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Spotlight

Counsel obtains settlement for raped tenant despite defendant's destruction of evidence

Banks v. Bouvé & Mohr, LLC, Ga., Fulton Co. Super., No. 01VS015665C, Apr. 7, 2006.

When 20-year-old Joceyline Banks moved into a new apartment with her two young children, she had no idea that her family's safety would be shattered just 48 hours later by a brutal home invasion and rape. Joceyline's road to recovery was just beginning, though, as she faced deceptive tactics from the apartment rental company, including the destruction of evidence by a security guard at the apartment complex who was also a police officer assigned to the case. After a long fight, however, Joceyline, with the aid of her lawyers, was able to secure a settlement from the rental company to help her and her family rebuild their lives.

Before Joceyline moved into the apartment, she notified the rental company, Bouvé & Mohr, that a ground-floor windowpane was missing and the window was covered by only newspaper and tape. Bouvé & Mohr promised to replace the glass pane but never did, despite Joceyline's repeated requests. Two days after she moved in, an assailant entered through the missing windowpane, burglarized the apartment, and raped Joceyline at knifepoint in front of her children.

Joceyline called the police, who took her to a hospital rape crisis center. She also notified the rental company of the attack and informed it that she was moving out of the apartment. Bouvé & Mohr responded by having its attorneys draw up what the company called a "release of apartment to ownership," offering Joceyline a refund of all her rent money in exchange for her signature. In fact, the document released Bouvé & Mohr from all liability related to the rape. Joceyline signed the document, but when her fiancé saw the liability release clause, he knew the rental company had attempted to hoodwink her. He contacted ATLA members Jim Goldstein and Jonathan P. Hayes, of Atlanta, who immediately notified Bouvé & Mohr that Joceyline was filing a claim against the company and repudiating the release because it had been obtained by misrepresentation.

Goldstein and Hayes then filed suit against Bouvé & Mohr, alleging it failed to inspect the premises and maintain it in a safe condition. The complaint also alleged failure to repair a known defect, asserting Bouvé & Mohr had actual knowledge of the danger posed by the missing windowpane but failed to make the needed repair. Joceyline, who was not employed at the time of the assault, did not claim medical expenses or lost income. In its answer, Bouvé & Mohr contended that Joceyline had not been raped. At first, the company also attempted to argue that the release she had signed was a bar to her claims, but it eventually dropped that defense.

During discovery, Joceyline's attorneys learned that the police officer assigned to investigate Joceyline's criminal case was also a part-time security guard at the apartment complex. The officer had terminated the criminal investigation after just two weeks, the attorneys discovered, and never disclosed to his superiors that he had a conflict of interest in the case due to his employment with Bouvé & Mohr. Further, the officer allegedly never followed up with Joceyline during the investigation; while he left a business card in the door of the apartment where she was raped, he never attempted to contact her at her new address, which she had given to the rental company.

The investigating officer, Joceyline's attorneys learned, also personally took possession of the rape kit that crisis center personnel had used in examining Joceyline after the assault. Relying on testimony from the police evidence custodian, Goldstein and Hayes established that the kit did not appear in the evidence refrigerator at the police station until several months later, at which time the investigating officer directed it to be destroyed because he had already closed the criminal case. Joceyline's attorneys had sent multiple letters to the police chief and the evidence custodian requesting that any evidence related to the rape be preserved, Hayes says, but the investigating officer disregarded those requests. Further, the officer admitted there was no law enforcement reason for the police department to take custody of the rape kit, since the investigation had already been terminated.

Goldstein and Hayes then moved for sanctions against Bouvé & Mohr, arguing that the officer acted as the company's agent in intentionally spoliating the evidence in the rape kit. As for the particular sanction he requested, Hayes says "having the court instruct the jury that Joceyline was raped was critical, as the direct tangible evidence was no longer in existence." Even though the attorneys had deposition testimony by an expert and the crisis center counselor who had attended Joceyline that they had no doubt she had been raped, an unfavorable ruling by the court would have left them with a difficult decision: Whether to put Joceyline's young son, who recalled the violent attack on his mother in detail, on the stand as an eyewitness.

At an evidentiary hearing, the trial court concluded that the officer, acting as an agent of the rental company, had destroyed the rape kit in bad faith. The court imposed the sanction Joceyline's attorneys requested—at trial, the jury would be instructed that Joceyline had been raped, and Bouvé & Mohr would not be allowed to challenge the statement. An appellate court affirmed the ruling, holding that trial courts have the power to use sanctions to "control the behavior of litigants before them to maintain the integrity of the judicial process." 618 S.E.2d 650 (Ga. App. 2005). Ultimately, Bouvé & Mohr agreed to pay Joceyline \$1 million—its policy limit—before the case went to trial.

In addition to rape crisis counselor Paulette Barnes, of Atlanta, Joceyline's attorneys relied on experts John C. Villines, security and crime prevention, Athens, Ga.; Fred G. Robinette III, law enforcement investigative practices and procedures, Cartersville, Ga.; Peg Ziegler, psychology and trauma, Atlanta, Ga.; and Jeff Gross, security, Powder Springs, Ga. Bouvé & Mohr's experts were Peter A. Smerick, security, Dumfries, Va.; Joseph V. Cavallo, security, Loganville, Ga.; and Ann Burgess, psychology, West Newton, Mass.

Joceyline is slowly recovering from the attack, Hayes reports, and has moved to a safer location with her family. "There is obviously no amount of money that can rid Joceyline of the memory of the rape," Hayes says, but "having the lawsuit finally behind her and the thought of having to relive the events on the witness stand eliminated are turning points in her recovery."

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