by Michael Gentile, J.D.

Understanding a hotel's liability for the contents of a guest's vehicle

In the previous edition of *The Rooms Chronicle*, there was a discussion about a hotel's liability for stolen or damaged vehicles that were parked on its premises or under the control of hotel management. In that article, it was determined that the question of liability would be determined by the level of control the hotel retained when offering the parking service. If a bailment was created, such as in valet situations, the probability of liability on the part of the hotel was high. In park and lock scenarios it depends upon a case by case analysis of the law in that jurisdiction to establish the extent of the duty created for the hotel property. Once established, the facts of each case will decide if a duty of care was met.

But that article only dealt with the vehicle itself. What about the contents of the vehicle? If the vehicle is stolen in a scenario where the hotel would be responsible for the car and there are valuable items in the trunk, is Management responsible for those items as well? Similarly, if the vehicle remains but the valuables are stolen, should the hotel be liable for the owner's loss?

Determining liability

To answer these questions, the legal analysis is very similar to, but not exactly the same as, the analysis used to establish liability for the vehicle itself. The first step would be to establish if a bailment was created for the specific items in question. While it may be easy to find the creation of a bailment for the vehicle, it may not be so obvious for the contents of that vehicle. Therefore, when applying strict bailment law to these cases most courts would require a separate acceptance of the contents of the vehicle before holding the hotel responsible for the loss of the contents in a parking bailment situation.

But this theory has only been used in a small minority of such cases. Instead courts have regularly turned to the legal analysis used in common situations where certain bailed items, such as luggage and packages, contain other items, the exact nature of which may not be known by the bailee hotel. The rule of thumb in those cases is whether a person in the bailee's position (e.g., valet, doorperson, parking lot attendant) could reasonably foresee that the bailed item (vehicle) may contain other personal property.

While this may seem a common sense approach to these cases, there is one fundamental difference between the traditional package bailment and the vehicle bailment that throws a twist into the discussion. In traditional luggage and package bailment cases, the sole purpose for the package is to contain something else and the presumption is that a guest would not need to turn it over for safekeeping unless it contained something valuable. The primary purpose of the vehicle, on the other hand, is for transportation; and there may or may not be other items involved. For that reason, most courts in cases involving vehicle contents would find the hotel liable for two categories of items:

1. The usual and ordinary equipment of the vehicle, and
2. Property which is in plain view.

What goes into these categories is a question of fact in each case. For instance, tires, batteries, audio equipment and items in the trunk may be usual and ordinary equipment. But so might CDs and portable audio players as well. Expensive artwork and jewelry in the trunk may not be covered here. Additionally, a back seat full of clothing or pharmaceutical samples may be in plain view but a wallet left sitting on the seat may not be. Like all things legal, this leads us to another test as it relates to items in plain view. That would be the difference between "express notice" of items in plain view versus the "foreseeability" of items not in plain view.

Express notice vs. foreseeability

In the case of "express notice", this theory generally provides protection to all parties. It implies that the owner of the vehicle gives some kind of notification of the vehicle's contents and the attendants can act accordingly to safeguard it and perform whatever legal duty they may have. On the other hand, if the existence of the items is not disclosed (which is most often the case) the hotel cannot be legally held responsible. Due to apprehension about theft, most guests are unlikely to disclose the contents of the vehicle presuming that someone on staff is most likely to steal them. Notwithstanding the reason for the lack of disclosure, no liability on the part of the hotel is created.

The application of the "foreseeability" test for items not in plain sight may be the most interesting. There are all types of objects that may be in a vehicle of a hotel guest. Clothes and personal items are certainly foreseeable. In the case of a resort hotel with a golf course, expensive golf equipment in the trunk was considered foreseeable. Expensive artwork in the trunk of a vehicle at an airport hotel was found not to be foreseeable. As in most cases of legal duty and negligence, foreseeability will be determined by a review of the facts as a whole.

If all of these examples can be relegated to a general rule in vehicle-content cases, it is this. If a court finds that the operator of a parking facility used by a hotel had some duty of care at all for the vehicle, the only question that would remain to be answered is whether the contents of the vehicle in that factual setting were "foreseeable". If they were, the operator would be responsible for that loss as well. As always, check the status of the law in your jurisdiction.

Suggestions for limiting liability

As a practical matter, what should a hotel and/or parking operator do to limit their potential liability in content cases? Since notice and foreseeability are at issue, it would be best for those offering and operating the parking service to make explicit through the use of language on parking documents, garage tickets, hotel registration cards, and through visible signage that the property is not responsible for items left in vehicles, specifically for items not disclosed to the operators. If a particular lodging property has a clientele that may carry valuable items on a regular basis, the hotel may want to look at providing a service to hold and store such items and make the guests aware of this service prior to parking their vehicles. This may, however, create a new area for potential liability. Depending upon the size of the hotel, location, level and type of parking services offered, all of these suggestions should be topics for Management to discuss. ✧

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