**UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**TAMPA DIVISION**

**WILLIAM TOURTELOT,**

**Plaintiff,**

**vs.** **Case No. 8:11-CV-1008-T-27MAP**

**URBAN RETAIL PROPERTY, *et al.*,**

**Defendants.**
_____/

**ORDER**

**BEFORE THE COURT** is Defendant Security Services of America, LLC's Motion to Dismiss First Amended Complaint (Dkt. 21), Defendant Urban Retail Property and City of St. Petersburg's Motion to Dismiss First Amended Complaint (Dkt. 19), and Plaintiff's responses to the motions (Dkt. 22, 23). Upon consideration, the motions are **GRANTED**.

The First Amended Complaint purports to state negligence claims against each of the Defendants under a theory of premises liability. Plaintiff claims that he was attacked by "unknown third parties" while visiting property owned or operated by Defendants. In conclusory fashion, Plaintiff alleges that Defendants knew or should have known of prior criminal acts at or near the premises, "including crimes against property and persons," and that Defendants knew or should have known of the potential danger posed to Plaintiff by criminal acts of third persons at or near the premises. *See* First Amended Complaint (Dkt. 17), ¶¶ 11-13, 20-22, 29-31.

Defendants contend that the First Amended Complaint fails to state a claim because it lacks factual allegations demonstrating that Defendants had actual or constructive knowledge of the risk to Plaintiff on the premises. The Court agrees.

Under Florida law, "[t]he duty of care owed ... to an invitee with respect to protection from criminal acts of a third person is dependent upon the foreseeability of the third party's activity." *Medina v. 187th St. Apartments, Ltd.*, 405 So.2d 485 (Fla. 3d DCA 1981) (citing *Relyea v. State*, 385 So.2d 1378 (Fla. 4th DCA 1980)). In order to demonstrate foreseeability, a plaintiff must demonstrate "that a proprietor had actual or constructive knowledge of a dangerous condition on [the] premises that was likely to cause harm to a patron." *Hall v. Billy Jack's, Inc.*, 458 So.2d 760, 761 (Fla. 1984) (citing *Fernandez v. Miami Jai Alai, Inc.*, 386 So.2d 4 (Fla. 3d DCA 1980)). "A dangerous condition may be indicated if, according to past experience ..., there is a likelihood of disorderly conduct by third persons in general which might endanger the safety of patrons or if security staffing is inadequate." *Hall*, 386 So.2d at 761-62. The dangerous condition need not be specific, rather the landowner simply needs "actual or constructive knowledge of prior *similar* acts committed upon invitees on the premises." *Paterson v. Deeb*, 472 So.2d 1210, 1214 (Fla. 1st DCA 1985) (emphasis in original).

The First Amended Complaint lacks factual allegations that, when taken as true, demonstrate that Defendants had "actual or constructive knowledge of prior *similar* acts committed upon invitees on the premises." *Paterson*, 472 So.2d at 1214 (emphasis in original). As a result, the First Amended Complaint fails to state a claim to relief that is plausible on its face. *See Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)).

Accordingly, it is **ORDERED AND ADJUDGED** that:

(1) Defendant Security Services of America, LLC's Motion to Dismiss First Amended Complaint (Dkt. 21) and Defendant Urban Retail Property and City of St. Petersburg's Motion to Dismiss First Amended Complaint (Dkt. 19) are **GRANTED**.

(2) The First Amended Complaint is **DISMISSED**. Plaintiff shall have twenty (20) days from the date of this Order to file an amended complaint.

**DONE AND ORDERED** at Tampa, Florida this 25th day of August, 2011.

**JAMES D. WHITTEMORE**
**United States District Judge**

Copies to:
Counsel of Record