

1997

# Monica Robles v. William L. Bolton, Janice Bolton Dent, and James E. Bolton : Reply Brief

Utah Court of Appeals

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**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO. 970627-CA

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IN THE UTAH COURT OF APPEALS

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MONICA ROBLES,	)	REPLY BRIEF OF THE APPELLANT
	)	
Plaintiff and Appellant,	)	
	)	Appellate Court No. 970627-CA
v.	)	
	)	Argument Priority
WILLIAM L. BOLTON, JANICE	)	Classification No. 15
BOLTON DENT, and JAMES E.	)	
BOLTON,	)	Appeal from the Third
	)	Judicial District Court,
Defendant and Appellee.	)	Judge Wilkinson

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**FILED**

Utah Court of Appeals

APR 15 1998

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RULES

None.

STATUTES

None.

OTHER AUTHORITIES

None.

**ARGUMENT**

**I. THE EVIDENCE ESTABLISHES THAT THE DEFENDANTS ASSUMED RESPONSIBILITY FOR THE PROPERTY.**

Defendants acknowledge that a third party who has assumed responsibility for the management of property owes a duty of care with regard thereto.

Defendants acknowledge that their mother had Alzheimers and did not manage the property, nor was she aware of what was happening with regard to the rental of the property by her children.

Defendants have not identified another third party that was responsible for the management of the property. Their statement that they were not responsible is contrary the facts which they acknowledge. Defendants acknowledge that every done with regard to the rental and maintenance of the property was done by them. No one else could have. The fact that they neglected certain maintenance is proof of negligence, not proof of non-responsibility.

At the very least, it is a question of fact for the jury, whether or not the activities of the defendants amounted to the exercise of responsibility for the management of property.

There is no legal authority for the proposition that a written contract for compensation or some other missing formality is required before a person may become responsible for the

management of property. The present case is a good example for the absurdity of such a proposition.

**II. DEFENDANTS WERE THE AGENTS OF THEIR MOTHER.**

For the first time on appeal, defendants allege that they were not the agents of their mother. Defendants argue that their mother was incapable of manifesting consent to their actions in the capacity as her agent. Therefore, defendants reason that an agency relationship could not be created.

Logic must prevail. If the defendants were not the agents of their mother, then they were illegally renting her property. In doing so, they must be held to the same standard as any other landlord. They have a duty of care with regard to the maintenance of the premises.

The only alternative conclusion is that an agency relationship was created by the actions of the parties, that defendants were the agents in acting, that their mother was the principle from whom action was taken, and that she received the benefit conferred by their actions. Her acceptance of the benefits in question constituted a manifestation of consent. Defendants did not put into evidence before the trial court anything to show that the mother was entirely unaware of general assistance being provided by her defendant children.

Again, it should also be concluded that at the very least, the existence of an agency relationship is a question of fact for the jury.

**III. DEFENDANTS SHOULD HAVE DISCOVERED  
THROUGH EXERCISE OF ORDINARY CARE THE  
DEFECTIVE CONDITION OF THE WINDOW IN QUESTION.**

A window that will not open properly may be determined to be a dangerous condition. Again, whether the condition of this window constituted a dangerous condition is a question of fact for the jury.

In Williams v. Melby, supra, 699 P.2d 723, 728, the Supreme Court stated, "If a reasonably prudent person should have known or could have learned by exercise of reasonable care, that the design or construction of the window constituted a dangerous condition, the landlord could be held liable for not taking adequate safety precautions." The Supreme Court also cited Becker v. IRM Corp., 144 Cal.App.3d 321, 192 Cal.Rptr. 570 (1983) in which, "The difference between tempered glass and untempered glass was discernable only on close inspection. The Court set aside summary judgment because the case presented a factual issue as to whether the landlord could have learned of the defective condition of the property." Id.

In the present case, the Window in Question was extremely difficult to open. It could be opened slightly and was opened slightly by tenants from time to time due to the humidity caused

by the neighboring bathroom shower. The dangerous condition of the Window in Question was apparent on the basis of a mere cursory inspection, not only because the window would not open, but because there was also splintering of the wood and chipping of paint. The dangerous condition was an obvious and patent defect, not a latent defect. Both plaintiff and her former husband Adolfo Robles provided deposition testimony and were prepared to provide further testimony. That testimony, construed in the light most favorable to plaintiffs, would have established that the Window represented a dangerous condition, and that the dangerous condition was easily discoverable upon even a cursory investigation. Further evidence consisted of expert testimony and a video tape of efforts to open the Window. However, common sense is all that a jury need possess to construe from the testimony of Monica Robles and Adolfo Robles that the Window constituted a dangerous condition.

A further relevant fact is the testimony of James Bolton and Janice Dent to their basic neglect as to the condition of the Premises. They knew very well that the home was old and not in good condition. Within the approximately three years prior to the accident, James Bolton and Janice Dent had rented to Premises to five different parties.

Had James Bolton and Janice Dent exercised ordinary care in inspecting and maintaining the Premises, they would have easily

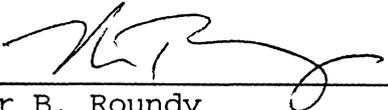
discovered the dangerous condition of the Window in Question. Had they done no more than nail the window shut, the accident to Mrs. Robles could have been prevented.

**CONCLUSION**

Construed in the light most favorable to plaintiff, James Bolton and Janice Dent were clearly negligent. The undisputed evidence alone is sufficient to establish that James Bolton and Janice Dent were the only persons managing the premises and that they owed a duty of care as a matter of law. The jury is the ultimate source to determine the facts relevant to the duty of care and its breach by defendants. Plaintiff and Appellant Monica Robles respectfully requests that this Court reverse the summary judgment granted by the Trial Court.

Respectfully submitted.

DATED this 15<sup>th</sup> day of April, 1998.

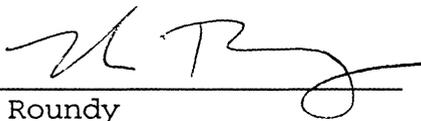
  
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I, THOR B. ROUNDY, certify that on this 12<sup>th</sup> day of April, 1998, I served two copies of the attached REPLY BRIEF OF THE APPELLANT, Appellate Court No. 970627-CA, upon counsel for the appellee in this matter by mailing it to him by first class mail with sufficient postage prepaid to the following address:

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