Liability For A Sexual Assault Committed By An Employee

The owner or management company faces the greatest risk of liability when an employee commits a rape at the property. Recent cases have resulted in liability to the owner or management company in the following instances:

1. A property management firm in Minnesota hired a convicted armed robber to be the manager of a 198-unit apartment complex and provided him a master key to all of the units. The manager raped a tenant and the property management company was found negligent because it had not checked the manager's criminal history and if it had, it would have known that the rapist had falsified information on his employment application.

2. A maintenance supervisor raped a woman at a 280-unit complex and she received a large settlement from the property management firm. The assailant had been convicted of burglary and theft prior to being hired by the property management firm, and the firm had failed to re-key all of the apartments after two rapes that occurred with unforced entries. In addition, the property management company failed to warn the tenants of the possibility of future rapes occurring.

To avoid or attempt to avoid situations such as occurred in both of the cases cited above; property management firms must conduct a criminal history check from local and state law enforcement agencies. This can be conducted through a private investigator that should have contacts at a national level so that you would have a better chance of getting a complete criminal history on a prospective employee. With proper precautions taken, the likelihood of liability to the sexual assault victim may be lessened.

There are two theories of liability to hold the owner or property management firm responsible for the sexual assault committed by the employee. The first is the respondeat superior theory, which finds the owner or manager vicariously liable, which requires the victim to show that the assailant was acting within the course and scope of his or her employment. Determination as to whether the employee was acting within the scope of employment was based upon all the relevant factors as to the time of the incident; the location of the incident and the current task the assailant was conducting at the time of the incident. Of course, an argument can be raised that a criminal act by the employee is not within the scope of employment, however, such an argument raises insurance coverage issues as the carrier may invoke the intentional or criminal act exclusion from the general liability policy.

The second theory of liability concerns negligent hiring. This theory is based upon the owner or manager's negligence in investigating employees before being hired which is premised on special relationship which exists between tenants and the owner (or landlord) and its employees This theory of liability differs from the doctrine of *respondeat superior* in that the assault need not have been be performed during the attacker's course and scope of employment but other conditions must exist in order for liability attach. The attacker must be on the premises of the owner or landlord and the owner or landlord must know or have reason to know that control of the assailant is necessary and have the ability to exercise such control. In essence, owner or landlord must know or should have known of the assailant's dangerous propensities. In the event the assailant has not acted violently during present employment, proof of prior knowledge of

such a dangerous propensity is difficult for the victim to establish but courts have recently found that the employer's failure to adequately investigate the assailant's background may be enough to overcome a lack of proof of knowledge on the part of the owner or landlord.

The hiring of employees by the owner or landlord is a very serious task and must be approached cautiously so as to attempt to minimize the risk of criminal acts by such employees at the property.

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November 1992 / Apartment News