

NEGLIGENT SECURITY

John Doe and Jane Doe v. National Retail Store

Final Summary Judgment



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Negligent Security Shooting Incident - Final Summary Judgment granted to the Defendant on September 27, 2022 – Indian River County Circuit Court, Vero Beach, Florida

Senior Partner **Marc M. Greenberg**, Boca Raton office, prevailed on a Final Summary Judgment on a negligent security cause of action. This matter arose out of a shoplifter (hereinafter referred to as “Perpetrator”) concealing and stealing two pieces of merchandise from inside of the store. While that criminal activity was occurring, the Defendant’s Loss Prevention Employee was watching the video cameras. He noticed that the perpetrator was large in stature and decided to call law enforcement instead of approaching the perpetrator inside the store. The Loss Prevention Employee stayed on his cellular telephone with the Sheriff’s Deputy so that he could guide the officer of the perpetrator’s location upon law enforcement’s arrival into the parking lot. The Loss Prevention Employee remained the eyes and ears for law enforcement during that five-minute time period.

Once the perpetrator got near his vehicle to leave the premise, he was stopped by the Sheriff’s Deputy in the vast parking lot and was asked to produce identification. Within seconds, the perpetrator began walking in the opposite direction, grabbed his firearm from his waistband and began firing at the deputy less than 10 feet away. Within seconds, a second deputy arrived and returned gunfire. No one was shot, and the perpetrator ran through the parking lot heading east bound. The front parking lot consisted of 16 rows. After running through seven rows eastbound, the perpetrator grabbed a vehicle driver’s side door handle, which was locked. After unsuccessfully attempting to carjack a vehicle occupied by a man and women, the perpetrator fired one shot through the driver’s side window. Unfortunately, the bullet went through the driver’s right arm, exited his right arm and then stuck the passenger’s left shoulder/chest area, where fragments remain today. These Co-Plaintiffs continued driving to the main road and flagged down law enforcement. A total of 90 seconds elapsed from the time law enforcement approached the perpetrator until the shooting of the Plaintiffs.

The Co-Plaintiff driver underwent an Open Reduction and Internal Fixation due to a Clavicle Fracture. That emergent surgery produced a good result. The Co-Plaintiff passenger did not undergo surgery. Both Plaintiffs had extensive future life care plans and were claiming significant emotional damages caused by the criminal episode. Plaintiffs were seeking

millions of dollars in compensation as of the time of the filing of the lawsuit. As an aside, Marc Greenberg, Esq., conducted a rapid response the day after the incident and made sure that all relevant camera angles were preserved. Thereafter, he put together a six-minute condensed video that was shown to the Judge at the September 27, 2022 Summary Judgment Hearing to educate the Court on the facts giving rise to the incident. That video compilation proved valuable in support of the dispositive motion.

The Defendant felt sorrow and compassion towards both Plaintiffs and never wanted any customers to be injured on its premises. In this case, the Defendant argued that nothing the Defendant did, did not do, or which could have been done more was the proximate cause of Plaintiffs' injuries. The Defendant argued that the 1,000 calls for service on its property in the one year prior to the subject incident did not place the Defendant on notice to provide greater security measures, especially when the majority of the calls pertained to non-violent incidents. Conversely, Plaintiffs' Criminology Expert provided a 16-page Affidavit in Opposition to Defendant's Motion for Final Summary Judgment on Lack of Proximate Causation citing eight violent crimes on the Defendant's premise, including a "Robbery" shortly before the subject incident. Mr. Greenberg obtained all eight police files and determined that seven of the eight purported violent crimes cited by Plaintiffs' Expert were indeed not actually violent crimes. Also, the eight alleged violent crime was an unlawful taking of a cellular telephone incident of the store, and was not a "Robbery".

At the Summary Judgment Hearing, the Defendant relied on the facts and holding in *Stella Mae Brown v. Motel 6 Operating, L.P., LTD*, 989 So.2d 658 (4th DCA 2008) for the proposition that Final Summary Judgment should be granted to the Defendant. In *Brown*, the decedent was found shot to death in his motel room. The Estate filed a Wrongful Death Cause of Action against the motel alleging that in light of past criminal activity, the motel was negligent in failing to take greater security precautions. Because there was no evidence of a forced entry nor any evidence that the shooting could have been prevented with greater security, the trial court in *Brown* granted final summary judgment in favor of the motel. In *Brown*, just as in our case, Plaintiff's expert based his opinion that security was lax on five police reports during a two-year period, which included crimes involving a burglary, the selling of drugs by a police informant, and one armed robbery. Final Summary Judgment was granted in *Brown* because Plaintiff was unable to demonstrate that the injury resulted from the breach of a duty. In our case, Plaintiff also failed to meet that burden because Plaintiffs' Criminology Expert's 16-page Affidavit spoke about certain parking lots in Florida and elsewhere generally, and failed to show what, if anything, the Defendant did wrong either prior to or following the criminal episode.

Further at the Summary Judgment Hearing, the Court ruled as a matter of law that the Plaintiffs have failed to meet their burden of production under the newly heightened standard of Rule 1.510 by coming forward with evidence from which a jury could conclude that Plaintiffs' injuries were caused by the Defendant's negligence. The Court rationalized that Plaintiffs have not come forward with any evidence establishing that the Defendant breached a duty to Plaintiffs. Because the perpetrator was approached and within the investigative authority of local law enforcement prior to the shooting, and the chase resulting in injuries to the Plaintiffs happened so quickly and unexpectedly, as a matter of law there was nothing more that the Defendant could have done to prevent Plaintiffs' injuries short of having security guards posted throughout every aisle of the parking lot. See *Reichenbach v. Days Inn of Am., Inc.*, 401 So. 2d 1366 (Fla. 5th DCA 1981). See also *Miller v. Aldrich*, 685 So. 2d 988 (Fla. 5th 1997); *Wong v. Crown Equipment Corp.*, 676 So. 2d 981 (Fla. 3rd 1996); *Adkins v. Economy Eng. Co.*, 495 So. 2d 247 (Fla. 2nd 1986); *Cassel v. Price*, 396 So. 2d 258 (Fla. 1st 1981); *Hurst v. Astudillo*, 631 So. 2d 380 (Fla. 3rd 1994); and *McCormick Shipping Corp. v. Warner*, 129 So. 2d 448 (Fla. 3rd 1961).

Plaintiffs are evaluating whether to appeal our ruling, and have made mention that the holding in *Stella Mae Brown v. Motel 6 Operating, L.P., LTD* poses challenges to Plaintiffs on appeal.