

ASSOCIATION "POLICE" POWERS SCRUTINIZED
BY THE ILLINOIS APPELLATE COURT

by

Michael C. Kim

Michael C. Kim & Associates

February 1, 2012

In the case of Poris v. Lake Holiday Property Owners Association, Inc. et al. (2012), the Illinois Appellate Court addressed the ability of a homeowners association to enforce its speeding and traffic regulations within its own community.

The case was initiated by a homeowner against the association, its board of directors, its chief of security and one of its patrol officers. The association had its own private security department which employed its own public safety officers (private security officers) to enforce the association's rules and regulations, including the power to issue citations for speeding on the association's private roadways. The public safety officers used radar guns and vehicles equipped with oscillating and flashing lights and were equipped with a badge, uniform and duty belt on which weapons could be included.

Mr. Poris was pulled over by one of the association's private security officers who ordered him to turn over his association membership card and driver's license and to stay in his vehicle. The public safety officer informed Mr. Poris that he was being recorded by equipment in the officer's car but that recording would be stopped if he did not wish to be recorded. The public safety officer issued Mr. Poris a citation for speeding.

None of the private security officers had been given police powers by the LaSalle County Sheriff's Office, nor had any police agency or the LaSalle County Board given the association's security department or its employees the authority or permission to stop vehicles, use overhead lights, use radar guns or make recordings on association property.

Under the facts of this case and applying the Illinois Vehicle Code and Criminal Code, the Appellate Court ruled that:

1. The association's private security officers had no legal authority to stop and detain drivers for violation of the association's rules and thus, those acts were unlawful.
2. The association's private security officer's use of amber oscillating and flashing lights was unlawful, since the association's security department was not a private security company. Conversely, an independent private security company could use such lights.
3. The association's use of recording equipment in this case was not unlawful because Mr. Poris was advised of his right to have the recording stopped but apparently did not make that request, thereby impliedly consenting to the recording.

4. The use of a radar gun by the association's private security officer to detect/measure speed was not unlawful.

Finally, since the association's private security officer did not have the legal right to stop and detain Mr. Poris, the Appellate Court ruled that the association was guilty of false imprisonment and would be liable to him for damages.

The ultimate lesson of this case is that private security guards who are not given police power by a governmental body or agency cannot detain a person only for a violation of association rules (but may do so for suspected violation of state or local law, apart from an ordinance violation). Also, if employed by a private security business, the security guard can use vehicles equipped with oscillating and flashing lights. Finally, recording of conversations is permitted if consented to, even impliedly, and private use of a radar gun is permissible.