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EARLELAW NEWSLETTER

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Criminal Charges Against Apartment Manager Dismissed

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Issue Number: 2009-33

Several months ago, the resident manager of an apartment complex (“Manager”) contacted EARLE LAW OFFICES and requested representation after having been notified by the Santa Clara (CA) District Attorney’s Office that criminal charges had been filed against him.

During an initial meeting with him at the law office, Manager related the following facts and events: Manager had been employed as an apartment manager for more than 20 years. Manager had never been arrested and does not have a criminal record.

Manager, on a recent evening, received a report from a tenant that the odor of burning marijuana was emanating from one of several closely-situated units in a two-story apartment building. In response to the complaint, Manager initiated an investigation in order to determine whether it would be appropriate to summon police.

In order to visually monitor the area of the apartment building from which marijuana smoking reportedly was emanating, Manager walked to a park-like common area in the apartment complex, adjacent to both a swimming pool and the first-floor patios and second-floor balconies, where Manager conducted a brief period of surveillance. It was early evening and although the sun was setting, it was not yet dark.

Unfortunately, Manager’s presence was detected by a male tenant who mistook Manger for a Peeping Tom.

Police responded to the apartment complex, not to investigate illegal drug use, but to investigate whether Manager had broken any laws. During the course of the police investigation, officers took

statements from two adult females who were inside an apartment near the location where Manager had been conducting his investigation. The women had not been aware of Manager’s presence outside of their apartment, but said they did not approve of any unlawful conduct in which Manager might have engaged.

The police investigation was documented in a written report, which was then forwarded to the District Attorney’s Office. Significantly, the police did not arrest Manager.

The District Attorney’s Office, based solely on a review of the police report, filed a criminal complaint against Manager, charging Manager with two (2) separate crimes of disorderly conduct: Count I charged Manager with “Prowling”, in violation of California Penal Code § 647(h). Count II charged Manager with “Peeping”, in violation of section 647(i).

“Prowling” is defined by California law as conduct by a person “[w]ho loiters, prowls, or wanders upon the private property of another, at any time, without visible or lawful business with the owner or occupant. . . .” P.C. § 647(h) (underline added).

“Peeping” is conduct by a person “[w]ho, while loitering, prowling, or wandering upon the private property of another, at any time, peeks in the door or window of any inhabited building or structure, without visible or lawful business with the owner or occupant. P.C. § 647(i) (underline added).

An element of each of the two criminal laws with which Manager was accused of violating is that

each offense must have been committed “upon the private property of another”.

Furthermore, Manager resided at the apartment complex and was engaging in the lawful conduct of investigating a tenant complaint at the time the alleged offenses occurred.

After Manager’s “not guilty” plea was entered, EARLE LAW OFFICES initiated its own investigation, which revealed serious deficiencies in the prosecution’s case. Approximately 70 photographs were taken of the apartment complex and adjacent grounds, which clearly depict that the location where Manager had conducted his surveillance for evidence of possible illegal drug use is located in the park-like common area of the complex, which does not constitute any part of the premises which are rented to any tenant.

After concluding its own investigation, EARLE LAW OFFICES was convinced that Manager had committed no crime.

At a pretrial conference, dialog was initiated with the female deputy district attorney who had been assigned to prosecute Manager. The prosecutor was shown (1) a copy of the statutes she had charged Manager with violating; (2) photographs taken by EARLE LAW OFFICES of the apartment complex, including the common area where the alleged offenses had occurred; and (3) the portion of the police report in which the investigating officer had written that, at the time the alleged offense was committed, Manager “was in a place [Manager] was lawfully allowed to be.”

Although it apparently was clear to the investigating police officer that Manager had not committed any crime, the investigating police officer presumably thought it less hazardous to that officer’s career to refer the matter to the District Attorney’s office and allow prosecutors to decline to file charges against Manager, rather than to risk being the subject of a citizen/personnel complaint and subsequent internal affairs investigation for (properly) exercising discretion by declining to take any enforcement action.

After being confronted with the actual language of each statute Manager was accused of violating, along with evidence, in the form of photographs and likely testimony of a prosecution

witness which would support the defense rather than the prosecution (the police report), the prosecutor responded by asking, “what would you like me to do?” Of course, the response was that all charges against Manager should be dismissed, as Manager had not committed a crime.

The female prosecutor then responded that although Manager’s conduct may not have been illegal, the conduct nevertheless was “creepy”.

Fortunately for Manager, not all conduct that a government prosecutor may consider “creepy” is illegal. EARLE LAW OFFICES encouraged the prosecutor to consult with her superiors before a trial of this matter was commenced, which, to her credit, she did. At the next court hearing, the prosecutor informed EARLE LAW OFFICES that all charges against Manager would be dismissed.

All criminal charges against Manager have now been dismissed; Manager continues to perform his duties at the apartment complex.

Earle Law Offices provides trial and appellate litigation, as well as non-litigation, legal services in the areas of business law, family law, real estate law, tax law, and trusts and estates.

* Mr. Earle is licensed to practice law in all California state trial and appellate courts, the United States Supreme Court, the United States Court of Appeals for the Fourth and Ninth Circuits, federal trial courts in the Northern District of California, and the United States Tax Court. He has served as a Judge Pro Tempore for the Santa Clara Superior Court, and is also a licensed Real Estate Broker.

Mr. Earle received his law degree from the Santa Clara University School of Law, where he served as an Editor of the school’s Law Review, and where he received awards for academic excellence. He received his undergraduate degree, with honors, in business administration from the University of La Verne.

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