (1st Dist. 1984), the plaintiff was shot by trespassers while in the common area of an apartment complex owned by the defendants. Prior to the night of the plaintiff’s injury, trespassers, on several occasions, had entered the premises and committed crimes therein. The plaintiff alleged that the defendants either knew or reasonably should have known of these occurrences and that the defendants were negligent in the maintenance of the building’s locks and doors and in the failure to provide proper security devices. The trial court dismissed the plaintiff’s complaint for failure to state a claim. The First District Appellate Court affirmed the trial court’s dismissal, relying on the reasoning in *Carrigan*, that “where [the] precise cause of plaintiff’s loss is left to conjecture, then plaintiff cannot recover . . .” *Beck*, 466 N.E.2d at 1124. Like the court in *Carrigan*, the court in *Beck* believed that the alleged connection between the defendant’s acts or omissions and the plaintiff’s injuries were simply too tenuous to be the proximate cause of the plaintiff’s injuries.

IV. Practice Tips

A. Pleading Motions

As soon as defense counsel receives the assignment of defending a residential landlord in a third-party assault case, the initial assessment must focus on the status of the pleadings. The allegations in the complaint must be carefully analyzed to determine whether the plaintiff has indeed stated a cause of action under one of the two recognized exceptions to the general rule of no liability. If the plaintiff has not alleged proper facts in her cause of action to bring the claim within one of the two recognized exceptions, then defense counsel should file a motion to dismiss based on the case law cited above.

In regard to the second exception, plaintiffs’ attorneys often plead facts which at first blush may appear to support a cause of action under the second exception. However, upon careful review, often these facts are red herrings. For example, plaintiff’s counsel will often allege that there was general criminal activity taking place in the area of the defendant’s apartment building. However, Illinois courts have repeatedly held that general allegations of crime in the area do not give rise to a duty to protect tenants from the criminal acts of third parties. In order to establish liability, the plaintiff must plead and prove prior similar criminal acts on the defendant’s property. See, *Petrauskas v. Wexenthaller Realty Management, Inc.*, 186 Ill. App. 3d 820, 542 N.E.2d 902 (1st Dist. 1989); *N.W. v. Amalgamated Trust & Savings Bank*, 196 Ill. App. 3d 1066, 554 N.E.2d 629 (1st Dist. 1990).

In addition, plaintiffs’ attorneys will often plead defects in the premises, which are unrelated to the criminal activity at issue. For example, plaintiff’s counsel may plead that a side door was carelessly left unlocked or interior hallway lights were constantly not working when the perpetrator actually gained access to the plaintiff’s apartment through the use of an exterior stairway or fire escape. Allegations of defective repairs in portions of the property that are not connected with the third-party criminal attack are not, however, relevant to establish a duty on the part of the defendant landlord. Accordingly, a motion to dismiss should be brought when those types of allegations form the basis of the plaintiff’s complaint.

One other point deserves mention. Plaintiff’s counsel may attempt to plead a separate cause of action based on alleged violations of the Chicago Municipal Code. Defense counsel should be aware of the case of *Abbasi v. Paraskevoulakos*, 187 Ill. 2d 386, 718 N. Ed.2d 181(1999). In that case, the Illinois Supreme Court held that a violation of the Chicago Municipal Code does not give rise to a separate and independent cause of action. Alleged violations of the Chicago Municipal Code must be incorporated into a complaint as part of the allegations of general negligence in a standard negligence count. Accordingly, any attempt to state a separate cause of action based on violations of the Chicago Municipal Code should be met with a motion to dismiss.
B. Written Discovery Issues

If plaintiff’s counsel is successful in defeating a motion to dismiss, or is ultimately successful in pleading a cause of action which falls under one or both of the recognized exceptions to the general rule of no liability, then the case will proceed through discovery. One of the first things that defense counsel must do is meet with the defendant and inspect the premises at issue. Defense counsel must become intimately familiar with all means of ingress and egress to the building, the type and position of light fixtures at the building, the type and location of any security devices at the building, etc. Defense counsel should take the opportunity, when visiting the scene of the occurrence, to meet with any maintenance personnel and learn all she can about the maintenance schedule, how complaints from tenants are received and dealt with, whether any paperwork exists to document tenant complaints and repairs, and other issues regarding maintenance at the premises.

Written discovery addressed to the plaintiff must focus on several key issues. The interrogatories that are served on the plaintiff should request information about the plaintiff’s prior addresses and landlords. This information may be useful in contacting prior landlords to learn what type of tenant the plaintiff was. Information about employers should be solicited so that an effort can be made to contact employers to determine whether the plaintiff missed any work following the incident in question. Interrogatories regarding medical and psychiatric treatment, and any treatment received for the aftermath of rape, if that is the crime at issue, must be served on the plaintiff. In addition, the interrogatories should request the name, addresses and telephone numbers of any witnesses, police investigators, private investigators or other individuals involved to attempt to determine the cause of the third-party criminal attack upon the plaintiff. The interrogatories should also ask the plaintiff for any information which supports an assertion that the criminal attack upon her was reasonably foreseeable, and should ask the plaintiff to identify other incidents of crime that she is aware of that have occurred on or around the defendant’s premises.

Requests to produce which are directed towards the plaintiff must seek production of any documents the plaintiff may have in her possession which purport to support the plaintiff’s cause of action. In particular, defense counsel should request the production of any police reports in the plaintiff’s possession, any other reports prepared regarding the incident which gives rise to the lawsuit, as well as any other reports, compilations, statistical analyses, Federal Bureau of Investigation reports, etc. regarding crime on the property in question or in the general vicinity. State and local police departments are required to keep statistical evidence of the number, frequency and types of criminal activity which occur in a given neighborhood or beat. This type of statistical data can prove to be problematic during the course of a case. As a result, defense counsel must make sure, at the beginning of the case, that requests are made to the plaintiff and her counsel to produce this very type of documentary evidence.

In addition, the request for production of documents to the plaintiff should request copies of any statements taken from any witnesses, any newspaper accounts of the crime in question or criminal activity at the property in question, and incident or accident reports for other crimes occurring in and around the premises in question. The request should also seek copies of each and every lease the plaintiff executed for the premises at issue. Most residential leases contain a clause, which states that the tenant inspected and approved the quality of the premises prior to leasing the same. If such a clause exists in the plaintiff’s lease, the fact that the plaintiff signed a lease containing such a clause can help minimize or disprove claims that the premises in question were in a state of disrepair from the moment the tenant took possession. The requests to the plaintiff should also seek copies of any and all written complaints submitted to the landlord, the city, or state officials regarding the condition of the premises, defects in the premises or efforts to get those defects fixed. Requests should also include
copies of any and all medical records regarding the plaintiff, including records from psychiatric care providers, psychologists, rape counselors, medical doctors and other healthcare professionals.

C. Oral Discovery Issues

The plaintiff’s deposition is the ideal forum to determine the basis for the plaintiff’s claim. Defense counsel must focus on the evidence to support the precise factual predicate for the plaintiff’s causes of action. If the plaintiff attempts to proceed under the first exception to the general rule, the questioning must be geared towards the type of security services provided at the building, when the security services were provided, who provided them, what type of promises were made on safety at the building or the efficacy of the security services at issue, etc. If the plaintiff attempts to proceed under the second exception to the general rule, the questioning must focus on the precise defects in the physical leasehold that the plaintiff claims facilitated the attack upon her, and, in particular, whether the plaintiff has any knowledge of other similar criminal incidents on the premises prior to the incident in question. In addition, questioning of the plaintiff must be designed to determine whether the plaintiff has any information as to the defendant’s knowledge that prior similar criminal acts were facilitated by defective conditions on the premises prior to the attack upon the plaintiff.

The plaintiff’s deposition is also the ideal time to discover as much information as possible regarding any complaints the plaintiff may have made about defective conditions on the premises in question. The questioning of the plaintiff should be designed to elicit information regarding who made the complaints, to whom they were made, when the complaints were made, the contents of the complaints, and whether any written complaints were submitted to the defendant or any other entity which may have been responsible for correcting the allegedly defective conditions. Special attention should be paid to determine whether the complaints made by the plaintiff to the defendant were ever reduced to writing or whether anyone other than the plaintiff witnessed the complaints. Defense counsel should also attempt to gather any information the plaintiff may have on other tenants who may have made similar complaints about defective conditions on the premises.

In addition to asking about all of the above subjects, defense counsel should ask the plaintiff if she inspected the premises prior to moving in. Special attention should be paid to determine precisely what the plaintiff’s inspection entailed, whether a written inspection checklist was made, and whether, prior to moving in, the plaintiff made any complaints to the defendant – or the defendant’s representatives – as to the condition of the leasehold.

As unpleasant as it may seem, it is vitally important that defense counsel take a fair amount of time and have the plaintiff walk through every detail of the assault. Special emphasis should be placed on lighting conditions, the exact location of the assault, any details that the plaintiff can give on the physical characteristics of the assailant, the length of time over which the attack took place, and whether anything was said to the plaintiff on the method of entry to the location where the assault took place. Many times, details on the specifics of the assault provide potent ammunition for a motion for summary judgment.

Finally, defense counsel should question the plaintiff as to where she lived following the assault. Plaintiffs often refuse to break their leases and continue to live in the same apartment where the attack took place. Evidence that the plaintiff continued to live at the scene of the attack, despite being given an opportunity to break the lease by the defendant, can be powerful evidence at a trial in undermining the plaintiff’s claims of recurrent emotional or psychological problems.

Preparation is key in the presentation of a defendant landlord for deposition in a case involving a physical or sexual assault on one of the defendant’s tenants. The most important thing that defense counsel can do prior to presenting the defendant for a deposition is to thoroughly read and understand the law regarding this particular area of liability. To prepare for a possible summary judgment
following the completion of fact discovery, the defendant must be prepared to testify in accordance with the provisions of the applicable law.

Specifically, the defendant landlord must be prepared to testify regarding all the details surrounding his or her ownership of the property in question. The defendant landlord must also be prepared to testify as to any complaints that may have been made by the plaintiffs or other tenants regarding physical defects in the premises. The landlord must also be prepared to testify regarding his or her knowledge of any other incidents of criminal activity, which have taken place on the premises in question. Maintenance of the leasehold will undoubtedly be a subject that will be covered at great length during the course of the deposition. As a result, the defendant must be prepared to testify regarding the maintenance program which was in place to field complaints and respond to any problems which would arise during a tenant’s stay on the property. If the provision of security is an issue in the case, the defendant must be prepared to testify regarding the provision of security services, what led the defendant to determine that security services were necessary, what was done to screen the providers of security services at the building, and other issues surrounding the provision of guards and/or 24-hour doormen.

In most cases, the perpetrator of the criminal activity in question is never caught. As a result, the defense attorney usually does not have to take or respond to the deposition testimony of the person responsible for attacking the plaintiff. In those rare instances where the perpetrator has been caught, arrested, tried and convicted, defense counsel must give very careful thought to whether or not he wants to depose the perpetrator. For instance, if the perpetrator has given a statement to the police in which he “confesses” that defective conditions of the premises facilitated his criminal activity, it may not be in the defendant’s best interest to have that same testimony recorded in the form of a sworn deposition. It is much easier for defense counsel to attempt to prohibit the use of an unsworn, hearsay statement in a police report regarding the characteristics of the crime than it is to attempt to prohibit the use of sworn testimony regarding that same evidence.

D. Experts

In most cases, the plaintiff will hire an “expert” on security issues to provide testimony in the case. Oftentimes plaintiffs’ attorneys disclose security experts in an effort to avoid the inevitable motion for summary judgment. Defense counsel must always keep in mind that whether a duty exists is a question of law to be decided by the court. An expert cannot create a duty where the law says one does not exist. So, in those cases where the plaintiff has failed to produce any evidence which places her case squarely within one of the two very narrow exceptions to the general rule of no liability, defense counsel must make sure that testimony of an expert to the contrary is stricken or limited at the summary judgment stage.

V. Result of the Introductory Case

The facts outlined in the introduction section above are taken from a case that the authors recently handled in the Circuit Court of Cook County. The defendant landlord, the sole defendant in the case, was ultimately successful and obtained summary judgment in his favor. Several factors in the case led to this result.

One factor involved the distinction in the law set forth by the courts in this particular area. Despite numerous motions to dismiss, the complaint never delineated which of the two exceptions applied. Moreover, there was a lack of specific facts set out to place the plaintiff’s cause of action within either of the two recognized exceptions. During the discovery phase of the case, few facts were uncovered which would place the case within one of the two recognized exceptions. The plaintiff’s claim relied on some unidentified crime of the property and evidence of some alleged defects in the premises, evidence that the court found to be insufficient to defeat summary judgment in favor of the defendant.
The only evidence presented by the plaintiff regarding the provision of security services at the premises in question included that lights were on the exterior portion of the building and locks were on the plaintiff’s back door and rear window. The plaintiff provided no evidence of other similar criminal acts on the premises, and instead relied on general allegations of a rapist operating in the Lincoln Park area and unauthenticated police records regarding other minor crimes which had occurred on the premises in question. The court rejected admission of the listing of other criminal activity on the property which plaintiff’s counsel obtained from the Chicago Police Department after the defendant filed his motion for summary judgment, in part because the listing of criminal activity obtained by the plaintiff did not indicate the circumstances of any of the crimes, the precise location on the property of the particular crimes, or that the defendant landlord ever knew that the crimes took place. The court correctly held in ruling on the motion for summary judgment that without evidence of prior, similar criminal activities on the premises, that were facilitated by the same defective conditions that the plaintiff complained of, the plaintiff was not able to rely on the second exception to the general rule of no liability.

In the introductory case, the perpetrator of the crime was actually caught, tried, convicted and sentenced to prison. Both parties to the suit knew the perpetrator’s identity and where he was incarcerated, but the perpetrator was not deposed. Rather plaintiff’s counsel simply relied on an alleged confession of the perpetrator to the investigating officers three or four weeks after the crime had taken place. Defense counsel successfully had that evidence stricken as unauthenticated double hearsay. Without the alleged statements of the perpetrator regarding why he chose the particular building at issue and how he gained access to the apartment in question, the court concluded it was mere speculation as to how the crime occurred.

Finally, the plaintiff retained a security expert to testify in the case. This expert, who was from the east coast and admitted during the course of his deposition that he had never lived, worked or spent any serious amount of time in Chicago, was proffered as an expert on not only security issues, but the law as well. This expert never reviewed any of the case law from the state regarding the imposition of a duty on the landlord to protect his or her tenants from the criminal acts of third parties. The court agreed with defense counsel’s argument that the plaintiff’s expert could not create a duty where the law says a duty does not exist. As a result, the court granted summary judgment in favor of the defendant despite the plaintiff’s expert’s testimony that the defendant owed a duty of care to the plaintiff, that duty was breached, and the plaintiff suffered injuries as a proximate result of that breach.

VI. Conclusion

The facts are inescapable. Society is growing increasingly violent. People are becoming more and more litigious. As a result, landlords can expect to face a growing number of lawsuits for damages due to the criminal acts of third parties. In order to properly handle these cases, defense counsel must know the law, uncover the facts, and ultimately present them in such a way that the courts will not hesitate to grant summary judgment or direct a verdict in favor of defendant landlords.
Endnotes

1 Interestingly enough, the *Sockow* case appears to be the only case in the State of Illinois in which a court has held that the provision of security devices, such as lights, locks and alarms, amounts to a voluntary undertaking to provide security services for tenants. Actions such as these thus meet the requirements of the first exception to the general rule of no duty. However, *Sockow*, a Northern District of Illinois case, decided four years before the *Rowe* case, would likely be found to be bad law, in light of the fact that the Illinois Supreme Court specifically held in *Rowe* that the provision of security devices, such as lights and locks, does not amount to a voluntary undertaking to protect tenants from the criminal acts of third parties. *See, Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 531 N.E.2d 1358, 1365 (1988); *see also Sockow v. Whitmore*, 1984 U.S. Dist. LEXIS 23815 (N.D. Ill. 1984).

2 The appellate court reversed the dismissal in favor of the defendant and remanded the case back to the trial court for further proceedings based on an argument by the plaintiff that he was a business invitee and, therefore, a special relationship existed between himself and the CHA, thereby imposing a duty upon the CHA to protect him from the criminal acts of third parties. According to the appellate court, there were sufficient facts alleged in the plaintiff’s fourth amended complaint to give rise to such a cause of action.

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