

How the Undertaker Doctrine May be Alarmingly Helpful to A Warehouse

It is well known that a warehouse must exercise reasonable care in the storage and handling of a depositor's goods.¹ In fact, it has been held that a warehouseman is liable for loss or damage to goods stolen by a third party when the warehouseman has failed to take proper security measures to protect its depositors' goods. Many courts have also held that an alarm company may contractually absolve itself from liability even if the alarm fails to work during a burglary.² Cases such as these may give the impression that a warehouse has little recourse in the event a depositor's goods are stolen from its facility. However, a recent Florida Appellate Court case provided a bright spot for warehouses by holding that a security company retained by an alarm company to inspect a warehouse facility in the event of a burglary may be held liable to the warehouse if fails to reasonably perform its obligation to inspect the premises.

In *Travelers Insurance Co. v. Securitylink*³, the warehouse contracted with an alarm company to install and monitor an alarm system in its warehouse.³ The alarm company contracted with a security company to send a guard to inspect the premises when an alarm sounded at the warehouse. The guard would subsequently report any signs of forced entry or suspicious activity to the warehouse.

One weekend after the warehouse entered into the agreement with the alarm company, the alarm company received four alarm signals from the warehouse. Upon receiving each signal, the alarm company contacted the security company to send a guard to inspect the premises. After the first three alarms, a guard from the security company inspected the premises but reported no evidence of a burglary. However, on the fourth alarm, the security company discovered that a ladder had been pushed through a skylight on the premises and that merchandise was missing.

Subsequent to the burglary, the warehouse's insurer paid the claim and filed suit against the security company. The security company contended that its only duty was to the alarm company with whom it had contracted. However, the court determined that even though the security company did not contract with the warehouse, the warehouse was a direct beneficiary of the service that the security company contracted to provide to the alarm company.

Specifically, the court relied on the "undertaker doctrine" which holds for the principle that "one who undertakes... to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking if: a) his failure to exercise reasonable care increases the risk of harm, or b) he has undertaken to perform a duty owed by the other to

¹ U.C.C. 7-204

² See *Nahra v. Honeywell, Inc.*, 892 F. Supp. 962 (N.D. Ohio 1995)

³ *Travelers Ins. Co. v. Securitylink from Ameritech, Inc.*, 995 So. 2d 1175 (Fla. Dist. Ct. App. 3d Dist. 2008)

the third person, or c) the harm suffered because of reliance of the other or the third person upon the undertaking.

In this instance, both the alarm company and the warehouse were the direct beneficiaries of the contracted services that the security company agreed to render. Due to the fact that the security company failed to reasonably perform its obligation to respond and inspect the warehouse premises and the warehouse suffered harm as a result of the security company's failure to perform its obligation, the court held that the plaintiff had a valid cause of action against the security company.

While the undertaker doctrine may provide a remedy for a warehouse that is unfortunate enough to experience a burglary on its premises, it is not a substitute for exercising reasonable care to prevent such incidents from happening in the first place. Thus, a warehouse should always continue to take the necessary precautions and ensure that its facility is sufficiently protected from unforeseen events.

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