

boundaries

A GUIDE FOR PROPERTY OWNERS AND INSURERS IN A LITIGIOUS SOCIETY

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No Link Between Building Code Violations and Murder

By Mark Masters

In *Benton v. Briggs*, Plaintiff's decedent lived in a rented upstairs flat in Pontiac, Michigan. One night, there was a knock on his door, which led to the outside and had been left unlocked. Plaintiff's decedent (who was involved in selling drugs and fencing stolen property) received no response from the visitor to his repeated "Who is it?" inquiries. A few days before, Plaintiff's decedent had been beaten and threatened by other members of the criminal element due to an unpaid debt. According to witnesses, Plaintiff's decedent opened the door, became visibly frightened, shots rang out, and he tried to slam the door shut.

The visitor repeatedly fired a .22 caliber rifle into the rented flat through the open door. Plaintiff's decedent slammed the door on the barrel of the rifle, but the rifle continued to fire. The visitor then pulled the rifle barrel out of the door jamb and shot one round through the door. Slugs recovered by the police had pierced kitchen cabinets and countertops, as well as a metal bread box. A single slug killed Plaintiff's decedent. Whether or not the bullet which passed through the door was the one that killed Plaintiff's decedent was contested. While arrests were made in regard to the killing, no charges were brought. The killer remains unidentified and at large.

Plaintiff filed suit against the landlord, alleging that Plaintiff's decedent was killed due to an out-of-code door, door jamb, and lock. Specifically, that an up-to-code door

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One of the best defenses in any premises liability lawsuit is that the premises met all applicable building codes and standards. However, due to the far reaching nature of all of the building codes and standards, it is rare for any property to be perfect in every respect. Therefore, when an injury occurs, careful consideration must be made to determine if there truly was a causal connection between the injury and any code violations alleged by Plaintiff.

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(i.e., a hollow steel door or solid wood door) would have stopped the bullet, and that an up-to-code lock and door jamb would have allowed Plaintiff to get away from the door when it was being fired on, rather than leaning his weight against it after he opened it to the unannounced visitor. Plaintiff's expert first opined that an up-to-code door may have stopped the bullet penetration. However, he ultimately admitted he did not have any idea if the bullet would have been stopped and refused to agree to stand behind an up-to-code door during testing where .22 caliber rifle rounds were fired at it. Further, Plaintiff's expert agreed that an up-to-code door could also have windows in it that were not required to be bullet proof. In regard to the door jamb and lock issues, he admitted he had no idea if they would have made a difference here since Plaintiff's decedent opened the unlocked door.

The trial court granted Defendant's motion for summary disposition based on lack of factual proximate cause. Specifically, Plaintiff could not prove that the presence of an up-to-code door, door jamb and lock would have made any difference in this case. Plaintiff's expert admitted that this was likely not a random killing, but that Plaintiff's decedent probably knew his killer. The Court of Appeals upheld the dismissal based on lack of proximate cause. The Court of Appeals further held that it was not reasonably foreseeable that providing an inadequate apartment door would result in someone shooting through it, killing another person on the other side.

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We welcome your questions and comments.

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