

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2011 CA 0629

DENNIS R. WHALEN

VERSUS

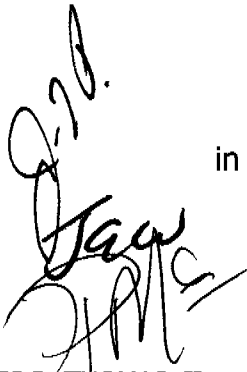
THE PROVINCIAL NORTH APARTMENTS, LLC, ET AL

Judgment rendered November 9, 2011.

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Appealed from the
19th Judicial District Court
in and for the Parish of East Baton Rouge, Louisiana
Trial Court No. C535441
Honorable William A. Morvant, Judge

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DENNIS R. WHALEN

ATTORNEY FOR
DEFENDANTS-APPELLEES
ARTHUR C. LEWIS, III,
ALEA NORTH AMERICAN
SPECIALTY INSURANCE CO.,
AND THE PROVINCIAL NORTH
APARTMENTS, LLC

* * * * *

BEFORE: PETTIGREW, McCLENDON, AND WELCH, JJ.

PETTIGREW, J.

Following a bench trial on the merits, plaintiff appeals the dismissal of his personal injury action, which arose following an incident at plaintiff's apartment. The sole issue on appeal is whether the trial court was clearly wrong in finding that plaintiff failed to carry his burden of proof on the issue of liability. According to the record herein, plaintiff lived in a one bedroom apartment with a front door secured by a door knob lock, a deadbolt lock, and a safety chain screwed to a wooden strip alongside the front door. On the day of the incident in question, plaintiff's doorbell rang at approximately 5:00 a.m. Plaintiff looked through the peephole and saw two individuals he did not recognize. After arming himself with a handgun, plaintiff unlocked the door knob, unbolted the deadbolt, and opened the door leaving the safety chain in place. One of the two individuals then threw his shoulder into plaintiff's door twice before the safety chain and the wooden strip alongside the front door pulled loose from the door jam, allowing the door to open completely and knocking plaintiff to the ground.

After hearing the testimony and considering the evidence introduced, the trial court concluded:

I don't think that there has been a showing of either negligence or premise liability from some defect in this security system when plaintiff's own expert opines that you had two other safety features built in, a dead bolt and a lock on the door, and that not so much the chain which would have not prevented the break-in regardless of whether it was properly installed, but plaintiff's actions in reducing the efficiency of the system that caused or allowed the assailant to gain entry during the home invasion.

Following a thorough review of the record and exhibits, we find the record does not demonstrate that the decision of the trial court is clearly wrong. Thus, in accordance with Uniform Rules--Courts of Appeal, Rule 2-16.2A(2), (4), (5), and (8), we affirm the judgment below and assess all costs associated with this appeal against plaintiff.

AFFIRMED.