

JOHN DICARO AND JENNIFER ANDERSON OBTAIN SUMMARY JUDGMENT IN A PREMISES LIABILITY CASE

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JSH partner John DiCaro and appellate attorney Jennifer Anderson obtained summary judgment for their clients in a

premises liability case involving a shooting at a storage facility.

A man (“Trespasser”) walked uninvited onto the grounds of a storage facility (“Storage Facility”) with the intention of scaring a customer of the Storage Facility (“Customer”), who was retrieving stored property. The Trespasser gained entry when someone who lived on the Storage Facility’s premises (“Tenant”) opened the electronic security gate for someone else, unaware that the Trespasser was also standing by the gate waiting for it to open.

Unbeknownst to the Storage Facility’s owner and manager (“Owner”) or the Tenant, the Trespasser was enraged at the Customer and planned to confront him at the Storage Facility. The Trespasser told no one about this plan or the fact that he was carrying a concealed gun. After entering the Storage Facility’s premises without permission, the Trespasser accidentally shot the Customer in the cheek and neck after pistol-whipping him. The Trespasser is currently serving a lengthy prison sentence.

The Customer sued the Storage Facility, the Owner, the Tenant, and the Trespasser for negligence, premises liability, and vicarious liability. DiCaro and Anderson moved for summary judgment in favor of the Storage Facility and the Owner on the ground that, even assuming the Tenant was the Storage Facility’s employee, the Trespasser’s assault was a sudden and unforeseeable attack for which the Storage Facility and Owner could not be held directly or vicariously liable. The trial court granted the motion, ruling there was no evidence the Storage Facility, the Owner, or the Tenant knew or had any reason to know of the Trespasser’s assault plan or violent tendencies. The Trespasser admitted he told no one about his intentions.

The court rejected the Customer’s theory that a landowner is liable whenever something bad happens on his property, noting that this goes against well-established Arizona law that “the proprietor of . . . business premises is not an insurer of the safety of invitees and is not required at his peril to keep the premises absolutely safe.” *Simon v. Safeway, Inc.*, 217 Ariz. 330, 337, ¶ 18 (App. 2007). The court also declined to find the Storage Facility and the Owner liable under a “mode of operation” theory because nothing about the Storage Facility’s “mode of operation” would cause it to reasonably anticipate that assaults could regularly occur.

[John DiCaro](#) practices in governmental liability, personal injury, civil rights and insurance defense. John has tried cases for the cities of Phoenix and Mesa, several insurance carriers and a number of private companies. In 2007, he was recognized for obtaining one of Arizona’s top 10 defense verdicts while defending the Billet Bar in a dram shop action. He also is a faculty member of the Arizona College of Trial Advocacy.

Jennifer Anderson handles federal and state appeals concerning a wide range of issues, including torts, commercial law, insurance, governmental liability, workers’ compensation, and family law. Jennifer also provides strategic advice to trial counsel on preserving the record for appeal and she assists at the trial level by preparing dispositive motions and case-shaping jury instructions, motions in limine, trial memoranda, and post-trial motions. Jennifer has represented clients in numerous appellate oral arguments, trial court hearings and mediations.

About Jones, Skelton & Hochuli:

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