

SAFETY AND SECURITY IN CONDOMINIUMS

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*2017
SOUTH BOSTON CONDO
DOUBLE MURDER OF
DOCTOR RICHARD FIELD
AND
DOCTOR LINA BOLANOS*

FACTS IN SOUTH BOSTON---THE BUILDING

Drs' Field and Bolanos lived at a luxury South Boston Condominium, 11 story, 144 units.

Like most condos, there was a Board of Trustees and a property manager. This building also had a concierge company.

Dr. Field purchased penthouse Unit A in 2013 for nearly Two Million Dollars. The top floor contained two penthouse units.

The building had a 3 level garage that is accessed by personally programmed transponder.

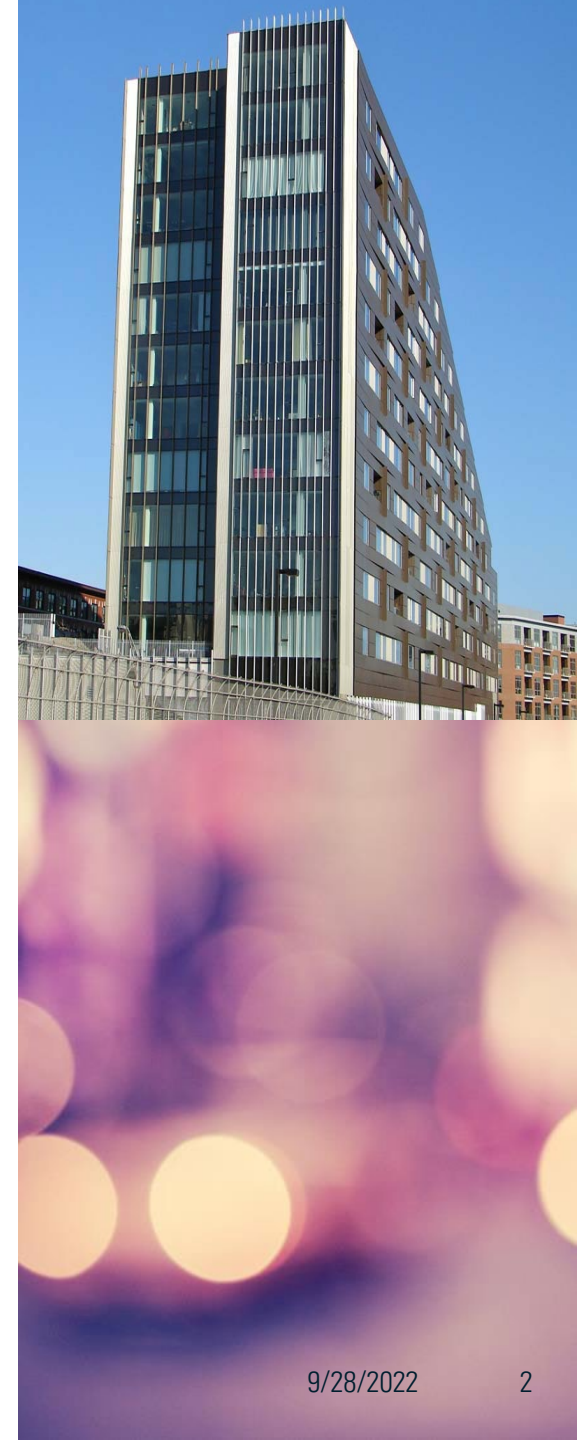
The building required a fob to gain access to the main building lobby which would provide access to the units.

Concierge desk equipped with computer screen showing the feeds for buildings 14 closed circuit TV's feeds.

Camera locations included garage and lobby entrances, driveway, various angles of Dorchester Avenue.

Building had service elevator that required fob to get to floors 1-10. Floor 11 required its own fob.

However once on the elevator, individuals could access any residential floor, including the 11th floor, via two internal unlocked stairwells.





2022

GEORGIA CONDOMINIUM SHOOTING

On August 22, 2022, Raissa Kengne, a resident at a high-rise condominium in Atlanta shot and killed the onsite property manager and shot and wounded the building's chief engineer.

Following that, she walked to another building and killed the association's accountant.

She had been in a longstanding dispute with the condo and filed a lengthy lawsuit in federal court against the condo, the management company and the accounting firm, accusing all of them allowing people into her home to facilitate harassment and retaliation from the accounting firm and others.

As the active shooter situation progressed, Ms. Kengne actually took a taxi to another individual's home, presumably with the intent of shooting that individual, but they were not home.

She eventually taxied to the airport where she was apprehended.



THE SOUTH BOSTON MURDER

May 5, 2017 murdered by Bampumim Teixeira, who was a former employee of the concierge company servicing the building.

Teixeira walked past the lobby at 2:40 PM.

3:50 PM entered the garage behind a vehicle being pulled in by one of the members of the concierge.

Concierge staff did not see him on CCTV. One was waving to someone else, the other was looking at his cell phone.

Once in the garage, Teixeira waited for the elevator to be summoned, entered it, exited on a floor via the stairwell, went to the 11th floor and apparently attacked one of the doctors as they were entering their unit. Once inside killed both of them.

At or around the same time, 911 calls were placed by the doctors, concierge staff conducted a building tour starting on the 11th floor and noticed nothing amiss.

He was discovered in the unit by the Police less than an hour after the murders.

When the police went to the unit, they saw packages and keys strewn in the area in front of the unit, which is how they gained access to the unit.

BUILDING SECURITY AND ACCESS

In both cases, the assailants were able to get access to their victims.

Access was a little more complicated in South Boston, third party assailant.

Access obviously easier in Georgia, as it was a resident, although the assailant was able to get access into the Association's accounting firm to shoot the accountant.

Takeaway:



Do we need to make our association and its employees, property managers and service providers more secure?



Do we need to consider safety and security protocols both onsite and offsite, for instance if we are a management company?



Do we need to ensure facilities are locked and inaccessible.



Bullet proof glass?



Buzz-in entry?



Camera Surveillance?

What examples does your association or service provider take?
Love to hear some examples...please type in the chat!

DO INCREASED SECURITY MEASURES INCREASE RISK OF LIABILITY TO CONDOS AND THEIR PROVIDERS?

THE SOUTH BOSTON LAWSUIT.

The Estates of the slain doctors sued the Condo, Property Manager and Concierge Company for wrongful death. The Condo, Property Manager and Concierge Company all moved for dismissal, primarily on the grounds that they could not be responsible for the actions of a third party.

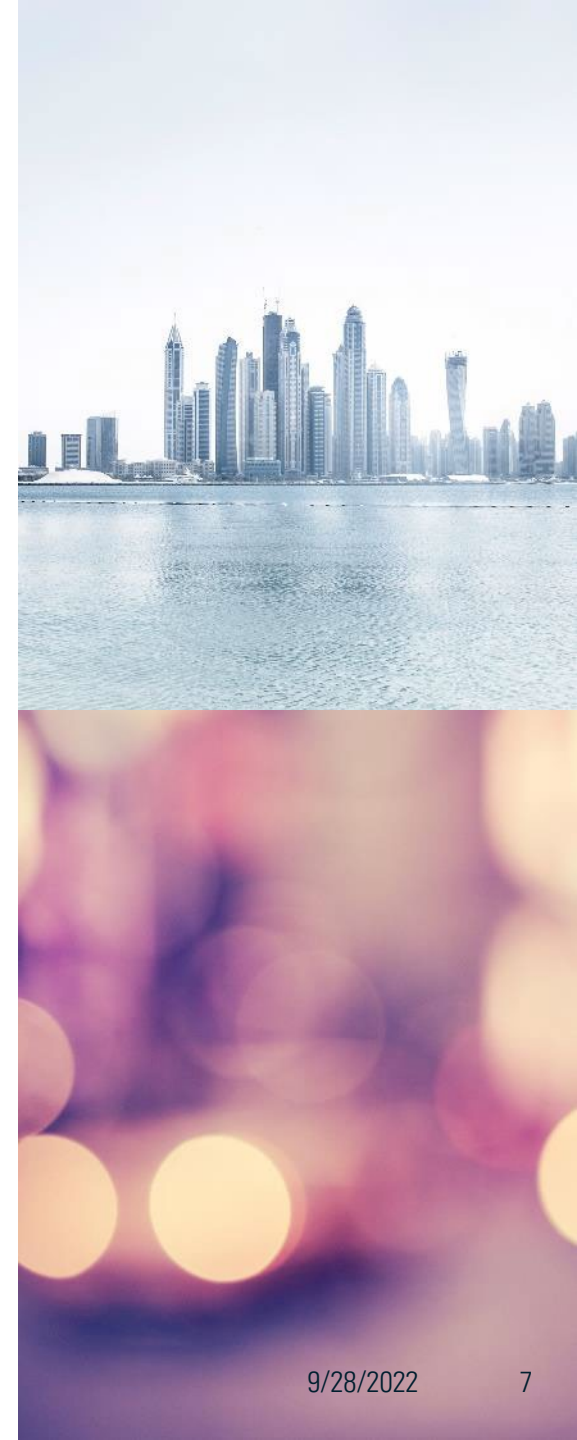
On July 5, 2022, Massachusetts Superior Court Justice, Christine Roach issued a 22-page decision denying the Dismissal and ordering the Defendants to stand trial on the negligence claims.

Field v. Highbridge, let me know if you want a copy of the case.

DUTY OF CARE CAN ARISE IN 3 WAYS

1. Existing social norms and customs
2. Voluntary assumption
3. By contract.

Generally speaking, no duty of care exists to protect others from criminal activities of third persons...BUT it can arise if it was reasonably foreseeable---i.e., knowledge of prior criminal activity or opportunity for a possible crime.





THE CONDO BOARD

Condo Board's primary duty is to maintain, repair and replace the common areas.

No published MA appellate case stating whether duty extends to protect owners from criminal acts of third parties carried out through the common areas.

Two prior cases involving assault and rape at condos. One where the owner left balcony door open and another where there were no bars on a window. Both cases resulted in the condo being dismissed. 1994 and 2004 respectively.

In her Decision, Judge Roach said:

Supreme Courts of Arizona and California held condos should be held to same standard of care as a landlord as it relates to common areas, and therefore bears a duty to exercise due care for residents safety in those areas under the condo's control.

While not a guarantor of safety, the landlord is not free to ignore reasonably foreseeable risks of harm that could result from unlawful intrusion.

Very Troubling If This Is A New Standard!

Is this a societal change?

Didn't many Condo's adopt this societal change during the Pandemic?----so should we be surprised?

Either way, the Facts for the Condo were not good. In deciding not to dismiss, the Court looked at: (1) 14 closed circuit cameras, (2) concierge that did building rounds, (3) key fobs and garage door transponders—designed for security, (4) board meeting minutes discussed improving security, (5) prior criminal access and acts committed in garage, and (6) Dr. Fields complained via e-mail to the Board that open access stairwell was a possible access to his unit for intruders.



SO WHAT IS THE CONDO TO DO?

Can the condo limit liability for the acts of 3rd persons?

Have the norms changed? Is there an expectation of security? Does the expectation of security increase property values? Is that expectation really a false sense of security?

Should the condo have cameras? Lots of condos do not for this reason?

Should the condo have a concierge or company that performs "security type" functions (i.e. doing rounds, monitoring security cameras)?

Does the condo emphasize that they are not a guarantor of individual safety from the acts of third persons? Do they amend their documents to so provide?

Do they emphasize their responsibility to maintain, repair and replace common elements!

Strict construction v. liberal interpretation?

Do they hire a security expert or company?

Do they shift liability to these entities via contract?

Should they increase their insurance?

What is one life worth? How about two? Doctors? Should the GL policy limit be higher? Is Ten Million Dollars crazy?

THE PROPERTY MANAGER

The Court held that the Property Manager could be liable because its management contract provides that the Manager shall be authorized and required to perform all services necessary for the management of the property including but not limited to: Entering into contracts in the name of the Trust...and monitoring proper performance under such contacts... including for security services.

The manager testified at a deposition that 24/7 concierge was in some way a safety and security measure. The meeting minutes disclosed management company's participation in Board's efforts to upgrade its security system and had knowledge of prior intrusions in the garage despite the transponder system.

SO WHAT IS THE PROPERTY MANAGER TO DO

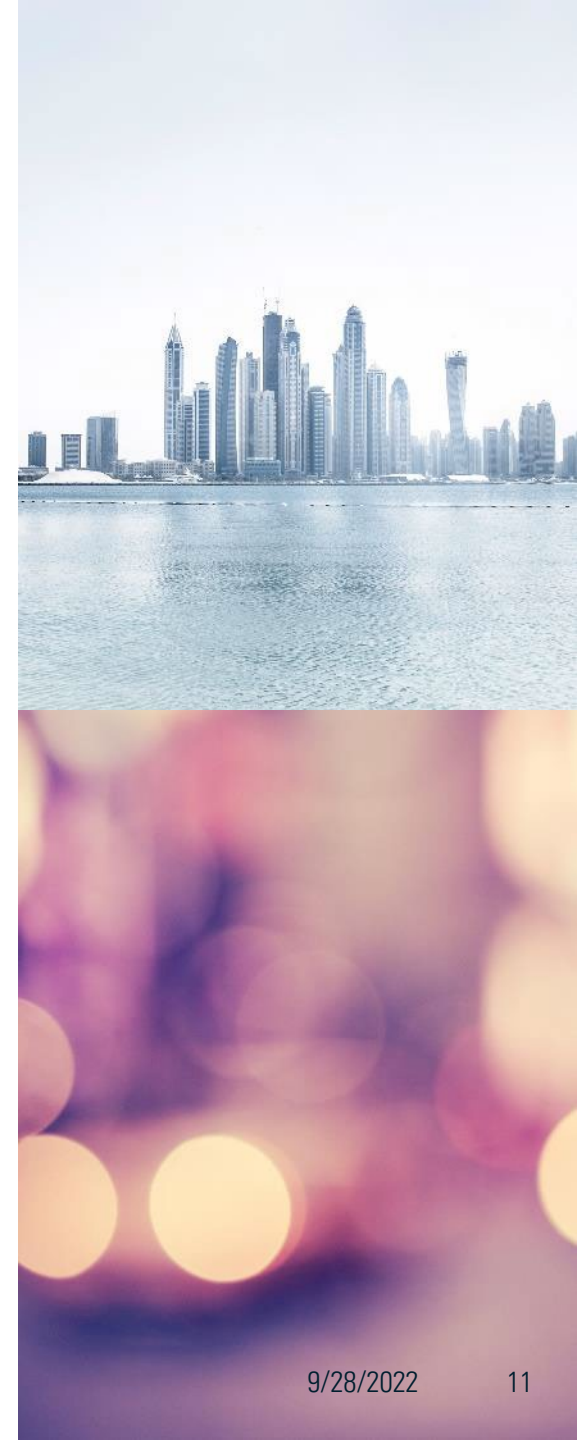
Could be a source of friction between condo and property manager going forward. To be Negotiated during the contract?

Does the Property Manager need more insurance? Do the parties need to check each others insurance before they move forward together?

Is there an insistence on security expert or a security company---a third party provider that both the condo and the manager can shift liability and exposure to and presumably make the building safer.

Downside is that costs money?

Are residents willing to pay for safety?



THE CONCIERGE

Concierge Agreement provided its staff to view the monitors, make rounds and control access to residential section of building and common areas. The agreement also alerted the concierge to the possibility that:

In your position as a concierge you may become aware of, or be notified of criminal activity, just remember when in doubt, report it.

So again, if you just want concierge to be a concierge and not a security company, the concierge contract should so specific.

TAKEAWAYS

1. Law could be evolving requiring condos, managers and others in this part of the country to take on greater responsibility and risk. This case is a Superior Court case subject to appeal.
2. All parties should protect legal liability through negotiated contract control and insurance.
3. Should consideration be given to make buildings secure and safer through technology or security experts or security contracts? Expensive? Does it increase value?
4. Should consideration be given to return to a strict diet of “maintain, repair or replace? See-takeaway #1? Is that risky?
5. In the face of all of that, how do we protect our employees, etc. Enclosures and/or bullet proof glass for onsite? What about offsite? Limitation of access? Are the days of walking into an office over?





Q&A

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