

SUPREME COURT OF VIRGINIA

Taboada v. Daly Seven, Inc.

641 S.E.2d 68 (Va. 2007) · No. Record No. 051094 · Decided March 2, 2007

SUMMARY

The Supreme Court of Virginia, on rehearing, declined to set aside its prior judgment in favor of Ryan Taboada. The Court affirmed the trial court's sustaining of the demurrer to Taboada's claim under Code § 35.1-28, reversed the demurrer ruling on his common-law negligence claim, and remanded for trial on that claim. Justice Agee, joined by Justice Kinser, concurred in part and dissented in part, arguing that the hotel owed no duty to protect Taboada from the third party's criminal assault.

CASE DETAILS

COURT	Supreme Court of Virginia
JURISDICTION	Virginia
DECIDED	March 2, 2007
DOCKET	Record No. 051094
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Daly Seven petitioned for rehearing of the Supreme Court of Virginia's prior decision reversing in part the trial court's sustaining of Daly Seven's demurrer. On rehearing, the court declined to set aside its prior judgment, affirmed the demurrer as to Taboada's claim under Code § 35.1-28, reversed the demurrer as to his common-law negligence claim, and remanded for trial.
STANDARD OF REVIEW	Review of the trial court's ruling sustaining a demurrer; the court accepts well-pleaded factual allegations as true and determines whether they state a legally cognizable claim.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Ryan Taboada v. Daly Seven, Inc.

TOPICS

- premises liability
- duty of care
- negligence
- pleadings
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the Supreme Court should set aside its prior judgment on rehearing.
2. Whether Taboada's claim under Code § 35.1-28 survived Daly Seven's demurrer.
3. Whether Taboada stated a cognizable common-law negligence claim against Daly Seven based on the innkeeper-guest relationship and injuries caused by a third party's criminal conduct.

HOLDINGS

1. The court declined to set aside its prior judgment.
2. The trial court's judgment sustaining the demurrer to Taboada's claim under Code § 35.1-28 was affirmed.
3. The trial court erred in sustaining the demurrer to Taboada's common-law claim; that claim was reinstated and remanded for trial on the merits.

KEY QUOTATIONS

“the judgment of this Court should not be set aside” (641 S.E.2d at 68)

“remand the case for a trial on the merits of that claim” (641 S.E.2d at 68)

“common carriers should be held responsible to a passenger for injuries received at the hands of an intruder, a stranger, or a fellow-passenger only in those cases where its agents or employees knew, or, in light of surrounding circumstances, ought to have known, that danger was threatened, or to be apprehended, and then failed to use their authority and power to protect him from the impending peril.” (641 S.E.2d at 72)

FACTUAL BACKGROUND

Taboada was a registered guest of Daly Seven when he was injured by the criminal conduct of Derrick Smith. He alleged that Daly Seven owed him a duty to protect him from the third party's criminal acts. The circuit court sustained Daly Seven's demurrer to both the statutory claim under Code § 35.1-28 and the common-law claim.

PROCEDURAL HISTORY

The circuit court sustained Daly Seven's demurrer to Taboada's amended motion for judgment. The Supreme Court previously reversed in part and remanded, and Daly Seven sought rehearing. The court granted rehearing under Rule 5:39(e) without setting aside its prior judgment, then reaffirmed the prior disposition.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Affirm the demurrer to the claim under Code § 35.1-28, reverse the demurrer to the common-law claim, and remand the common-law claim to the circuit court for trial on the merits.

CASES CITED

- *Taboada v. Daly Seven, Inc.*, 271 Va. 313, 626 S.E.2d 428 (2006)
- *Taboada v. Daly Seven, Inc.*, 272 Va. 211, 636 S.E.2d 889 (2006)
- *Wright v. Webb*, 234 Va. 527, 362 S.E.2d 919 (1987)
- *Yuzefovsky v. St. John's Wood Apartments*, 261 Va. 97, 540 S.E.2d 134 (2001)
- *Thompson v. Skate America, Inc.*, 261 Va. 121, 540 S.E.2d 123 (2001)
- *Burns v. Johnson*, 250 Va. 41, 458 S.E.2d 448 (1995)
- *Gupton v. Quicke*, 247 Va. 362, 442 S.E.2d 658 (1994)
- *Dudas v. Glenwood Golf Club, Inc.*, 261 Va. 133, 540 S.E.2d 129 (2001)
- *A.H. v. Rockingham Publishing Co.*, 255 Va. 216, 495 S.E.2d 482 (1998)
- *Connell v. Chesapeake & Ohio Ry. Co.*, 93 Va. 44, 24 S.E. 467 (1896)
- *Hines v. Garrett*, 131 Va. 125, 108 S.E. 690 (1921)
- *Norfolk & Western Railway Co. v. Birchfield*, 105 Va. 809, 54 S.E. 879 (1906)
- *Virginia Railway & Power Co. v. McDemmick*, 117 Va. 862, 86 S.E. 744 (1915)
- *Crosswhite v. Shelby Operating Corp.*, 182 Va. 713, 30 S.E.2d 673 (1944)