

1968

Venus Tripp v. Granite Holding Company and Douglas Optical Company : Brief of Plaintiff- Respondent

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IN THE SUPREME COURT
OF THE STATE OF UTAH

VENUS TRIPP,
Plaintiff and Appellant,

vs.

No. 11304

GRANITE HOLDING COMPANY
and DOUGLAS OPTICAL COMPANY
Defendants and Respondents.

BRIEF OF PLAINTIFF-RESPONDENT

STATEMENT OF THE KIND OF CASE

This is an action for damages for personal injuries to a business invitee with impaired mobility, a condition known to the Defendants, suffered by a fall due to defective sidewalk in the inevitable course of ingress or egress to the entrance of Defendants' premises.

DISPOSITION IN LOWERCOURT

The matter was heard on Defendants' motion for Summary Judgment. From an order granting Defendants' motion for Summary Judgment, plaintiff appeals.

RELIEF SOUGHT ON APPEAL

Plaintiff seeks reversal of the order and an order of this Court remanding the matter for trial on the issues as presented in Plaintiff's complaint.

STATEMENT OF FACTS

Plaintiff, an elderly lady, with impaired vision and a victim of a stroke, was attracted to Defendants' place of business on the southwest corner of 21st South and Highland Drive in Salt Lake City, Utah, by its extensive television

advertising, which uses primarily as its sales pitch, price as well as quality. Appellant was driven to the location of the Respondent, Douglas Optical Company, who is the lessee of Respondent, Granite Holding Company. Appellant required the support of her companion in entering the premises of the Douglas Optical Company, where she was fitted for glasses and paid for them.

On leaving the premises, still supported by her companion, Appellant tripped on a hole in the sidewalk, the said hole being in an inevitable course to and from the store. The condition of the deteriorated sidewalk was of long standing, and so known to both parties,

Respondent .

ARGUMENT

POINT I. THERE IS NO DISAGREEMENT BETWEEN PARTIES, APPELLANT AND RESPONDENT, AS TO THE LAW DEFINING THE DEGREE OF CARE REQUIRED OF A BUSINESS INVITOR TO BE EXTENDED TO HIS BUSINESS INVITEE, OR IN DEFINING THE PREMISES AND THE PHYSICAL EXTENT THEREOF, IN WHICH THE BUSINESS INVITOR MUST EXERCISE HIS RESPONSIBILITY OF CARE.

In *De Weese vs. J.C. Penney Co.*, 5 U2d 116; 297 P2d 898, the Court declared:

"In action against storeowner for injuries sustained by a customer when she fell in entrance of store, it would have not been proper to use procedure of any particular individual or of another store, either

generally, or in connection with particular storm which was in progress when plaintiff was injured, as the standard of care upon which to determine whether defendant store was negligent."

The facts of the De Weese case indicated that the customer fell in the entrance of the store, and no issue was made regarding the entrance being in the area of business invitor responsibility, if any.

POINT II. THE LAW AS IT PERTAINS TO PEDESTRIAN-SIDEWALK CASES IS NOT IN ISSUE.

If there is any responsibility in the lessor and the lessee operator, it derives from the business invitor-invitee relationship, since the law as it pertains

to pedestrians per se would involve municipal liability only. It would be in error to confuse the principle involved here with the ordinary rights of a pedestrian injured on a defective sidewalk.

Your petitioner seeks sharply to draw the distinction between the rights of pedestrians and the rights of business invitees. He particularly pushes the concept to the Court, that in its enlightenment the Court declare for a doctrine, that under certain extraordinary circumstances, the doctrine of premises be dealt with and extended to include the area of sidewalk immediately adjacent, and contemplated as inevitably to be used for ingress and egress to and from the premises of the business invitor.

POINT III. A BUSINESS INVITOR, BY APPEALING THROUGH MASS COMMUNICATION MEDIA TO PERSONS WITH A SPECIFIC PHYSICAL HANDICAP MAY EXTEND THE DOCTRINE OF PREMISES BEYOND THE THRESHOLD OF HIS BUSINESS ESTABLISHMENT TO INCLUDE INEVITABLE AVENUES OF ENTRANCE AND EXIT.

It is for this Court to determine whether, as in the instant case, a business invitor can appeal to a specific area of handicap, primarily among a limited income group through extensive communication media and ignore the hazards to which such handicapped invitee may be subjected, the very hazards increasing the probability of injury which may foreseeably result from the nature of

the handicap itself.

POINT IV. LAW EVOLVES DAILY FROM THE CURRENTLY ACCUMULATED EXPERIENCE OF MAN AND MAY DISCARD ARCHAIC LAW IN FAVOR OF PRINCIPLE FITTING THE ETHICS AND CONCEPTS OF THE DAY.

Special circumstances contemplated by the parties should enlarge the area of reciprocal responsibilities and privileges to be enjoyed by each, the business invitor and the business invitee.

In a case not directly in point, an enlightened Court destroyed the archaic distinction between guests, employees, invitees and other persons on the premises in the determination

of an owner's liability to persons injured and degrees of duty incumbent on such an owner.

In *Levine vs. Katz* Fed. 2d (D.C. Cir.), on May 14, 1968, in a concurring opinion, Chief Judge Bazelon acutely stated:

"The rule developed in cases cited by the majority is often explained on the theoretical basis that all persons lawfully on the premises are the landlord's invitees. But in my view, our decision does not depend upon adherence to outmoded 'invitees licensee-trespasser trinity.'"

He then urged that this old tripartite classification of entrants onto land should be cast into the boneyard of discredited common-law errors, on

the convincing ground that this archaic triadic "common law classification and their progeny of sub-classifications are discordant with the realities of modern living."

Judge Bazelon then concluded that

"The landlord's duty to entrants upon common use areas is better expressed in terms of due care under all the circumstances."

In keeping with this philosophy of viable law, is the extension of the doctrine of implied warranty recently expressed in suits against automobile manufacturers, tobacco companies, and soft drink distributors, from the rather narrow interpretation of liability only in the seller. The archaic principle

of privity seems now to be obsolescent.

There is further the extension of the doctrine of negligence in the areas previously immune by virtue either of the charitable, eleemosynary, or public character of the institution involved.

Respectfully submitted,

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