

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

November 28, 2012

SANDRA DELANCEY, as Personal )  
Representative of the Estate and on )  
behalf of all survivors of KIMBERLY )  
DELANCEY, deceased, )  
 )  
Appellant, )  
 )  
v. )  
 )  
CARLTON ARMS OF MAGNOLIA )  
VALLEY, LLP, a Florida limited liability )  
limited partnership; and THE )  
MAHAFFEY APARTMENT COMPANY, )  
a Florida corporation, )  
 )  
Appellees. )  
\_\_\_\_\_ )

Case No. 2D10-5451

BY ORDER OF THE COURT:

Appellant's motion for rehearing; for rehearing en banc; and/or certification is denied. On the court's own motion, the prior opinion dated August 17, 2012, is withdrawn and the attached opinion is issued in its place. No further motions for rehearing will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A  
TRUE COPY OF THE ORIGINAL COURT ORDER.

JAMES BIRK HOLD, CLERK

IN THE DISTRICT COURT OF APPEAL  
OF FLORIDA  
SECOND DISTRICT

SANDRA DELANCEY, as Personal )  
Representative of the Estate and on )  
behalf of all survivors of KIMBERLY )  
DELANCEY, deceased, )  
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Appellant, )  
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v. )  
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CARLTON ARMS OF MAGNOLIA )  
VALLEY, LLLP, a Florida limited liability )  
limited partnership; and THE )  
MAHAFFEY APARTMENT COMPANY, )  
a Florida corporation, )  
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Appellees. )  
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Case No. 2D10-5451

Opinion filed November 28, 2012.

Appeal from the Circuit Court for Pasco  
County; W. Lowell Bray, Judge.

Barry A. Cohen and Michael W. Gaines  
of The Cohen Law Group, Tampa, for  
Appellant.

Mark D. Tinker and Charles W. Hall of  
Banker Lopez Gassler, P.A., St.  
Petersburg, for Appellee Carlton Arms  
of Magnolia Valley.

No appearance for Appellee The  
Mahaffey Apartment Company.

PER CURIAM.

Sandra Delancey, as Personal Representative of the Estate of Kimberly Delancey, appeals a final judgment entered after a jury trial in favor of Carlton Arms of Magnolia Valley and the Mahaffey Apartment Company. This case arises from the murder of Kimberly Delancey. Although the criminal case resulted in the conviction of the perpetrator, the Personal Representative sought to pursue civil liability against the owners, managers, and operators of the apartment complex where Kimberly resided. On appeal, the Personal Representative raised two issues concerning the applicability of section 768.36, Florida Statutes (2005), the alcohol defense statute.

After thoroughly reviewing the record and the arguments made in the trial court and on appeal, and notwithstanding the tragic facts of this case, we conclude that the Personal Representative has not established reversible error. See Indus. Affiliates, Ltd. v. Testa, 770 So. 2d 202, 204 (Fla. 3d DCA 2000); Coffman v. Kelly, 256 So. 2d 79, 80 (Fla. 1<sup>st</sup> DCA 1972). Accordingly, we affirm the final judgment.

Affirmed.

SILBERMAN, C.J., and CASANUEVA and KELLY, JJ., Concur.