



POWER OF ATTORNEYS



LEGAL BATTLE WAGED OVER PEEPING TOM CAMERAS

by Diccon Hyatt

It was the autumn of 2009, and something odd was happening at the offices of ING North America at 400 Atrium Drive in Somerset. It had to do with one of the janitors. Unlike most janitors, this one had set up his own office, inside a boiler room. And in addition to making his rounds, which included one of the women's restrooms in the five-story building, the man spent a lot of time on his laptop in his office even though nothing about his job required him to use a computer.

There was also something strange going on in the bathroom that he cleaned. For months, women had been noticing objects wrapped in toilet paper, set in peculiar places.

All this suddenly made sense in November, when a woman went to use the bathroom and noticed a strange looking object in one of the ceiling tiles. She stood on the toilet and retrieved what looked to be a hidden camera. She called the police, who downloaded the footage from the camera. The very first image the camera recorded was of the janitor installing the device. Police found two more USB cameras at his workplace and later searched his home and found more cameras. They also found

eight hours of footage of women using the restroom.

This discovery ended up launching a 10-year legal battle that seemingly involves everyone but the accused video taper, Teodoro Martinez himself. The janitor was charged but then let out on bail and fled, presumably out of the country. Attorneys believe he went back to his native Mexico and that there is little chance he will be caught.

Now, Suzanne Marasco, a lawyer for Hill Wallack at 21 Roszel Road, is the lead attorney representing 60 women who used that bathroom over the course of almost a year that

Courts are considering whether 29 women — who were not seen on recovered videos but have reason to believe they were secretly recorded — have grounds to sue.

Martinez was thought to be making his surreptitious videos. The victims sued CRS Facility Services, the company that hired Martinez and Jones Lang LaSalle, LLC, the property manager, I&G Garden State, the property owner, and Planet Companies Building Services, which

ING had hired to provide security for the building.

Marasco says she doesn't know much about Martinez's background, as the police are not releasing his file due to him being a fugitive and the subject of what is technically an ongoing investigation. "He was purportedly documented, but I

don't know how reliable all his papers were. During the course of litigation, during deposition we discovered that he did not submit entirely reliable information that would have allowed his employer to have done the appropriate background check. We do know he submitted at least two different social security numbers," Marasco said.

In addition to working at the Atrium Drive building, Marasco said Martinez had a job at a Somerset hotel on his resume.

The case, Friedman vs. Martinez, is now in the hands of the New Jersey Supreme Court over the ability of about 29 of the women to sue. Half the women in the group of 60 were seen on the video evidence collected by the police, and they settled their case for undisclosed terms in 2016. But the other half were not captured on the video footage recovered by police, but Marasco asserts that they have every reason to believe they were recorded.

In 2014 a trial court dismissed the cases of the women whose recordings were not found, arguing that the only way to prove their privacy was vio-



Suzanne Marasco of Hill Wallack represents 60 women who were working at ING North America in 2009.

lated was to show that their images were captured on camera.

But in 2018 an appeals court overturned the dismissal, and set a new legal precedent. "An approach that requires a plaintiff to brandish the smoking gun of an intrusion — an actual image of the event — 'fails to provide full protection to a victim' and gives 'too much protection


to people who secretly place recording devices in private places,” the panel of judges wrote. The court decided that the placement of a hidden camera is a massive invasion of privacy “even if the victim cannot demonstrate she was ever recorded,” and that it is enough for the victim to provide evidence that a recording device was present in a place where there is a reasonable expectation of privacy, such as a bathroom stall. In a ruling that could affect future cases, the court decided that the nature of the crime of invasion of privacy was that it damages the victim’s sense of privacy or peace of mind, and that this is true whether or not an actual recording was found. The decision noted that “a person who is inclined to secretly place a camera in a private area can easily incapacitate the camera when it is not in use so as to minimize any responsibility upon discovery.”

Martinez was known to be recording women in that bathroom over a six month to one-year timespan, and the victims worked in offices close enough to the bathroom that they likely used it occasionally. For the appellate court, this was enough evidence for their lawsuit to proceed.

In other words, victims don’t need a smoking gun to win a lawsuit over invasion of privacy.

But this ruling might itself be overturned. In March the case was taken up by the Supreme Court, which has the power to reverse the appellate court.

The case highlights the liabilities that property owners take on when they lease out a building. “The property owner and the landlord have a non-delegable duty to provide a safe environment for everybody who works in the building,” Marasco said.



A wireless hidden camera and motion detector disguised as a perfume bottle is available for \$99.65 on Amazon.

The property owners disputed this theory in court, arguing that there was no way they could have foreseen or prevented what Martinez is accused of doing. Since the case was settled confidentially, it is impossible to tell which argument would have prevailed in court.

Nevertheless, Marasco offered some suggestions for keeping this kind of thing from happening in the future.

Firstly, employers can ensure that janitors only clean bathrooms of their own gender. “Mr. Martinez was unfortunately given unfettered access to multiple women’s bathrooms, and without supervision,” she said. Of course, a man or a woman could record victims of their own gender, but the risk would be lessened.

Secondly, she recommended better supervision and monitoring of workforce.

“There were some very unusual things going on with Mr. Martinez that the plaintiffs believe responsible parties turned a blind eye to. It should have struck his supervisors and others as odd that he was frequently

using a laptop when he was supposed to be maintaining and cleaning the bathrooms.”

She also said landlords should be aware of the condition of their property. “Certainly, routine inspections should have revealed the unlawful recording if my clients, who are just using the bathroom intermittently, picked up on the unusual activity.

Technology has made it easy for criminals to invade the privacy of people using public restrooms thanks to cheap hidden cameras easily purchased online.

The property manager of the building certainly should engage in practices that would have identified dangerous conditions like that.”

Marasco also went after the defendants for not checking Martinez’s references.

Marasco is a partner in Hill Wallack’s Princeton office. She is a graduate of Rutgers Law School, and also earned her undergraduate degree at Rutgers.

Cases like Friedman vs. Martinez might become more common as recording technology proliferates. Earlier in April, a bank employee in Burlington County was charged with invasion of privacy for leaving a phone in an envelope and leaving it in a stall in the women’s bathroom of Citizens Bank on

Route 70. Police said when a woman noticed it and told a manager, a suspect snatched the phone and ran. Police got a search warrant and eventually arrested him. A Citizens Bank spokesperson told reporters Tucker was “no longer with the bank.”

Technology has made it easy for criminals to invade the privacy of people using public restrooms thanks to cheap hidden cameras easily purchased online. Amazon sells hundreds of models of spy cameras that look like innocuous objects. Some are marketed as “nanny cams.” One model looks like a USB charger, another resembles a smoke detector, another, seemingly designed to go unnoticed in a bathroom environment, looks like a perfume bottle. Others are just tiny cameras that could be hidden almost anywhere.

In March, a man in Passaic County was arrested for installing a hidden camera in his shower and filming children.

In February, an Englewood janitor was arrested and charged with installing a hidden camera in a bathroom. In that case, it was another janitor who discovered the device and turned it in to police. That camera also allegedly gave the perpetrator away because its recorded footage showed him installing it — yet another person filmed when they least expected it.