

Hotel owes no duty for 3rd-party assault

By: Correy E. Stephenson October 13, 2016



A man who was attacked by a group of young people who had followed him from the street into the lobby of a nearby hotel could not sue the hotel for negligence, a U.S. magistrate judge has found.

The plaintiff lived next door to the Omni Hotel in Providence. While waiting for his girlfriend outside early one morning, he observed a "bunch of kids" making noise in front of the hotel before chasing after another individual. A hotel valet left to park a

car, and when the group returned, the plaintiff retreated to the Omni lobby and asked the night manager to call the police.

Within a few seconds, several members of the group entered the lobby, pushed the plaintiff to the ground and broke his arm.

The plaintiff sued Omni for negligence, asserting that the hotel breached its legal duty to implement security measures to protect him from the reasonably foreseeable wrongful conduct of third parties.

But Judge Patricia Sullivan granted summary judgment in favor of the hotel, ruling that the plaintiff failed to present evidence to support the existence of a legal duty, the applicable standard of care or proximate cause.

"Rhode Island has time and again demonstrated reluctance to expand the boundaries of liability imposed on a business or premises owner to protect invitees from the criminal acts of third parties," Sullivan wrote, uniformly rejecting "the proposition that a defendant has a duty to protect persons on or near the subject premises from harm caused by the dangerous or spontaneous criminal acts of an unrelated third party in the absence of strong and direct evidence of foreseeability."

In the absence of such evidence, "I hold that no duty exists in this case," Sullivan said.

The 25-page decision is *Mu v. Omni Hotels Management Corporation*, Lawyers Weekly No. 54-018-16. The full text of the ruling can be found [here](#).

Drawing a line on liability

Providence attorney Geoffrey W. Millsom, who represented Omni Hotels Management Corp., said he focused on his client's lack of duty in the case.

"The perspective of the hotel is this was a criminal assault," he explained, which broke the chain of liability.

Rhode Island courts have yet to articulate what duties are owed by a hotel to a member of the public in a criminal assault situation, however, so the judge had to draw on the general principles of negligence in the state and look to how other jurisdictions handle criminal assaults on hotel property, Millsom noted.

When that case law supported the defense's position that the hotel did not owe a duty to the plaintiff, the plaintiff attempted to analogize the situation to social host liability, Millsom said.

Millsom said he countered that the "theories and policies underlying [social host liability] don't apply here. The hotel didn't do anything wrong. It didn't serve these people alcohol or in any way cause or contribute to the accident. It was merely the site where the injury took place."

Millsom, a partner at Adler, Pollock & Sheehan, said that by "holding the line" on liability for third-party criminal assaults, the judge rendered a pro-business decision.

"This is a positive decision for businesses and premises owners that could be the potential site of an accident," he said.

Jesse W. Duarte of Duarte & Obolensky Law in Providence represented the plaintiff. Duarte, who is filing an appeal,

would say only that he was "very disappointed" in the decision.

Group attack

Henry Mu resided in a luxury apartment building known as The Residences, contiguous to the Omni Hotel in Providence. The incident in question began at approximately 2:30 a.m. on Aug. 24, 2014, when Mu was waiting outside his building for his girlfriend.

Mu said he watched a group of young people in front of the hotel confront and chase another person they seemed to know. He testified that he heard sounds he interpreted as "some kind of fight" and breaking beer bottles.

Although Mu requested that the Omni valet get help, the valet left to park a car. When the group returned to the area with beer, Mu retreated into the hotel lobby, asking the night manager to call the police.

Although the manager called 911 and alerted hotel security, within seconds between five and seven members of the group entered the lobby and pushed Mu down. One of them swung a small table and broke Mu's arm. The group fled prior to the arrival of Omni security and the police.

Mu sued the hotel management.

Linking the attackers with another group that was evicted from the hotel earlier in the evening for partying in a hotel room without the presence of a registered guest and possibly using marijuana, Mu asserted a negligence claim alleging that the hotel breached its legal duty to implement security measures to protect him from the reasonably foreseeable wrongful conduct of third parties, resulting in his broken arm.

Defendant Omni Hotels Management Corp. moved for summary judgment, countering that the plaintiff failed to present any evidence to establish the existence of a legal duty, the applicable standard of care or proximate cause.



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— Geoffrey W. Millsom, Providence

Unforeseeable violence negates duty

The plaintiff's negligence claim failed because he was unable to establish a legally cognizable duty owed to him by Omni, Sullivan said.

While the facts of the case established the existence of a special relationship based on Omni's status as "the possessor of land that holds the land open to the public/member of the public" and the plaintiff's status as a member of the public present on the public portions of the hotel, the plaintiff failed to produce any evidence permitting an inference that Omni had a relationship with any of the attackers.

Therefore, "the duty analysis rests on whether, based on the 'particular facts and circumstances' of this case, Omni had a legal duty to protect Plaintiff, a member of the public, from an attack spontaneously committed by third parties who followed him from the Omni's driveway into its lobby," Sullivan said.

Refusing to expand the boundaries of business liability imposed on a premises owner to protect invitees from the criminal acts of third parties, Sullivan answered in the negative.

"Rhode Island cases uniformly reject the proposition that a defendant has a duty to protect persons on or near the subject premises from harm caused by the dangerous or spontaneous criminal acts of an unrelated third party in the absence of strong and direct evidence of foreseeability," she said.

Only in rare instances have the courts found a legal duty existed in such circumstances, and those cases involved a defendant with "control over and direct knowledge of the perpetrator, which made the potential for violence foreseeable," she added.

However, Rhode Island "has yet squarely to address the precise issues of what must be foreseeable to impose a duty on a business owner like Omni to protect the public from third-party criminal activity occurring on the public portions of its premises," Sullivan acknowledged.

A review of case law from other jurisdictions revealed courts "consistently declining to find a duty except where the evidence of foreseeability is not only strong but also clearly linked to the crime at issue in the case," she said, citing decisions from California, the District of Columbia, Georgia, New York, Ohio, Oregon, Puerto Rico and Texas.

In the cases in which courts did find a duty of a hotel to protect a member of the public from third-party crime, "the

foreseeability evidence was substantial and directly related to the incident at issue," Sullivan wrote.

"Applying these legal principles to Plaintiff's version of what happened, both from the perspective of Omni's duty to protect patrons in the lobby from foreseeable crime and from the perspective of whether this specific crime was foreseeable, I hold that no duty exists in this case," Sullivan wrote, noting that the plaintiff presented no competent evidence of any prior criminal activity in or near the Omni.

"At best for Plaintiff, the evidence establishes that Omni knew that a loud and rowdy group of young men, who may have been using marijuana, was outside its lobby, on or near its premises," she said. "However, throughout the time that Omni was aware of this group, the group committed no crimes or acts of violence resulting in personal injury. ... Thus, there is no evidence establishing that a spontaneous physical attack on Plaintiff was foreseeable until the moment when the night manager was approached by Plaintiff in the lobby with the perpetrators in pursuit, 'seconds' before they attacked."

Sullivan said she also had "difficulty in envisioning the extent of the burden that would be imposed on Rhode Island hotels if a duty were imposed here," such as "a phalanx of security employees."

The plaintiff similarly failed to establish a standard of care or causation, she found, and was unable to demonstrate that his injury was the "natural and probable" consequence of any specific act of alleged negligence.

"Here, with an incident that spontaneously erupted in 'seconds,' Plaintiff has not shown that working security cameras or an increase in the number of security guards or any of the other suggestions he made in his deposition would have prevented his injuries," she wrote. "Therefore, he cannot show that the Omni's failure to adhere to some applicable standard of care was the proximate cause of his injury."

CASE: *Mu v. Omni Hotels Management Corp.*, Lawyers Weekly No. 54-018-16

COURT: U.S. District Court

ISSUE: Does a hotel have a duty to a member of the public from an attack spontaneously committed by third parties who followed that person into the lobby?

DECISION: No

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