
Association Liability for Crimes Committed by Third Parties

22 Feb 2022

[Zachary L. Chapman](#)

On February 3, 2022, a final order was issued in *Letellier v. The Atrium Unit Owners Association, et al.* (Case No. CL19001103-00). The case tested the duty owed by condominium associations when a third-party commits a crime against a resident.

On May 7, 2017, a man posed as a maintenance worker and entered the Atrium Condominium (the "Condominium") in Arlington, Virginia. He entered the secured Condominium by following in after another resident. Once inside, he knocked on several units, claiming to be a maintenance worker. One resident opened her door and was sexually assaulted before the man fled the area.

The victim brought a civil action for personal injuries she sustained from the criminal assault committed by the third-party.

In preparing for trial, the Association filed a motion to strike, contending there was no special relationship with the plaintiff. The Association also argued there was no duty to warn or protect the plaintiff from a criminal act by a third-party. Arlington County Circuit Court Judge Daniel S. Fiore, II denied the Association's motion and allowed the case to proceed to a jury. The jury was instructed to apply the ordinary standard of care. In arriving at this decision, the judge noted the man was seen trying to enter the Condominium at various entry points, and he was seen leaving some bushes he had been hiding in before slipping into the garage. The man eventually accessed the building through a door a resident exited. All of these movements were captured by the Association's security camera, according to the judge's opinion.

In Virginia, there are two general exceptions to the general rule of nonliability. The judge's opinion noted these two exceptions are: (1) where a Defendant assumes a duty to protect from criminal harm; and (2) where a special relationship exists (and a duty is not assumed).

The judge's opinion stated when there is circumstantial evidence of a special relationship. In concluding there was a sufficient factual basis to establish a special relationship, the judge's opinion referred to the monthly Condominium fees paid by plaintiff each month, which included security measures. The judge also noted these security measures were within the exclusive control of the Association.

The Association also argued this crime was not foreseeable and that the heightened standard of imminent harm established in *Thompson v. Skate Am., Inc.*, was not established. The judge rejected these positions as well. The judge's opinion concluded there was a reasonable belief a crime was in progress when there were reports from other owners that called the front desk and stated a maintenance man was trying to enter other units. The opinion also touched on the fact the front desk attendant told residents that there were no maintenance people on site because it was a Sunday.

Ultimately, the judge allowed the jury to consider whether the Association acted under an ordinary standard of care. The jury returned a verdict in favor of the Association.

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individual units but also the entire community. Different communities will have different needs. Large communities within a city will have different needs than smaller communities in more rural areas. We can help associations assess potential risk within and outside the community.

This article is not intended to contain legal advice or to be an exhaustive review. Zach Chapman is an Associate Attorney in the General Litigation and Real Estate Practice Groups. He counsels a variety of community associations and boards, helping them address their evolving needs in an ever-changing world. He can be reached at 202-457-1613 or via email at zchapman@jackscamp.com.

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