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**Landlord Had No Duty to Evict Tenant Belonging to Gang, S.C. Rules**  
*Justices, in 6-1 Ruling, Uphold Nonsuit in Action Brought by Victim of Shooting at El Centro Trailer Park*

By a MetNews Staff Writer

A landlord generally has no duty to refuse tenancy to, or to evict, tenants associated with a street gang, the California Supreme Court ruled yesterday.

Reversing the Fourth District Court of Appeal, the justices said nonsuit was properly granted to the defendants in Ernest Castaneda's suit against the owners of an El Centro mobilehome park where he was shot by an alleged member of the Northside El Centro gang.

Justice Kathryn M. Werdegar, writing for the court, said a landlord has no duty to refuse to rent to a gang member, and has a duty to initiate eviction proceedings only if a tenant engages in conduct that makes it highly foreseeable that an innocent person will be injured.

Justice Joyce L. Kennard dissented in part, arguing that there was enough evidence for a jury to decide whether the landlord was negligent in failing to initiate eviction proceedings against Carmen Levario and his son, Paul Levario prior to the November 1996 incident in which Castaneda was shot.

Castaneda, 17 at the time, lived in a mobilehome with his grandmother and sister. The complex was owned by George and Paule Olsher and their company, P&G Enterprises.

After the shooting, an El Centro police officer identified Paul Levario as a member of the Northside gang. Police determined that a fellow gang member visiting Levario fired the shot that injured plaintiff.

The plaintiff presented evidence that he had driven home with three friends, who remained in the car while he went inside to talk to his sister. A second car containing four young men drove up behind his car, and two young men from the mobilehome across the street came outside.

At that point a confrontation between the men in the second vehicle and the men from the mobilehome occurred in which “gang slurs” were exchanged.

Friends of Castaneda said the men in the car shouted “Westside Centro, Westside Centro” while the men from Levario’s mobilehome shouted “Northside Centro, Northside Centro”.

Several minutes later, as Castaneda exited his mobilehome to rejoin his friends, shots were fired and he was hit in the back, he said.

### **Grandmother Complained**

Prior to this incident, the plaintiff’s grandmother, Joyce Trow, had complained to the mobilehome manager that people who “looked like gang members” were hanging around

the mobilehome, breaking bulbs in the outdoor lights. The mobilehome manager had explained she could not do anything to prevent this after a conversation with George Olsher who had approved renting to Carmen Levario.

For the two months prior to the shooting, Trow said she had complained that people “dressed like gang members” were congregating at the mobilehome of Levario. They were, Trow said, “dressed in baggy pants and flannel shirts, drinking from 40-ounce bottles outside the mobilehome”.

### **Past Incidents**

The plaintiff presented evidence of gun shots from a gang confrontation in 1996 being fired on a property contiguous to defendants’ mobilehome park, and of a 1995 incident in which a bullet was fired—the shooter was not identified—from outside defendants’ mobilehome park and hit a unit in the park. The defendants were aware of these incidents.

There was also evidence of gang graffiti and drug sales in the park. But Imperial Superior

Court Judge Jeffrey B. Jones, granting nonsuit, said “plaintiff has failed to show prior similar incidents such that a shooting herein was highly foreseeable” and therefore the landlord owed no duty to Castaneda.

The Court of Appeal reversed, saying Castaneda “presented evidence that Olsher was aware that he was renting spaces in his mobilehome park to gang members and that there had been a variety of gang-related criminal activity and other similar crimes occurring on and near the premises.”

Werdegar agreed that a landlord generally owes a tenant the duty, arising out of their special relationship, to take reasonable measures to secure areas under the landlord’s control against foreseeable criminal acts of third parties.

But while alleviating gang violence is of the utmost importance, the justice said, a duty placed on residential landlords to screen potential tenants in order to determine gang affiliation and criminal associations, would result, in many cases, in arbitrary discrimination on the basis of race, ethnicity, family

composition, dress and appearance, or reputation.

Essentially, imposing this duty to screen for gang affiliation, and to refuse tenancy to individuals who appeared to be affiliated with a gang, would subject landlords to potential liability from both sides, she reasoned. Thus the burden imposed on a landlord requires that the probability of violence and risk to tenants be “extraordinary.”

Further, requiring background or criminal screening by a landlord would impose too heavy a burden and lead to significant expense and delay.

This case did not involve ‘knowledge’ of gang affiliation by either defendant landlord or his management staff, the justice pointed out, but merely suspicion.

Indeed, if the landlord had refused tenancy initially, as this case involved a mobilehome park, the landlord risked potential civil liability for violation of the California Mobilehome Residency Law, Werdegar said. Suspicion of

gang membership is not one of the allowed bases for disapproval under that law.

In contrast, once a landlord has rented to a tenant who is associated with a gang, the standard is lessened to a “highly foreseeable” likelihood of violence, the justice said.

She said that a landlord did have more opportunity to observe gang related violence and criminal associations of existing tenants. She also noted, however, that there remained a burden on landlords in evicting tenants particularly those with criminal and/or violent inclinations.

Here, although there was gang graffiti and possibly the presence of gang members within the park, the defendants had no reason to expect a confrontation between rival gangs or an incident specifically

involving the Levarios or any other specific tenant, Werdegar wrote.

For these same reasons, she said, there was no duty on the part of the landlords to provide improved lighting or hire security guards.

The case was argued in the high court by El Centro attorney Lowell F. Sutherland for the plaintiff and by Kim L. Nguyen of Encino’s Horvitz & Levy for the defendant. The California Apartment Association, Western Manufactured Housing Communities Association, The Civil Justice Association of California, and Pacific Legal Foundation filed amicus briefs in support of the defendant.

The case is *Castaneda v. Olsher*, 07 S.O.S. 4750.