

SAMPLE BRIEF

CRJ002

Fisher v. Carousel Motor Hotel, 424 S.W.2d 627 (1967)

FACTS:

Plaintiff Fisher, an African-American, was attending a business meeting at Defendant Carousel. At a lunch break, Plaintiff was standing in a lunch line when Flynn, a manager of Carousel, snatched Plaintiff's plate from his hands (Flynn did not actually touch Plaintiff) and, in front of a group of people, loudly told Plaintiff he would not be served.

Plaintiff brought a civil action against Flynn and his employer seeking actual and exemplary damages for the alleged assault and battery. At the trial, the Plaintiff testified he was not fearful of a physical injury, nor indeed was he actually touched; however, Plaintiff claimed he suffered humiliation.

Jury awarded Plaintiff \$400 for actual damages for the indignity and \$500 for Flynn's malicious conduct. The trial court reversed the jury finding and the Texas Appellate Court affirmed this decision. Plaintiff appealed.

ISSUE:

Whether a battery was committed by Flynn when he grabbed the plate and, if so, whether Plaintiff is entitled to damages from Carousel for Flynn's conduct.

RULE:

To constitute a battery, it is not necessary to touch Plaintiff's body or

even put him in fear; knocking or grabbing something connected with Plaintiff's person, in an offensive way, is enough to permit recovery for mental suffering and, if the battery is done by a management employee acting within the scope of his employment, the employer may be liable for exemplary damages.

ANALYSIS:

Since the tort of battery is designed to protect a person from intentional and impermissible contacts of his/her person, it makes sense that the tort should include contacts with objects held by the person, also. Essentially, either direct or indirect contact represents an unwanted trespass on the person. Damages are proper, even when no actual physical harm is done, since the invasion may produce humiliation and/or embarrassment. In this case, Plaintiff was not touched or injured but is entitled to actual damages because Flynn's intentional conduct violated Plaintiff's person and dignity.

Furthermore, since Flynn was a manager of Carousel at the time and acting within his scope of employment, Carousel must pay for his malicious act and wanton disregard of Plaintiff's feelings. While Carousel may not have authorized, approved or ratified Flynn's battery, the law is clear that a master (Carousel) is liable for punitive damages if the principal (Flynn) is a manager committing a battery while on duty.

CONCLUSION:

The judgments of the courts below are reversed and the jury verdict is upheld.
