

By Lidia Dinkova | September 06, 2018

Excessive-Force Claim, Appeals Court Rules

Sgt. Terry Scott and Officer Joseph Craig are accused of using excessive force when arresting Dara Clarke. Clarke was opposing the construction of a sidewalk required for the controversial Prive at Island Estates high-end condominium.



Aerial of the finished Prive at Island Estates condominium in Aventura/courtesy photo

A federal appeals court ruled two Aventura police officers lack qualified immunity in a lawsuit alleging they used excessive force while arresting attorney Dara Clarke during a development protest. She is now running for the City Commission.

Sgt. Terry Scott is accused of stomping on Clarke's right foot and twisting her arm behind her back during the February 2015 arrest. The lawsuit claims Officer Joseph Craig pulled her other arm behind her back, and the two tightly handcuffed her and lifted her off the ground for 30 to 60 seconds.

Clarke, an Aventura resident and former Broward County prosecutor, sued the officers for damages, saying a foot, calf, elbow, shoulder and arm were injured during the protest tied to the Prive at Island Estates condominium, which has since been completed.

The U.S. Court of Appeals for the Eleventh Circuit affirmed a decision by U.S. District Judge Robert Scola in Miami. Circuit Judges Gerald Tjoflat, Peter Fay and Elizabeth Branch issued an unsigned opinion Aug. 31.

The decision leaves Scott and Craig on track for trial.

In reviewing the case, the appellate panel said it drew inferences in Clarke's favor given that she wasn't the one who appealed.

This means the officers' version of events wasn't considered in the decision, said their attorney, Michael Burke.

"This version of the facts is disputed by Sergeant Scott and Officer Craig," said Burke, a partner at Johnson, Anselmo, Murdoch, Burke, Piper & Hochman in Fort Lauderdale. "At a trial, the jury, unlike the court, will be permitted to consider the testimony of all of the persons who witnessed the event."

This is one of many legal battles in connection with Prive at Island Estates, a 16-story, twin-tower, 160-unit condominium complex on the 8-acre North Island. The protest was over sidewalk construction on neighboring South Island, an enclave of about 20 single-family homes connecting the Prive island to the mainland.

The Prive developer was required to build a sidewalk before building the condos, but Clarke, who lives on South Island, and some neighbors argued the sidewalk was being built on private property, according to court filings.

During construction, Clarke tried to stop it, an effort the appellate panel called "ambitious." In the morning, Clarke parked cars on the swale where the sidewalk was to be built and left for the day. When she returned in the evening to see concrete had been poured, her husband, David Clarke, drove over it and damaged it, the opinion said. Charles Phelan, who is affiliated with the developer, asked the Clarkes about the damage.

"Clarke laughed as her husband responded that they had given Phelan 'something to do tomorrow,' " the judges wrote.

Both sides called the police, which is when Scott and Craig questioned Dara Clarke.

" She replied that she 'could do whatever (she wanted)' with the concrete because it was on her property," the panel wrote.

There were more discussions before Clarke was arrested on charges of criminal mischief, disorderly conduct and resisting arrest without violence. She wasn't prosecuted.

She sued in 2016 and amended her complaint in 2017. The defendants included the city, the officers, Prive Developers LLC and limited liability companies affiliated with the developer. The officers are the only remaining defendants.

Scola ruled against the officers Feb. 20, saying they failed to establish they used minimal force.

Clarke's "attempt to show the officers a land survey on her phone, without a showing of hostility or inclination toward violence, cannot warrant the use of force that was shown in return," the Eleventh Circuit judges wrote.

Scott and Craig have disputed Clarke's assertion that she was calm during the exchange.

"The officers warned Clarke on multiple occasions that she needed to calm down. Despite those warnings, Clarke continued to thrust her phone a few inches from the officers' faces," they argued in a summary judgment motion.

In other Prive-related litigation, Miami-Dade Circuit Judge William Thomas ruled last December that the sidewalk encroached on private property. It has since been removed.

"I went through a night of misery ... for nothing, for absolutely nothing," Clarke said Wednesday.

Hall, Lamb, Hall & Leto partner Matt Leto represents Clarke in this case.

The developer's attorney, Glen Waldman of Waldman Barnett in Miami, didn't return by deadline a request for comment about the sidewalk.

Under a March settlement in another case, the Williams Island Property Owners' Association Inc. agreed to pay \$21.6 million to the developer for improperly challenging the project.

Prive at Island Estates, which is at least 75 percent occupied with homes starting at \$2.2 million, offers panoramic views of Dumfoundling Bay.

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