

This is a negligent security case against a condominium board and unit owner for the wrongful death of the plaintiff's 69 year old retired individual, who was beaten to death by his next door neighbor in an unprovoked attack. The victim sustained a severe traumatic brain injury, rendering him comatose, and died nine months later.

Prior to the murderous attack, the victim unknowingly rented a condominium unit next to the unit rented by his attacker. His attacker rented a unit from his own brother, the unit owner, who lived out of state. The victim did not know that his neighbor was a convicted violent felon; 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 the older woman that he attempted to rape. His attacker was also a paranoid schizophrenic, who had been hearing voices daily for 30 years, notwithstanding 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 beside his murderer for three years before the attack.

Although he had little or no contact with him while his brother was in prison, the defendant unit owner rented his unit to the attacker when he was released from prison. The unit was in a condominium development largely comprised of elderly and retired people, including a large proportion of elderly widows. Indeed, the unit owner purchased his unit for his father, so that his father could enjoy the condominium's amenities in his old age. His brother, the murderer, never would have been able to afford to live in the development had his brother not rented his unit to him for largely non-monetary consideration. The rental terms were that the attacker care for their infirm 80 year old father, remain on his prescribed medications, go to therapy, not drink or take drugs, contribute whatever funds he could, and follow the rules of the condominium. Ironically, one of those rules was that unit owners inform the condominium of their rental arrangements. The defendant unit owner did not inform the condominium association that his brother/tenant was a Level 3 Registered Sex Offender.

Nevertheless, a condominium owner learned the attacker's identity and alerted the defendant condominium 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 defendant condominium association finally mailed a letter to each of the condominium residents alerting them to the sex offender's presence and 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 defendant condominium 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. Those notices warned that the attacker remained dangerous and at high risk to reoffend. Other town organizations made the sex offender registry information available and took other measures to protect their members and

guests. By contrast, the defendant condominium association not only refused to circulate or post the warnings, but tore them down when other condominium residents tried to post them in communal meeting places, even though residents protested that elderly female residents would not recognize the violent attempted rapist without renewed warnings. The defendant condominium association feared that such warnings would lower property values and claimed that they acted on the advice of association attorneys. New residents who moved to the community after the initial warning did not know that a violent schizophrenic felon and Level 3 Sex Offender lived among them.

The defendant condominium association argued that it had no legal duty to provide security in the condominium's common areas (where the murder occurred) because it did not owe the same duty of care as residential dwelling owners. The association went so far as to cut its ties to the condominium's Safety and Security Committee, so that it would not appear to have voluntarily assumed a duty to protect.

Both defendants disputed that they owed any legal duty to warn their neighbors of the violent schizophrenic 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 defendant association dropped its "advice of counsel" defense in response to plaintiff's motion to compel production of communications between the defendant condominium association and its attorneys. After the murder, the Supreme Judicial Court would explicitly permit secondary dissemination of Sex Offender Registry information.

Both defendants adopted the murderer's testimony that he personally had told the victim of his violent criminal past and incarceration in detail, thus making a duty to warn claim moot and arguably making proximate cause impossible to prove. They acknowledged that no one else had warned the victim.

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 Court found the plaintiff's arguments so compelling as to deny the association's motion for the reasons stated in the plaintiff's memoranda.

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

The case had been mediated unsuccessfully twice before discovery and again before summary judgment motions were filed. After summary judgment, plaintiff's counsel served 15 page G.L. c. 93A/176D letters upon the primary and excess insurers and their respective executive officers, detailing the insurers' alleged bad faith settlement practices during the six years of the lawsuit's pendency.

The case was mediated again shortly before trial. The marathon 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 Three Million (\$3,000,000) Dollar settlement, five days before the anticipated two week trial that would commence in a jurisdiction known to be unfriendly to plaintiffs, a fact which defendants relied upon in their negotiations.