

Civil Litigation

Smart doorbells and invasion of privacy, part two

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In part one of this two-part series, we discussed a recent Alberta case, *Lupuliak v. Condominium Plan No. 8211689*, 2022 ABQB 65, wherein a breach of privacy by the installation of a Ring doorbell ("smart doorbell") to surveil a common hallway in a condominium by the offending unit owner was enjoined as a breach of the condominium bylaws.



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In another case of alleged breach of privacy by the installation of a Ring doorbell to surveil a common entryway, *Zeliony v. Dunn*, 2021 MBQB 136, the action was dismissed, seemingly because the surveilled parties had largely brought it on themselves by vandalizing the other party's property. The installation of the smart doorbell was found to be reasonable as an exercise of the defendant's lawful right to

defend his property.

In *Zeliony*, the plaintiffs and defendant shared a common entranceway. The plaintiffs — husband and wife — apparently took it upon themselves to tamper with the porch light of the defendant so that the husband could smoke outside undeterred by insects, which were attracted to the light. The defendant installed a security camera inside his storage locker in the common entryway and installed a smart doorbell to learn who was vandalizing his porch light.

The security camera installed by the defendant was vandalized and the Ring camera taped over on several occasions. The property manager at the condo building

attempted to mediate the situation and, at his request, the defendant disabled the motion control feature of the surveillance and limited the range of the video surveillance. The decision suggests that the plaintiffs were caught on the video vandalizing the property of the defendant.

Although the plaintiffs eventually moved out of the building, they sued the defendant for invasion of privacy under the *Privacy Act* of Manitoba, for the torts of intrusion upon seclusion and nuisance and claimed damages for wilful infliction of nervous shock. They also sued the condo corporation in negligence for not addressing the issue of surveillance. The plaintiffs claimed non-pecuniary damages in the amount of \$20,000 and for the diminished sale price of their condo unit, as they felt they had to sell on a rushed basis.

In the result the judge, Associate Chief Justice Shane I. Permuter, found that the plaintiffs had vandalized the property of the defendant and that the defendant was justifiably defending his property in installing the smart doorbell: “[His] evidence is uncontradicted and his explanation about why he installed the doorbell camera is sensible in the circumstances” (para. 21).

The plaintiffs’ claims were summarily dismissed and damages provisionally assessed at \$2,000. The court noted that the plaintiff wife had waited for over two years before she sought medical help for her alleged anxiety and insomnia caused by the surveillance. In the court’s view, the evidence did “not support a non-pecuniary damage award beyond a nominal amount whether for invasion of privacy, intrusion upon seclusion, nuisance, wilful infliction of nervous shock or negligence” (para. 56). The claim against the condo corporation was also summarily dismissed.

In *Lupuliak*, which we discussed in part one, the claims before the court appeared to directly relate to breaches of condominium bylaws and not specific claims of civil wrongs (torts) for which the court can impose liability. In *Zeliony*, however, the plaintiff sought damages for invasion of privacy, intrusion upon seclusion,

nuisance and wilful infliction of nervous shock arising from the installation of the smart cameras.

With the growth in availability of smart cameras and doorbells, and an increasing focus on privacy, it is highly likely that there will be a growth in litigation between condominium unit owners as a result of equipment installed capable of surveilling on common property, and potentially violating the rights of others by invading or interfering with their privacy. It is also likely that there will be increased scrutiny on the policies of condominium corporations governing such installations and in a broader sense, ensuring the property is secure and policies contribute to the safety of residents.

This is the second of a two-part series. Read the first article: Smart doorbells and invasion of privacy, part one.

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