



Where Does an Association's Responsibility to Protect Its Members Stop?

By Carrie B. Nase

In *McMahon v. Conklin* the Commonwealth Court of Pennsylvania recently determined that a homeowners' association's responsibility to protect the public's well-being stops at private property. In *McMahon*, a homeowner sued to hold the homeowners' association partially responsible for injuries sustained after being attacked by a neighbor's pit bulls.

John McMahon was a resident in the Pleasant Valley development. His neighbors, Lee and Susan Conklin, owned two pit bulls. In 2002, McMahon's roommate complained to the Pleasant Valley West Association (the Association) that the Conklins' pit bulls were aggressive and should be leashed and confined to their owners' property. The Association sent the Conklins a notice of the complaint and requested that they keep the dogs on their property; however, it was sent to the wrong address and the notice was never received. In 2004, while unloading his car in his driveway, McMahon was attacked by both pit bulls, who were unleashed on the Conklins' property. McMahon suffered puncture wounds to his arm. McMahon filed a complaint against the Conklins and the Association for the injuries suffered in the attack.

In his complaint, McMahon alleges that the Association was negligent by (1) failing to establish and enforce rules and regulations requiring the Conklins to maintain, control and confine their dogs to their property, and (2) violating its duty to exercise reasonable care to prevent the harm flowing from the Conklins' failure to control and confine the dogs on their property based on its knowledge of the violent propensities of the pit-bull breed prior to the attack.

With respect to the first allegation, it has generally been determined that a homeowners' association owes its members the following duties:

1. to use ordinary care and prudence in managing the property and financial affairs of the community that are subject to its control
2. to treat members fairly
3. to act reasonably in the exercise of its discretionary powers including rulemaking, enforcement and design-control powers
4. to provide members reasonable access to information about the association, the common property and the financial affairs of the association

In this case, the Association did not retain the right to control the individual lots owned by the homeowners, including the lot on which the Conklins' dogs were kept. Therefore, the Association did not have a duty to control the Conklins' actions with respect to their dogs and did not have the authority to compel the removal of the dogs from their lot.

With respect to the second allegation, the Pennsylvania Superior Court has determined that as a general matter, there is no duty to control the acts of a third party unless a defendant stands in a “special relationship” with either the third party whose conduct needs to be controlled or the intended victim of such conduct. In this case, the Commonwealth Court found that the relationship between the Association, the Conklins or McMahon did not fit within the definition of “special relationship” outlined in the Restatement of Torts. Therefore, the Court found that the Association did not have a duty to protect McMahon from the harm flowing from the Conklins’ actions with respect to their property.

Based upon the Court’s analysis, a homeowners’ association will not be held responsible for injuries incurred on private property, unless the homeowners’ association retained the right to control such property or a special relationship existed between the parties.

For more information regarding this issue, or if you have other questions regarding homeowner associations, please contact Carrie Nase at 215.299.2030 or cnase@foxrothschild.com.



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