

Woman arrested in luxury condo protest: City and cops violated my rights

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A homeowner who was arrested last year during a property dispute with condo developers in Aventura has filed a wide-ranging lawsuit accusing the police officers who detained her of using excessive force, the developers who called 911 of defamation, and the city itself of turning a blind eye to what she charges was a false arrest.

It's the latest haymaker in a bare-knuckle brawl between aggressive developers and rich homeowners who've hammered each other with lawsuits and personal attacks since 2013.

The drama revolves around a four-foot-wide sidewalk on an exclusive private island in Aventura. The simple strip of concrete is the key to a controversial condo project on a neighboring island opposed by homeowners and locked in years of litigation. Without the new sidewalk — placed on land the homeowners say belongs to them — developers can't build a twin high-rise complex called Privé at Island Estates, according to an agreement with the city.

So one February morning last year, when a private construction crew tried to lay down the crucial walkway, homeowner Dara Clarke staged a sit-in in the dirt, blocking the crew's work. It was her property, she said, and the developers couldn't take it away.

But by evening, a battle previously fought in civil courtrooms and city council meetings ended with Clarke and her husband, David, in jail.

Police said that after Clarke gave up her protest, she and David drove their luxury vehicles, a BMW and a Porsche SUV, over a freshly poured curb, destroying it. The developers smelled a public relations victory and called the news media to report the alleged assault on their business. They filed a lawsuit against Clarke and her husband David in civil court. And they rebuilt and completed the sidewalk, allowing them to start construction on the condo towers.

But prosecutors declined to pursue a criminal case against the Clarkes, and she later successfully appealed to have her arrest expunged from public records.

Now, with her name cleared, Clarke is hitting back through the courts with a civil suit — one that attorneys for the city and Privé dismiss as frivolous.

Aventura city attorney Matthew Mandel said the city had not yet been served. But he called the allegations against the city and police officers "completely baseless."

In a written statement, Glen Waldman, an attorney for the developers, said: "We have carefully reviewed the lawsuit and believe it is meritless. We will defend the matter vigorously and look forward to the court making a final determination on this matter."

Courtroom drama

Clarke's suit adds to the long-running legal battle over Privé.

In the early-to-mid 2000s, developer Gary Cohen's firm built about 20 luxury homes on the Aventura island where the Clarkes now live. (Home values on the island go as high as \$3.7 million, according to the Miami-Dade County property appraiser.)

Cohen said he planned to build a similar, single-family community on an empty island to the north connected by a bridge. But in 2013, he changed his mind, saying he would instead develop two 16-story towers with a total of 160 condo units. Homeowners reacted with outrage, citing increased traffic and loss of privacy as the new residents used their island to travel between the mainland and the condos.

Several homeowners filed a lawsuit to stop the project. They said the new plan violated an agreement that restricted Cohen to building single-family homes. A condo association on nearby Williams Island filed suit, too. Ultimately, the city of Aventura ruled that the developers would have to build a sidewalk on the Clarkes' island to accommodate the new pedestrians sure to follow.

The developers responded with two suits of their own claiming a total of \$425 million in damages: one against the city of Aventura for denying them building permits and another against the homeowners for obstructing the project. At the time, one of the developers called the homeowners "spoiled brats." (They dropped the case against the city after it approved the permits. A judge threw out the suit against the homeowners.)

The lawsuit filed by the homeowners could settle the question of whether Cohen should have been allowed to build high rises on the north island. The case is set for trial.

It may be a fait accompli: Work on Privé is moving along at a steady pace.

WE HAVE EXPERIENCED CONTINUED MOMENTUM ON SALES AND POSITIVE RECEPTION OF PRIVÉ. Michael Neumann, Privé sales director.

Last week, the developers celebrated the topping off of one tower. They've secured financing and say they've now sold \$300 million worth of condos, advertising the complex as the last private island in South Florida. Units start at \$2.1 million.

But if the developers lose the case, a judge could order them to raze the condo, said Susan Raffanella, an attorney for the homeowners.

Named in the suit filed Thursday in Miami-Dade County Circuit Court are Terry Scott and Joseph Craig, officers with the Aventura Police Department; Charles Phelan, Gary Cohen and Daniel Lebensohn, the developers of Privé, as well as six of their companies; and the city of Aventura.

"So often people just get pushed around by developers who don't care about anything other than making a profit," Clarke told the Miami Herald on Friday. "They're not given a voice, they're crushed. It's not OK. If this is what happened to me, I am terrified for everyone else."

The suit claims that when Scott and Craig arrested Clarke for the damage to the sidewalk the cops needlessly "twisted her arms behind her back and violently lifted her off the ground while digging their knees into her calves."

In an arrest report filed at the time, police said Clarke, 5'3 and 110 pounds, resisted arrest.

Clarke was then held overnight in a "filthy" cell covered in fecal matter and denied water, according to the suit. She says the experience left her with injuries to her feet, arms, hands and shoulders and "extreme emotional anguish." In her lawsuit, she's seeking an unspecified amount of money in damages.

And while she acknowledges that her husband damaged the still-wet curb, Clarke denied that she herself drove over the sidewalk, even though police said they found wet cement on her car tires. The evidence, she says, was fabricated by officers who had been working as private security at the construction site.

"A responding officer [who was] working on site earlier in the day for the developer under private detail ... was in possession of the car keys and the car had been moved from the location it had been parked," according to the suit.

She claims her treatment at the hands of police amounts to an unofficial city policy of permitting evidence tampering and the use of excessive force. "The city exhibited a willful, wanton and callous disregard for the constitutional rights of Clarke," the suit states.

As for the developers, Clarke says they called the cops because they were frustrated that she objected to their project. Her suit charges them with malicious prosecution, negligent reporting to police and defamation for their statements to the media.

It's possible the Privé developers will have to pay to defend the city.

Two years ago, the city signed an agreement ensuring that the developers would "defend, indemnify and hold the city harmless from any claim, demand, suit, loss, cost, expense or damage" resulting from the sidewalk.

Matthew Leto, an attorney for Clarke, said the indemnification allowed the city to abdicate its duties to residents.

"The developer is controlling what the city is doing," Leto said. "And the city is representing the best interests of the developer, not the property rights of residents. ... Anybody who's going against the grain is getting silenced."

"If a developer undertakes construction knowing there is a challenge to his right to build multi-family housing," Raffanella said, "a trial court can order the buildings to be torn down."

In 2002, a ruling of the Florida Supreme Court forced a developer to destroy a recently opened \$3 million apartment complex in Jensen Beach.

That's a possibility the Privé developers don't seem to be entertaining.

"We have experienced continued momentum on sales and positive reception of Privé," Michael Neumann, the project's sales director, said in a Nov. 3 statement celebrating the construction milestone. "This momentum continues to grow as the project nears completion and purchasers recognize the reality of Privé and what it offers them in terms of lifestyle that can't be replicated or duplicated anywhere else in South Florida."

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