COMMUNITY COUNSEL

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FIRM NEWS

We are very pleased to welcome attorney DAVID G. SHIELDS to our firm, as of 1/18/05.

David is a very experienced community association attorney who is also a certified mediator. David's initial billing rate for non-mediation work will be $160/hour.

THE INFORMATION GIVEN IS SUMMARY IN NATURE, FOR EDUCATIONAL PURPOSES. IT IS NOT INTENDED AS SPECIFIC OR DETAILED LEGAL ADVICE. ALWAYS SEEK INDEPENDENT LEGAL COUNSEL FOR ADVICE ON YOUR UNIQUE SITUATION.

RESIDENT SECURITY: MORE BAD NEWS?

Last month, we reported on a multimillion Dollar judgment entered against an association in the case of Vazquez vs. Lago Grande Homeowners Association, Inc., et al. This month's personal injury case *du jure* is the case of Denise Robert-Blier, et al., vs. Statewide Enterprises, Inc., 30 Fla. L. Weekly D150a (Fla. 4th DCA 1/5/2005).

In broad terms, the issue in this case is whether a security company hired by a condominium association can be liable to a third party visiting the premises for injuries caused by an assailant. specifically, the real question is whether an independent contractor hired by the owner of premises to provide some, but not full, security services is liable to a victim for failing to do more than it contracted to do.

Statewide Enterprises, Inc., was a security contractor hired by Association to provide security services at the condominium complex. However, as put by the appellate court, it is more accurate to state that Association hired Statewide only for the *appearance* of security. Only with imagination could the services provided by Statewide be considered "security." Specifically, under the terms of the contract with Association, Statewide agreed to provide one unarmed guard to patrol the community of several buildings and adjoining parking areas; to escort residents to their homes upon request; and to observe and report suspicious incidents. No other services were expected or intended by the terms of the contract.

A guest visiting the complex, was forced into her car, driven off the premises, and raped. The guest and her husband brought a negligence action against Association and Statewide. Association settled its claim prior to trial. The Fourth District Court of Appeal noted that it was undisputed that Association owed a duty to visitors to protect or warn them of known dangers in the common areas. Statewide, however, argued that it owed no duty to the guest and therefore it could not be liable to the guest for this tort.

The Fourth District Court of Appeal noted that the threshold issue in negligence is whether a defendant owed any duty to the injured party. A duty may arise from the general facts of a case when one undertakes to provide a service to others and thereby assumes a duty to act carefully to not put others at an undue risk of harm.

In this case, there was no evidence that Statewide ever undertook by any affirmative act to assume Association's duty to protect its residents or its guests. Quite the contrary, it was undisputed that Statewide steadfastly performed the quite limited duties it agreed to perform, and no more. Because the guest adduced no evidence that Statewide assumed Association's broad, general duty to protect invitees and visitors from known risks of harm, the trial court erred in denying Statewide's motion for a directed verdict at the close of the evidence.

Once Association is on notice of criminal activity it must act reasonably to protect.

The guest also sued Association. However, Association settled its liability and damages claim prior to the trial against Statewide. It is unknown what the settlement terms were or what Association (or its insurer) paid to settle the claim. However, one fact would appear to be certain: Association must have been on notice of known dangers or other criminal activities upon the common elements. Otherwise, Association likely would not have been liable for any damages suffered by the guest. Often in the law, there is a comical paradox to the effect that "the first incident is free." But once Association is on notice that there is or has been criminal activity on or about the common areas, then Association is on notice that it must undertake reasonable measures to alleviate the criminal activity and to protect residents and guests from further danger. The failure of Association to undertake such remedial action can possibly result in significant liability.

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RECENT CASE SUMMARIES

In **Arditi vs. Grove Isle Association, Inc.**, 30 Fla. L. Weekly D94 (Fla. 3rd DCA 12/29/2004), Owner brought suit against Association and its elevator company for injuries she suffered when she became trapped inside of a malfunctioned elevator and suffered a heart attack immediately after jumping from the elevator to the floor. The incident occurred when Owner entered the elevator of her apartment building and the elevator suddenly stopped. She remained in the elevator alone for approximately twenty minutes before fire rescue arrived. Fire rescue opened the elevator doors approximately twenty-five minutes later. Rescue personnel asked Owner to jump out of the elevator onto the lobby floor located two-and-a-half feet below the elevator. When the Owner jumped, she immediately realized that she could not stand up and became dizzy. She also experienced numbness in her fingers and one of her feet. Owner was transported by ambulance to a nearby hospital where a doctor informed her that she was having a heart attack. Owner underwent emergency surgery. Owner's cardiologist reported that Owner had no prior medical history or medical problems. At fifty-two years of age, Owner was a very active person who exercised regularly and was very fit. The doctor also reported that the Owner's coronary dissection was most probably secondary to the events which occurred during the elevator incident from an acute frightful incident. The trial court entered summary judgment in favor of Association and its elevator company and found that Florida's "impact rule" barred Owner's claim for damages. On appeal, the 3rd District Court of Appeal reversed the trial court. In its final judgment, the trial court determined that Owner's doctor attributed her heart attack to a chemical reaction resulting from her anxiety and fear of being stuck in the elevator. However, the appellate court noted that a fair reading of the doctor's report raised a question of fact as to Owner's injuries. Specifically, the appellate court noted that there was speculation as to whether Owner's injuries were the result of her fear of being trapped in the elevator; whether her jump onto the lobby floor caused her heart attack; or whether it was a combination of the two, the fear together with the impact of the jump. If Owner's injuries were solely the result of her fear, there then would be no basis for recovery against Association and the elevator company. However, if it was the jump, or the fear and the jump, then the impact rule has been satisfied and Owner may recover her damages.

In **River Place Condominium Association at Ellenton, Inc., vs. Benzing**, 30 Fla. L. Weekly D14 (Fla. 2nd DCA 2005), Association sought review of a final summary judgment finding that Benzing was the proper owner of lands formerly submerged beneath the Manatee River and subsequently exposed by dredge and fill activities. Association argues that it is the proper owner under Sec. 253.12(9), Fla. Sta. because it is the record owner of the property immediately upland of the filled lands. In the alternative, Association argues that Sec. 253.12(9) is unconstitutional because it violates the Florida Constitution. Benzing argues that he is the proper owner under Sec. 253.12(9) because he is the record title holder of the filled lands. The trial court determined that Benzing was the owner of the filled lands. On appeal, the 2nd District Court of Appeal noted that in 1951 the Florida Legislature vested title to all lands submerged beneath tidal waters in the State Board of Trustees. In this case, the filled lands were submerged beneath the waters of the Manatee River in 1951 and therefore the land was sovereign land. Sec. 253.12(9), Fla. Stat., transferred title on July 1, 1993, from the State to either "the landowner having record or other title" to the filled lands or to the landowner who owns the lands immediately upland from the filled lands. The appellate court interpreted this statute to give priority to the landowner with record or other title because that option is listed first in the statute. The clear purpose of the statute is to remove clouds on the title to filled lands. As such, the court held that since Benzing was the title holder to the filled lands, Benzing had priority over Association.

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