

Condo board, unit owner sued over fatal attack

\$3 million settlement

A 69-year-old retired individual was beaten to death by his neighbor in an unprovoked attack. The victim sustained a severe traumatic brain injury, rendering him comatose, and he died nine months later.

Prior to the attack, the victim unknowingly rented a condominium unit next to the attacker's unit. The attacker rented his unit from his brother, the unit owner, who lived out of state.

The victim did not know that his neighbor, the attacker, was a Level 3 registered sex offender who had been released from prison four years earlier after serving a 15-year sentence for attempted rape, during which he stabbed an older woman.

The attacker was also a paranoid schizophrenic who had been hearing voices daily for 30 years, despite taking prescribed psychotropic medication. He refused therapy and rehabilitative efforts during his imprisonment, was denied parole accordingly, and was released at the end of his sentence without supervision.

Although the victim had no knowledge of his neighbor's history of criminal violence and mental illness, the defendant unit owner knew. The victim lived next door to his attacker for three years before the attack.

The condominium development was occupied largely by elderly and retired people, including a large proportion of elderly widows.

Under the rental terms, the attacker was to care for the siblings' infirm 80-year-old father, remain on his prescribed medications, attend therapy, abstain from alcohol and drugs, contribute whatever funds he could, and follow the rules of the condominium. One of the rules of the condominium was that unit owners inform the condominium of their rental arrangements. The defendant unit owner did not inform the association that his brother/tenant was a Level 3 sex offender.

Nevertheless, a condo owner learned the attacker's identity and alerted the defendant condo association that the convicted sex offender would be

living in their community. Residents demanded that the association take measures to protect residents, but the association balked.

When word spread, despite the defendants' efforts to keep the information silent, the association finally mailed a letter to each of the residents alerting them to the sex offender's presence, and it held a community meeting with public safety officials. The defendant association refused to take further action.

During the seven years between the attacker's move to the condominium and his murder of the plaintiff's brother, the condo association refused to send any further warnings of his presence to residents, even though the association received annual Sex Offender Registry notices from the local police department.

Other town organizations made the Sex Offender Registry information available and took other measures to protect their members and guests. By contrast, the defendant condo association not only refused to circulate or post the warnings, but tore them down when other condo residents tried to post them in communal meeting places. New residents who moved to the community after the initial warning did not know that a violent, schizophrenic felon and Level 3 offender lived among them.

The defendant association argued that it had no legal duty to provide security in the common areas (where the murder occurred) because it did not owe the same duty of care as residential dwelling owners.

Both defendants disputed that they owed any legal duty to warn the neighbors of the felon's presence and argued that the murder was not foreseeable.

The defendant unit owner argued that his brother was a guest, not a tenant, and that social host duties did not require him to warn. The condominium argued that it was prohibited from engaging in secondary dissemination of the Sex Offender Registry warnings (despite being advised that the Sex Offender Registry Board and local police took the opposite position), that the attacker had a right to live where he chose (although he could not have afforded to do so had his brother not placed him there), and that it could not invade the attacker's

privacy rights, all on the advice of counsel.

The trial court denied both defendants' summary judgment motions, recognizing a condominium's duty to provide security in common areas and warn of known dangers. The court rejected the defendant brother's social host argument, holding the brother to a common law tort duty of care. The court held the murderer's testimony subject to cross-examination, largely based on conflicting statements made by the murderer to his family and health care providers before the murder and the nature of his mental illness.

The court held issues of foreseeability, breach of the duty of care, and proximate cause to be jury questions on the evidence the plaintiff presented.

The defendant unit owner filed an interlocutory appeal, which the Appeals Court denied within 24 hours of filing, without waiting for the plaintiff's opposition.

The case had been mediated unsuccessfully twice before discovery and again before summary judgment motions were filed. The case was mediated again shortly before trial. The session lasted nearly 12 hours and again failed to resolve the claims.

The mediator persisted, however, and after several days of telephone calls, achieved a \$3 million settlement five days before the anticipated two-week trial.

Action: Negligence and tort

Injuries alleged: Wrongful death

Case name: Withheld

Court/case no.: Withheld

Jury and/or judge: N/A (mediated)

Amount: \$3 million

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