

1968

Jose F. Montoya v. Berthana Investment Corporation, Inc, and Robert E. Sanders and Shirley M. Sanders, Husband and Wife : Respondent's Brief

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

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JOSE F. MONTOYA,  
*Plaintiff and Appellant,*

vs.

BERTHANA INVESTMENT  
CORPORATION, INC., and  
ROBERT E. SANDERS and  
SHIRLEY M. SANDERS,  
husband and wife,  
*Defendants and Respondents.*

Case No.  
11113

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RESPONDENT'S BRIEF

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Appeal from the Order of the  
Second Judicial District Court  
for Weber County, State of Utah  
Honorable Parley E. Norseth, District Judge

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**FILED**

MAR 12 1968

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Clerk, Supreme Court, Utah

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*Defendants and Respondents.*

Case No.  
11113

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RESPONDENT'S BRIEF

The Appellant will be referred to as plaintiff and the Respondent Berthana Investment Corporation, Inc. as defendant.

STATEMENT OF THE KIND OF CASE

This is an action for wrongful death against defendant Berthana Investment Corporation, Inc., lessor of certain premises, and defendants Robert E. Sanders and Shirley M. Sanders, husband and wife, lessees.

DISPOSITION IN THE LOWER COURT

The trial court granted defendant Berthana's Motion for Summary Judgment made pursuant to

Rule 56 U.R.C.P. and dismissed plaintiff's complaint as to it (R. 23). Defendants Robert E. Sanders and Shirley M. Sanders remain in the action and are not involved in this appeal.

## RELIEF SOUGHT ON APPEAL

Defendant seeks affirmance of the trial court's ruling.

## STATEMENT OF FACTS

The general background of the case is set forth in the plaintiff's "Statement of Facts" at Page 2 through 4 of his Brief. Beginning at page 4 of his Brief, plaintiff sets forth in paragraphs numbered A through K his claims. However, since some of those claims are at variance with the uncontroverted facts as established by affidavits or sworn answer to Interrogatories, which are in the file, some discussion of the factual background and circumstances of the action is considered necessary.

Under subparagraph "C", (Appellant's Brief, page 4), it is asserted that Berthana (the lessor) would allow no alterations of the premises by the lessee without prior written consent of the lessor. The actual provision in the lease dealing with this matter is set forth in Paragraph 11 of the Lease, which is attached to Defendant's Answer to Interrogatories (R. 11), and provides:

"That the said parties of the second part (lessee Sanders) will not make or permit to be made any changes or alterations in the

building or in the electrical wiring therein without obtaining the written assent thereto of the party of the first part (Berthana)."

In subparagraph "H" (Appellant's Brief, page 5), the plaintiff states a legal conclusion as well as assuming the existence of legal duty on the part of this defendant, in claiming that Berthana knew that there was "no proper railing or other protective device to prevent skaters from falling into or being pushed against said arm rests which constituted a risk to skaters using the rink". Similarly in subparagraph "I" (Appellant's Brief, page 5), the plaintiff states: "It (Berthana) knew that Sanders (lessees) would use said premises for skating purposes before the area could be put in a reasonably safe condition and that Lessees would not make such changes." These statements assume that the premises were unsafe and that defendant Berthana recognized that they were unsafe by inferring that changes were to be made in the condition of the premises. These conclusions should be disregarded. The Lease contains all the conditions between lessor and lessee. Paragraph 5 of the Lease provides:

"That said parties of the second part accept this lease and the premises described therein in the condition and state of repair that they are now in, and agree to occupy the same in a lawful manner and for lawful purposes only; and will at their own expenses keep the said premises in all particulars in good condition and state of repair."

Subparagraph "J" (Appellant's Brief, page 5), states: "that both defendants knew, or should have known, of the hazards in the construction of said area, when used for skating purposes and of the possibility of injury to persons skating there, especially to children." These purported allegations of fact are conclusionary. There are no facts founded upon affidavit or otherwise which support these conclusions which are at variance with the terms of the Lease.

Lastly under subparagraph "K" (Appellant's Brief, page 5), the plaintiff admits that the deceased child was "pushed or fell violently" against an arm rest of a chair from which he suffered personal injury resulting in his death. The uncontroverted affidavit of Alma Clare states that he saw the deceased boy pushed hard from behind by an older girl with whom he was skating, which caused the deceased boy to go out of control. The complaint also contains claims against Robert E. Sanders and Shirley M. Sanders, co-defendant lessees, for negligently and carelessly failing to provide proper supervision and permitting skaters to be exposed to the hazards from the "speeding, rushing and jostling of other skaters", and in failing to render necessary aid to the injured boy.

## ARGUMENT

### POINT I

THE COURT DID NOT ERR IN GRANTING SUMMARY JUDGMENT IN FAVOR OF DEFENDANT BERTHANA INVESTMENT CORPORATION AND AGAINST THE PLAINTIFF.

*A. The sole cause of the injury and death of the child was the act of a third party.*

The crux of the plaintiff's claim is that the defendant as a lessor knew or should have known, that the premises were so negligently and imperfectly constructed as to be unsafe because of arm rests on seats located on an elevated platform adjacent to the skating and dancing area. The plaintiff charges this defendant with knowledge that there was "the possibility of injury to persons skating there", (Plaintiff's Amended Complaint, R. 15, Paragraph 4), and asserts that Berthana should be held responsible even though the plaintiff was pushed into the arm rest by a playmate over whom this defendant had no control or right of control.

After examining the pleadings, affidavits and answers in interrogatories, the trial court concluded that a cause of action against Berthana did not exist (R. 23).

"The primary purpose of the summary judgment procedure is to pierce the allegations of the pleadings", and show that although issues may have been raised in the pleadings, there is no genuine

issue of material fact. Where uncontroverted facts exist through affidavits or other verified pleadings, the mere reliance upon an amended complaint is insufficient because the pleadings when challenged by proof are not sufficient to raise an issue of fact. *Dupler vs. Yates*, 10 U.2d 251, 351 P.2d 624 (1960).

It is clear from the affidavits on file that the cause of the injury was not a defective structure, but the independent act of a third person. A sworn affidavit of an eye witness, Alma Clare, states that he observed a little Mexican girl, with whom the deceased was skating, "reach out and push the boy forward into the arm rest . . . he was pushed hard and out of control when he hit the chair . . . This was the first I had seen of any 'horse play' between the two children or anyone else skating on the floor." The roller rink was not crowded at the time (R. 12).

This version of the accident is not controverted, but is in fact supported by plaintiff's own statement in his answer to an interrogatory (R. 9). He states:

"The deceased son and other children were playing with each other as they skated back and forth on the floor and that during this procedure it appears that one Miss Aparicio of 1543-27th Street, Ogden, Utah, and maybe some others, collided with him some-way and he fell against one of the protruding arm rests of the bench, and as a result, he died from the injuries."

The defendant Berthana had no right under the lease to supervise the patrons of the rink. The lease provided in part as follows:

“5. The said parties of the second part accept this lease and the premises described therein in the condition and state of repair that they are now in, and agree to occupy the same in a lawful manner and for lawful purposes only; and will at their own expense keep the said premises in all particulars in good condition and state of repair.”

“6. That the party of the first part shall not be liable for any damages for failure to keep said premises in good repair and shall not be liable . . . for any damage occasioned by acts of neglect of cotenants or others, except party of the first.”

“9. To allow the party of the first part or its legal representatives free access to the premises hereby leased at all reasonable times for the purpose of examining, inspecting and exhibiting the same and to make any needed repairs or alterations of said premises that the said party of the first part may see fit to make without unnecessarily interfering with the operation of business of parties of the second part; also to allow to have placed upon said premises at all times during the last sixty days of this lease, for rent signs, and will not interfere with the same.”

The injury resulted, not from any defect in construction of the building premises, but from the intervening act of a third party. There is sufficient evidence in the record to sustain the trial court's ruling on that basis alone.

B. *Defendant Berthana breached no duty to plaintiff's decedent.*

The general common law rule concerning the liability of a lessor to patrons of a lessee, is stated in 2 *Harper and James*, Law of Torts, Sec. 2716:

“The duty of care to make or keep premises safe — where it exists at all — generally rests upon the person who has occupancy or possession of the premises. If premises are leased, the tenant is generally considered as entitled to exclusive possession of them, and therefore, alone liable to visitors for injuries caused by their dangerous condition or use . . .”

This general rule was followed in *Wilson vs. Woodruff*, 65 Utah 118, 235 Pac. 368 (1925), where the Utah Supreme Court held that a landlord was not liable for injuries sustained by the lessee due to the collapse of a wall on the premises where the defective condition was not a latent one but was open and obvious to the tenant and there were no circumstances which would otherwise have misled the tenant. In *Reams vs. Taylor*, 31 Utah 288, 87 Pac. 1089 (1906), a tenant was injured by falling into an uncovered cellar way at an apartment house. In denying recovery against the landlord the court said:

“It will, we think, not be disputed that, in the absence of deceit or misrepresentation by the landlord, the tenant will take the risk of the condition of the premises leased by him, and, if injured by reason of the unsafe con-

dition, especially when open and unconcealed, as a general rule, cannot recover against the landlord for such injury."

See also *Hatzis vs. U. S. Fuel Co.*, 82 Utah 38, 21 P.2d 862 (1933).

It is well established that the duties and liabilities of the landlord to persons on the leased premises by consent of the tenant are the same as those owed to the tenant himself. Where the tenant has no redress against the landlord, those on the premises at the tenant's invitation are likewise barred. See 32 Am. Jur. Sec. 665.

The plaintiff cites language from an annotation appearing in 123 A.L.R. 868.

That annotation refers to seven prior annotations which discuss the legal responsibility of a lessor to patrons who have come to the premises at the invitation of the lessee for amusement purposes. An exception to the general rule of caveat emptor with respect to a landlord's liability with the restriction hereafter noted, is generally recognized in relation to those who enter upon the leased premises for purposes of amusement.

"It is generally recognized that the lessor of the property for public amusement owes to the public, *at least as to latent defects*, the duty of exercising ordinary care to provide against defects in the premises which render them unsafe for the use intended." 123 A.L.R. 872 (Emphasis Added).

An examination of the cases cited in that annotation, and in the prior seven annotations, refers to cases where *latent* defects are present which result in eventual injury to a patron of a tenant. The cases cited in the annotation generally refer to latent defects in the structure of the building or device or to its state of repair. Even if a defect were found to exist in the arm of the chair in the leased premises in the present case, it was open and obvious, just as the absence of a down-spout was open and obvious to the tenant in *Wilson vs. Woodruff*, 65 Utah 118, 235 Pac. 368 (1925), discussed above, in which the court sustained a dismissal of the action.

Nevertheless, the plaintiff argues that it is a jury question as to whether or not the landlord knew, or should have known, that persons using the floor for roller skating purposes, might sustain injury if projected into the arm rest. (Appellant's Brief, page 9). He claims that the absence of a protective railing was a structural defect. However, the absence of a protective railing, even if it were found to be a structural defect, was as open and obvious to the tenant as to anyone else. Even so, under the same circumstances, it is just as logical to assume that a landlord could foresee injury to a patron of the lessee resulting from being pushed into a protective railing as to impose upon him the clairvoyance necessary to anticipate injury as a result of a patron being pushed into an arm rest. The plaintiff seeks

to impose a burden upon the lessor which the law does not recognize.

In any event, the landlord is to be judged by the test of reasonable foreseeability and not by hindsight. He is entitled to assume that the premises will be used in a reasonable way for the purposes anticipated. The lease prohibiting the lessee from making changes in the "building" did not apply to furnishings within the building. The use of the chair was discretionary with the lessee and was exclusively under his control. It did not constitute a structural defect and there is no claim that it was in any state of disrepair. The arm of the chair was only coincidentally involved. It may as well have been a wall, protective railing, another chair, a table or any other fixture or thing which happened to be in the path of the boy, who was pushed out of control.

The widely cited Utah case of *Larson vs. Calder's Park Company*, 54 Utah 325, 332, 343, 180 Pac. 599 (1919), is most helpful. In that case the defendant leased a building which he had used, and which he knew was to be used, as a shooting gallery. It was immediately adjacent to a "well beaten path" used by patrons visiting the amusement park in which the shooting gallery was located. There were wide gaps in the walls and holes were present in the building through which glancing bullets could pass. The plaintiff, while walking along the path, during a visit to the amusement park, was struck in the eye

by a glancing bullet and sustained injury. The following discussion is taken from the opinion:

“From the undisputed evidence it is manifest that by using the building which was intended for use as a shooting gallery and which was leased for that purpose, in the condition it was in when leased, the projectiles in passing from the guns would necessarily be deflected from the target through the openings in the wall of the building, and would thus *probably* come in contact with a person passing the building along the passage-way and injure him . . . It was the unsafe condition of the building as leased, however, which would expose the passer-by to danger and not the sole act of the tenant, for the reason that, *if the tenant used the building at all as a shooting gallery in the condition in which it was, the danger would certainly be constantly imminent . . .* Here the evidence is that *for years prior to the execution of the lease by appellant the shooting gallery as operated had been a dangerous nuisance.* The appellant must have known this fact. It also knew of the passage-way or path, and knew that it was used by patrons of the resort, and that every person using it was in danger from flying bullets or parts of bullets which often glance from the targets and, when not imbedded in the walls, pass through the cracks and holes therein . . . Any man of ordinary intelligence would know that tenants would probably continue its use as a shooting gallery, and under the circumstances disclosed by the evidence, it may be fairly said that a continuance of the manner in which it had been used was contem-

plated by the parties to the lease.” (Emphasis added).

The court continued:

“The weight of authority is to the effect that if an owner creates a *dangerous nuisance* on his land, he cannot avoid liability to a person injured thereby by leasing to another his land, with the nuisance thereon, especially in a case where it may be reasonably expected that the lessee will put the premises to a use that will continue the nuisance.

\* \* \*

“We agree with appellant’s counsel that as a building by itself the so-called shooting gallery was not a nuisance. As a bare building it was innocuous. When targets were placed in position and the other paraphernalia installed, it was still harmless. *It did not become an active and dangerous instrumentality until a gun was placed in the hands of a patron, and not until he fired the gun.* Then the missiles became active agents of danger, and they were dangerous then because the walls of the building had not been protected, and because the holes and cracks were permitted to be in the walls and because bullets and fragments of lead which glanced from the targets and went through openings in the walls were likely to hit and injure an innocent third party. All of this could have been foreseen by the appellant at the time the lease was executed.” (Emphasis added).

Our court has defined “dangerous” as “full of or attended with danger, risk, hazardous, perilous, full of risk, etc.” *Henrie vs. Rockey Mtn. Packing*

*Corp.*, 113 Utah 415, 418, 196 P.2d 487, 489 (1948). "Imminent" means "likely to occur at any moment; impending." *The Random House Dictionary of the English Language*, The Unabridged Ed., 1966, p. 712. Nuisance is defined in Section 76-43-1, U.C.A., 1953, as follows:

"Whatever is dangerous to human life or health, and whatever renders soil, air, water or food impure or unwholesome, are declared to be nuisances . . ."

Although this definition is contained in the criminal code the maintenance of a nuisance can give rise to a civil action, making the definition applicable to a civil case. *Dahl vs. Utah Oil Ref. Co.*, 71 Utah 1, 262 Pac. 269 (1927). However, nuisance is similarly defined in Section 78-38-1, U.C.A., 1953:

"Anything which is injurious to health, or indecent, or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, is a nuisance and the subject of an action. Such action may be brought by any person whose property is injuriously affected, or whose personal enjoyment is lessened by a nuisance; and by the judgment the nuisance may be enjoined or (abated) and damages may also be recovered."

The basis upon which liability is imposed upon a landowner for injury to a patron of his lessee is that the public policy will not permit him to maintain a dangerous nuisance, or one that is imminently dangerous, and escape responsibility by leasing

the property which contains it. As is apparent from the *Calder's Park* decision, the nuisance must be of such a nature that the landowner knows, or can be charged with knowledge, of its imminently dangerous condition, when the property is placed to the use intended. The imminently dangerous condition of the shooting gallery, considering the fact that the building which housed it had large cracks and holes through which the fragments of bullets could escape, is certainly to be contrasted with a spectator's chair elevated on a platform above the skating and dancing floor where spectators or patrons might sit in comfort and safety. There is nothing about the presence or the use of the leased premises, when used in the manner in which it was intended, which suggests them to be "imminently dangerous" or even "dangerous" in any respect. The chair was placed there for the convenience of patrons. If this furnishing is declared a "dangerous nuisance" creating a condition which made a danger "constantly imminent", as defined in *Calder's Park*, it is submitted that virtually any furnishing or fixture located in a building to which the public is invited, could readily fall into this category, because in the course of events accidents occur under circumstances which cannot be reasonably foreseen. This is especially true under circumstances where the injury is precipitated by the intervention of a third party. An automobile is not considered to be a "dangerous nuisance" nor imminently dangerous even though the

use of that agency accounts for thousand of deaths and injuries each year. If the theory of liability of the plaintiff is carried to its logical extreme by declaring an innocuous chair a nuisance, there would seem to be no limit to its extension and any agency which is involved in accidental injury to another could be condemned as a "dangerous nuisance" and the owner charged with responsibility for the injury and resulting damage.

The court in *Calder's Park* recognized the general rule of law as announced in *Reams vs. Taylor*, 31 Utah 288, 87 Pac. 1089 (1906), that a tenant, in the absence of deceit or misrepresentation by the landlord, accepts the risks of the condition of the premises as he finds them when the alleged unsafe condition is open and unconcealed. The court recognized in the *Calder's Park* case that in order for an exception to that rule to be applicable, that the condition in the premises not only must be a dangerous nuisance, but the landlord must know of it, or the circumstances must be such as to charge him with knowledge that the use of the facility in the leased condition for the intended purpose, that "danger would certainly be constantly imminent." The court appears to be speaking in terms of injury being the *probable* result of using the premises, as opposed to the mere possibility of injury. It is submitted that none of the conditions necessary to impose liability upon a landlord for injury to a patron

of a lessee, as outlined in *Calder's Park* case, are present in the one at bar.

The case of *Barrett vs. Lake Ontario Beach Co.*, 66 N.E. 969 (N.Y. 1903) cited by appellant is similar to the *Calder's Park* case. There the landlord leased a water toboggan slide in connection with a swimming facility. The patron would slide down a chute into the lake on a toboggan from a platform approximately 25 feet above the ground. The structure was made in such a way that water would accumulate on the platform and the steps. The only protective railing on the platform was 21" high. The landlord was held liable for injury to a patron who slipped on the wet surface and fell from the platform. The nature of the activity as in the Utah case was surrounded with risk.

In the *Gibson vs. Shelby County Fair* case, 44 N.W. 2d 362, 364 (Iowa 1950), also cited by appellant, a 17 year old boy was injured while watching a hotrod race. He was standing near the race track where patrons were invited to be when he was struck by a wheel which became detached from a racing car. The track was under lease for the purpose of racing but was designed for harness racing. The only protective barrier was a delapidated web wire fence, which was satisfactory for horse racing but was wholly inadequate to prevent injury, which could have been reasonably foreseen, from racing

automobiles. The court held the exception was applicable:

“When premises are leased for a public use the owner is charged with liability if a member of the public, rightfully on the premises, is injured because of a defective or dangerous condition that was known to the lessor or by reasonable inspection might have been known at the time of leasing.” (Citing *Larson vs. Calder’s Park Co.*, case, 54 Utah 325, 180 Pac. 599).

\* \* \*

“The word ‘defective’ in the rule means construction that is unfit for the leased use, as well as a state of disrepair.”

The case dealt with a defective structure as determined in light of the hazards contemplated in the activity to be carried on in the leased premises. The track was built for harness racing. There is certainly a substantially greater risk involved to patrons watching hotrod racing from the unprotected sidelines, than when watching harness races from the same position. In that case, as in the *Calder’s Park* case, upon which the court relied, the patron was injured as a direct result of being unprotected from the hazards necessarily involved in the contemplated activity of the lessee, and not as a result of an act of a fellow patron as in the case at bar.

In *Hamilton vs. Union Oil Company*, 339 P.2d 440 (Ore., 1959), the plaintiff sued the lessor company and the lessee for injury resulting when she

fell because of claimed defective construction of steps within the building to which she was invited, and where she was present for the purpose of paying a bill. The court sustained an involuntary nonsuit against the Union Oil Company, lessor. The court distinguished that case from *Larson vs. Calder's Park Company*, 54 Utah 325, 180 Pac. 599 (1919), in observing:

“ ‘This is not a case of an incipient nuisance’ . . . the governing principle is as stated by Crompton, J., in *Grandy vs. Juber*, 5 Best and S. 73, 485, quoted with approval in *Lewis vs. Jakes' Famous Crawfish*, 143 Ore. 340, 346, 336 P.2d 352:

‘ . . . But to bring liability home to the owner the nuisance must be one which is in its very essence and nature a nuisance at the time of the letting and not merely something which is capable of being thereafter rendered a nuisance by the tenant . . . ’

“Similarly the court said in *Whalen vs. Shivek*, 326 Mass. 142, 32 N.E. 2d 393, 32 Am. Jur. 537, *Landlord and Tenant*, Section 669:

‘ . . . If the premises can be used by the tenant in the manner intended by the landlord, either as shown by the construction of the premises or by the terms of the lease, or by other evidence, without becoming a nuisance, the landlord is not liable for the acts or neglect of the acts of the tenant which creates the nuisance. If a tenant creates the nuisance without authority of the land-

lord and after he has entered into occupation as a tenant, the landlord is not liable'."

The lease indicates that dancing and roller skating could be carried on in the premises. There is no suggestion from any source, not even in counsel's argument, that the use of the premises for a rolling skating rink would create a "dangerous nuisance". The only hazard which was present was that necessarily incurred by engaging in roller skating. If there was lack of supervision, such was the sole responsibility of the lessee.

Similar cases to the one at hand have repeatedly denied recovery to a patron. See *Randall vs. Pioneer Hotel*, 71 Ariz. 10, 222 P.2d 986 (1950), where a patron fell on a public dance floor, and *Maglin vs. Peoples' City Bank*, 141 Pa. Supp. 329, 14 A.2d 827 (1940), which denied recovery for injury to a patron because of the collapse of a board in the floor of a public bathhouse. The court also denied application of the Restatement of Torts, Sec. 359 (also cited by plaintiff) because there were not large numbers of persons admitted to the bathhouse. In the present case there was not a large crowd at the time of the accident (R. 12 Affidavit of Alma Clare). See also *Sand vs. Theriot*, 49 S.2d 484 (La. 1950) and *Jackson vs. Public Service Co.*, 86 N.H. 81, 163 A. 504 (1932), wherein the right of a patron to recover from the lessor for injuries sustained while on the premises at the invitation of lessee was denied.

## CONCLUSION

We need not look beyond established and long standing Utah precedent to resolve the issues presented in this case. *Reams vs. Taylor*, 31 Utah 288, 87 Pac. 1089 (1906), announced the rule that in the absence of deceit or misrepresentation by the landlord, the tenant accepts the risk of the condition of the premises, and, if injury results because of an unsafe condition, especially one which is open and unconcealed, there can be no recovery against the landlord. This rule of law was followed in *Wilson vs. Woodruff*, 65 Utah 118, 235 Pac. 368 (1925). *Larsen vs. Calder's Park Company*, 54 Utah 325, 180 Pac. 599 (1919), recognized a limited exception to the general rule under circumstances where the landlord "creates a dangerous nuisance" on his land which has characteristics such that danger is "constantly imminent", and he knows, or is charged with knowledge, that the nuisance is to be continued by the lessees and injury to a patron probable the then liability for injury resulting to a patron of lessee can be extended to include the lessor. The opinion seems to imply that the landlord must be able to reasonably foresee that the contemplated use would result in probable injury to a innocent person. Plaintiff suggests that there was only a "possibility" of injury (R. 15, para 4). Since the premises were not such as to constitute a "dangerous nuisance" the rule in *Reams & Wilson* applies, and any defect, even if the arm chair were considered to be such, was open and obvious. However, there is no

indication that the arm chair was in any way unsafe. It was located on a platform off the skating floor. Certainly it did not constitute a "dangerous nuisance" which could be found to present a "constantly imminent" danger which would result in probable injury to patrons of the facility.

It is submitted that the pleadings, admissions and affidavits on file show that there is no genuine issue as to any material fact on matters necessary to determine as a matter of law that plaintiff is not entitled to recover from the defendant Berthana, as lessor, because defendant breached no duty to plaintiff's decedent, and secondly, the accident resulting in the Montoya child's injury and death, as unfortunate as it was, resulted solely from the act of another patron.

Respectfully submitted,

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### CERTIFICATE OF SERVICE

I certify that three (3) copies of the foregoing brief were served upon counsel for the plaintiff by mailing the same, postage prepaid, to R. Blaine Peterson and P. LeRoy Nelson, 512 Eccles Building, Ogden, Utah, this ..... day of March, 1968

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MERLIN R. LYBBERT