

Liability Of Owners/Landlords For Drug Activity At An Apartment Complex

The court stated that liability in this case rested solely upon the active fault of the owner for managing his property as a nuisance.

In California, a suit was recently brought against the owner of an apartment complex by a class of Section 8 residents who had resided in the owner's apartment. It had been acknowledged by both parties that third persons conducted ongoing drug activity upon the grounds of or around the area of the apartment complex and while the owner had cooperated with the local police department by posting "no trespassing" signs around the perimeter of the property and installing new locks on some of the apartments in an attempt to deter such activity, the plaintiffs had alleged that such actions were insufficient and that the complex was operated in a manner which caused them emotional distress. The trial court found in favor of the residents by concluding that the apartment complex was run as both a public and private nuisance and awarded monetary damages to the plaintiffs. The apartment complex owner then appealed and the California Court of Appeals reviewed the legal basis of the decision.

First, the court looked to the question of whether an apartment complex can be considered a nuisance, and in doing so addressed whether drug transactions that occurred both on and around the property were activity sufficient to categorize the apartments as constituting a nuisance. The court looked to the California Health and Safety Code that categorized any type of "drug house" used for "selling, serving, storing.... (or) manufacturing ... any controlled substance" as being a nuisance for which damages could be recovered. The Health and Safety Code also provided that any area in which such drug activity occurred could also be considered a nuisance. The court also looked to the Civil Code definition of nuisance because it contained a much broader definition than that of the Health and Safety Code, i.e. "anything which is injurious to health, or is indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property." Being that the activity that occurred around the property comported to such a definition and interfered with the Plaintiff's enjoyment of the property, the court found that the categorization of the apartment complex as a nuisance was appropriate.

However, the court found the compensation for the residents was not justified only because the complex constituted a nuisance. The court stated that liability in this case rested solely upon the active fault of the owner for managing his property as a nuisance.

The residents could receive damages only if the court concluded that the owner did not act as a reasonable person in dealing with the problem that existed. Because the aforementioned efforts of the owner were not of the degree necessary to correct such grave problem such as drug activity, they were not deemed reasonable. More aggressive measures, like the employment of a live on manager, secure fencing, and key card gate were cited by the court as being reasonable precautions in this situation. Because the owner did not use any of these measures to prevent the drug activity from encroachment upon his complex, he was at fault in the of his property and by so concluding, found that the residents had compensable injury, and that monetary damages were appropriate against the owner and the apartment complex.

Liability Of Owners/Landlords For Drug Activity At An Apartment Complex

While this case is based upon California code sections in interpreting the Health and Safety Code and the Civil Code, it does signify a stance that some courts are taking to protect residents from any distress caused drug activities in areas on or surrounding the apartment complex. Because such activity is growing more frequent in our society, landlords want to pay close attention to the court's rationale in this case. If a property owner or landlord does not actively manage his property in an aggressive manner that a reasonable owner would take to prevent such nuisances, he may be held legally accountable.

By Scott M. Clark, Esq.

3008 N. 44th Street, Phoenix, AZ 85018

602.957.7877

sclark@scottclarklaw.com

<http://www.scottclarklaw.com>

July 1994 / Apartment News