

Chicago Daily Law Bulletin®

Volume 164, No. 87

Serving Chicago's legal community for 163 years

Trial dismissal created 'one free rape rule,' panel finds

BY DAVID THOMAS
Law Bulletin staff writer

An appeals panel on Wednesday reversed the dismissal of a suit against a Skokie hotel by a guest who was allegedly raped by a hotel employee.

Karla Gress alleges that Holiday Inn Chicago North Shore security guard Alhagie Singhateh drugged her at the hotel bar and raped her in her room in October 2013.

The hotel successfully moved to be dismissed, arguing it had no way to foresee the alleged attack.

Reversing, the 1st District held that such a defense would give hotels the equivalent of a "one free rape rule."

Circuit Judge Kathy M. Flanagan dismissed with prejudice all the claims against the hotel defendants in January 2017, agreeing with the defendants that they had no duty to foresee such an attack.

But the 1st District Appellate Court found there was a special duty of care owed by defendants Lakhani Hospitality Inc., owner Mansoor Lakhani and hotel operations director Sheila Gilani. It also found the type of harm Gress alleged was foreseeable.

"All of the preceding cases of rape, battery, assault and murder clearly have many factual variables, but the facts of this case tell an all-too-familiar tale where a vulnerable woman is raped and the assault is enabled by the failure of a responsible party to protect the victim," Justice Terrence J. Lavin wrote.

"Plaintiffs deserve the opportunity to expand on their story beyond the pleading stage, and the trial court erred in dismissing the counts of plaintiffs' complaint against the owner, operator and manager of the hotel and its involved employees," he wrote.

Gress alleged she was drinking at the Bar Louie attached to the hotel. She alleged Singhateh slipped a substance into her drink there. Gress passed out in her hotel room.

Another hotel employee sent Singhateh to enter Gress' room to fix a broken air conditioner, even though the staff allegedly knew she was intoxicated. When he entered the room by himself, Singhateh allegedly raped Gress while she was unconscious.

Police used a rape kit taken the morning after the alleged attack to match DNA with Singhateh.

Singhateh was never criminally charged, said Elizabeth R. Olszewski, an associate at Salvi, Schostok & Pritchard P.C. and one of Gress' attorneys.

Singhateh worked at the hotel for several more years after the alleged rape occurred, Lavin wrote.

The defendants argued they could not be held liable for Singhateh's alleged rape of Gress because there had not been a prior report of rape at the hotel.

The panel rejected this argument, as Illinois law does not require hotels to foresee the exact circumstances of a third-party attack to be held liable.

"If we were to impose such a

'notice' rule, it would produce the inimical result of the first sexual assault victim lacking a civil claim, while allowing the next victim ... to receive justice because defendants had notice of the prior rape," Lavin wrote. "Any such holding would lead to arbitrary results and would surely be against public policy."

The panel also found the plaintiffs adequately pleaded proximate cause.

The panel rejected Gress' bid to revive a negligent hiring and training claim against Intercontinental Hotels Group and Hostmark Hospitality Group as well as a premises liability claim against Intercontinental.

Prior to his 2004 hiring as a security guard, Singhateh was arrested for solicitation of prostitution Gress alleged Hostmark negligently hired him despite his arrest.

The panel agreed with Flanagan there was an "insufficient 'nexus'" between Singhateh's arrest and the alleged attack.

Gress and her husband were also represented by Robert G. Black of the Law Offices of Robert G. Black P.C. and Tara R. Devine of Salvi, Schostok & Pritchard P.C.

"We think the appellate court made the right decision," Olszewski wrote in a statement. "It was appropriate to hold that a duty of care existed and that there was proximate cause under the premises liability counts against LHI, Lakhani and Gilani. Proximate cause does not require foreseeability of the exact chain of events that ultimately occurred, it



Elizabeth R. Olszewski

only requires foreseeability that an injury may occur as a consequence of the negligent conduct. In so holding, we believe the court made a fair, well-reasoned ruling supported by Illinois law."

The defendants were represented by Michael L. Resis and Margaret Christina Firnstein of SmithAmundsen LLC. They did not return a request for comment.

While this part of the lawsuit proceeded before the 1st District on interlocutory appeal, the counts of assault, battery, intentional infliction of emotional distress and gender violence against Singhateh proceeded before Flanagan. Singhateh never made an appearance in the suit, and Flanagan entered a \$11.925 million default judgment against him, Olszewski said.

Justices Cynthia Y. Cobbs and James Fitzgerald Smith concurred with the opinion.

The case is *Karla Gress, et al., v. Lakhani Hospitality Inc., et al.*, 2018 IL App (1st) 170380.

dthomas@lawbulletinmedia.com