

Suit by murder victim's estate vs. condo trust, attacker's brother survives summary judgment

By: Kris Olson July 19, 2018



A lawsuit by the estate of a Yarmouth Port man who died as a result of an attack by a baseball-bat-wielding Level 3 sex offender has survived summary judgment.

On March 23, 2012, John Dacey Looney, a tenant in a condo in the Kings Way complex, assaulted neighbor Richard Steele and a female companion after Steele rebuffed Dacey Looney's invitation to "hang out."

Dacey Looney's status as a registered Level 3 sex offender stemmed from a 1992 conviction for an attempted rape in which he stabbed the victim in her arm. At the time, Dacey Looney had been on probation for another attempted rape from the mid-1980s.

Dacey Looney, who suffers from paranoid schizophrenia, had moved into the condo — which was owned by his brother, Michael J. Looney — in December 2005. The deal he had with his brother, who did not live on site, was that Dacey Looney would take care of their elderly father, contribute whatever money he could toward household expenses, and keep up his psychotherapeutic treatment regimen, which included regular appointments with a therapist and medication, according to the plaintiff's complaint.

The Kings Way Condominium Trust distributed letters advising residents of Dacey Looney's arrival and sex offender status in December 2005 and January 2006.

The crux of the plaintiff's case against the trust is that not only did it discontinue its notifications, but it actively worked against others' efforts to raise awareness of Dacey Looney's presence. The trust refused requests by the Yarmouth Police Department and residents to post notices in the complex's community post office and tore down notices and photos of Dacey Looney that residents had posted, the plaintiff contends.

One of the plaintiff's Boston attorneys, Kenneth I. Kolpan, notes that during discovery, when asked what harm would have come from continuing to alert condo owners to Dacey Looney's presence, the spokesperson for the trust cited the possible impact on real estate values and brokers' willingness to show units in the complex.

After Steele moved into the unit adjacent to Dacey Looney in 2009, the two became friends, though the parties strongly disagree over whether they were so close that Dacey Looney divulged his criminal past and sex offender status to Steele, as he now contends.

As to the trust's motion for summary judgment, Superior Court Judge Gregg J. Pasquale did not issue a full decision, writing only that, "After hearing, a genuine issue of fact exists for the reasons stated in the plaintiff's opposition."

Kolpan and co-counsel Mark F. Itzkowitz say they were heartened that Pasquale implicitly endorsed the imposition of a duty on the trust to warn unit owners of someone with a dangerous past in their midst.

The trust's attorney, Jeanne O'Leary McHugh of Engelberg & Bratcher in Boston, did not return calls seeking comment.



In their brief opposing the trust's motion for summary judgment, Kolpan and Itzkowitz argued that the trust should be held to the same duty of care as landlords with respect to common areas like the one in which Steele and his

companion were attacked.

As for the attacker's brother, the plaintiff alleges that he, too, breached a duty he owed as a unit owner to Steele and other Kings Way residents to warn them of Dacey Looney's sex offender status and potential for violence.

In a decision issued June 18, Pasquale rejected Michael Looney's argument that he owed Steele only the duty of care of a social host.

Looney also contended that, even if he was akin to a landlord, he did not owe Steele a duty to protect him from third-party criminal activity, an argument Pasquale found "unavailing."

"While there is no general duty to protect another from the unlawful conduct of third persons, liability may arise where a person voluntarily assumes certain obligations vis-a-vis the third person," Pasquale wrote.

Pasquale added that liability may also arise from a "special relationship" between Looney and Steele, one "predicated on a plaintiff's reasonable expectations and reliance that a defendant will anticipate harmful acts of third persons and take appropriate measures to protect the plaintiff from harm."

Michael Looney's Boston attorney, Gareth W. Notis, worries about the implications of imposing on a landlord a duty to warn about a tenant's criminal history or mental illness.

The Morrison Mahoney partner says that if the courts recognize such a duty, it will create a tension with a landlord's obligation under G.L.c. 151B not to discriminate against those with mental illness.

Further, disclosing information about a tenant could open up a landlord to a defamation or invasion-of-privacy claim, particularly if the information later proves erroneous, Notis says.

"I think the public policy implications are problematic," he says.

Leading up to Pasquale's decisions, the two sides sparred over what implication to draw from the fact that there is arguably nothing in the record to contradict Dacey Looney's claims that he had been forthright with Steele about his criminal history and sex offender status. That void in the record is, of course, due in no small part to the fact that the main person who could offer such testimony — Steele — is dead.

Ultimately, Pasquale decided that assessing the credibility of Dacey Looney's claim is a matter best left to the jury.

Notis says his client has not yet decided whether to appeal Pasquale's decision.

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