

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
VIRGINIA

Blackwell v. Abercrombie & Fitch Stores, Inc.

3 F. Supp. 3d 545 (2014) · Decided March 3, 2014

SUMMARY

The court denied Abercrombie & Fitch Stores, Inc.’s motion to dismiss a negligence claim arising from the sexual assault of a minor customer by an intoxicated man in an Abercrombie dressing room. Applying Virginia law, the court held that allegations that employees observed, suspected, and then lost sight of a suspicious intoxicated visitor approaching a poorly secured dressing-room area plausibly established an imminent probability of harm.

CASE DETAILS

COURT	United States District Court for the Western District of Virginia
WRITING FOR THE COURT	Samuel G. Wilson
JURISDICTION	Virginia
DECIDED	March 3, 2014
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss the amended negligence complaint under Federal Rule of Civil Procedure 12(b)(6).
STANDARD OF REVIEW	On a Rule 12(b)(6) motion, the court accepts well-pleaded factual allegations as true, draws all reasonable inferences in the plaintiff’s favor, and determines whether the complaint states a plausible claim for relief; it does not resolve competing factual inferences or determine what a jury may ultimately find.
PRECEDENTIAL VALUE	Published federal district court opinion applying Virginia law; persuasive authority within the district and not binding on the Supreme Court of Virginia or the Fourth Circuit.

TOPICS

premises liability negligence duty of care motions to dismiss civil procedure

PRACTICE AREAS

negligence premises liability civil procedure

QUESTIONS PRESENTED

1. Whether the amended complaint plausibly alleged that Abercrombie had a duty under Virginia law to warn and protect Blackwell from Sink's criminal act because its employees had notice of an imminent probability of harm.
2. Whether the amended complaint stated a negligence claim sufficient to survive Abercrombie's Rule 12(b)(6) motion.

HOLDINGS

1. The amended complaint plausibly alleged an imminent probability of injury because Abercrombie's employees knew of a specific, unabated danger posed by Sink immediately before the assault.
2. The amended complaint stated a plausible claim for relief, and Abercrombie's motion to dismiss was denied.

KEY QUOTATIONS

“Importantly, the Supreme Court of Virginia has recently reaffirmed that in the case of a business owner/invitee relationship, like here, a duty to warn of third party criminal acts arises “only where there [is] ‘an imminent probability of injury’ from a third party criminal act.”” (547)

“These factual circumstances and the reasonable inferences that can be drawn from them establish an imminent probability of harm that was known to Abercrombie’s employees.” (547)

FACTUAL BACKGROUND

While shopping at Abercrombie, Blackwell, a minor girl, was escorted by an employee to a poorly lit dressing-room area where the dressing-room lock was broken. Two employees observed Ryan Sink, an apparently intoxicated and suspicious man whom they described as "kind of sketchy" and "acting very shady," and suspected he might steal merchandise. The employees lost sight of Sink after seeing him head toward the dressing-room area without merchandise or an apparent legitimate purpose, and Sink then forcibly entered Blackwell's dressing room and sexually assaulted her.

PROCEDURAL HISTORY

Blackwell's original complaint was dismissed because it did not allege facts showing that Abercrombie's employees had reason to suspect an intoxicated visitor posed an imminent threat of harm. The court granted leave to amend. After Blackwell filed an amended complaint alleging that employees viewed the suspicious visitor heading toward the dressing-room area without an apparent legitimate purpose and then lost sight of him, Abercrombie again moved to dismiss. The court denied the motion.

DISPOSITION

other

CASES CITED

- Commonwealth v. Peterson, 286 Va. 849, 749 S.E.2d 307 (2013)
- Thompson v. Skate America, Inc., 261 Va. 121, 128-29, 540 S.E.2d 123 (2001)
- Kensington Volunteer Fire Department, Inc. v. Montgomery County, Md., 684 F.3d 462, 467 (4th Cir. 2012)
- Bell Atl. Corp. v. Twombly, 550 U.S. 544, 556 (2007)
- Blackwell v. Abercrombie & Fitch Stores, Inc., 2013 WL 6145113

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