

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

CLIFFORD CRUM,

Appellant,

v.

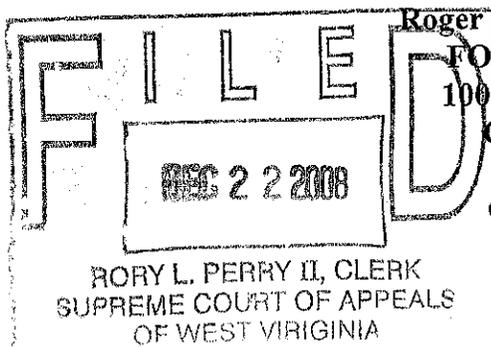
Appeal No. 080848

(Raleigh Co. Civil Action No. 05-C-296-B)

EQUITY INNS, INC., d/b/a THE HAMPTON INN;
VIM, INC; TRAVELERS PROPERTY CASUALTY INSURANCE
COMPANY; CONSTRUCTION CONCEPTS, INC.,
BECKLEY HOTEL LIMITED PARTNERSHIP, A WEST
VIRGINIA PARTNERSHIP; and JOHN DOE,

Appellee.

REPLY BRIEF



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ISSUES

- I. It defies all logic to conclude, as do appellees and the lower court, that Mr. Crum was without recourse when the light fixture in the Hampton Inn in Beckley fell on his head and injured him.
- II. The common law of West Virginia makes an innkeeper responsible for injuries which occur to a guest.

POINTS AND AUTHORITIES

Shifflette v. Lilly, 43 S.E.2d 289 (W.Va. 1947) 2, 3, 4

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ARGUMENT

- I. **It defies all logic to conclude, as do appellees and the lower court, that Mr. Crum was without recourse when the light fixture in the Hampton Inn in Beckley fell on his head and injured him.**

Judge Burnside’s Order granting Summary Judgment to Equity Inns should be reversed. Said decision is illogical and wrong. The hotel wherein Mr. Crum was injured should indeed be held culpable under the principles of Res Ipsa Loquitur. There are indeed jury issues and inferences which lead to jury issues which have not yet been addressed and cannot be resolved as a matter of law. Instead, there was a hurried and premature decision which placed an inappropriate burden on Mr. Crum to chase down unknown decorators and out of state - out of business corporations.

The fact that an expert has come up with an answer which pins negligence on someone else is not enough to justify the granting of summary judgment in this case. The report of Mr. Guffey does not obliterate the positive inferences which could indeed lead a jury to conclude that Equity Inns had a roles in causing Mr. Crum’s injury during the almost 10 years during which

they owned the hotel, through their admitted routine maintenance of the facility including cleaning the fixture and changing its bulbs. A jury could clearly conclude that something other than faulty installation caused the fixture to fall when it did.

This Court, under the circumstances which are presented in this case should rule that res ipsa loquitur applies and that if defendant Equity Inns seeks to present an explanation that another party is responsible, that the must bring this party to Court and/or make their arguments to a jury.

Mr. Crum was definitely injured in the Hampton Inn in Beckley. He is not at fault for causing his injuries. The hotel is indeed responsible for his safety and should not have been absolved by summary judgment.

II. The common law of West Virginia makes an innkeeper responsible for injuries which occur to a guest.

In West Virginia, the common law, as interpreted by this Court in Shifflette v. Lilly, 43 S.E.2d 289 (W.Va. 1947) is that an innkeeper is liable for injury to a guest's person.

Shifflette, supra, is a case of first impression, wherein this Court answered a certified question regarding the impact of W.Va. Code § 16-6-22 on the common law doctrine of innkeeper liability.

The syllabus point as enunciated in Shifflette is:

“Notwithstanding Code, 16-6-22, the common law doctrine of liability of an innkeeper for loss of or damage to the property of a guest, or for injury to his person, remains in force, and applies to the keeper of a hotel or restaurant in this State; and said statute, properly construed, relieves from, or limits, the right of recovery of a guest, only where such innkeeper, hotel or restaurant keeper affirmatively shows that he has met the requirements of said statute.”

The requirements of the statute, W.Va. Code § 16-6-22, are:

“§ 16-6-22. Liability of hotel or restaurant keeper for loss of property; deposit of valuables.

It shall be the duty of the keepers of hotels and restaurants to exercise due care and diligence in providing honest servants and employees, and to take every reasonable precaution to protect the persons and property of their guests and boarders, but no such keeper of any hotel or restaurant shall be held liable in a greater sum than two hundred and fifty dollars for the loss of any wearing apparel, baggage or other property, not hereinafter mentioned, belonging to a guest or boarder, when such loss takes place from the room or rooms occupied by said guest or boarder; and no keeper of a hotel or restaurant shall be held liable for any loss on the part of any guest or boarder of jewelry, money or other valuables of like nature, provided such keeper shall have posted in a conspicuous place in the room or rooms occupied by such guest or boarder, and in the hotel office and public reception room of such hotel or restaurant, a notice stating that jewelry, money and other valuables of like nature must be deposited in the office of such hotel (or restaurant), unless such loss shall take place from such office after such deposit.”

The common law rule as enunciated in Shifflette is applicable because West Virginia Constitution Article III § 13 adopts the common law and provides that it remains in effect until altered by the legislature. There has been no such alteration as to the liability for injuries to guests as established in the common law.

The common law as interpreted by this Court in Shifflette was one of absolute or strict liability for injuries to hotel or motel guests. Said common law has not been abrogated by Code § 16-6-22, as said section only relates to loss of property.

The common law rule as to personal injuries makes sense as it applies to this case. While the issue in Shifflette was about personal property, the Court also discusses the common law as

to the person of the guest wherein it states:

“It seems to be conceded that prior the enactment of Chapter 48, Acts of the Legislature, 1899, the liability of an innkeeper for the loss of property of a guest, while the relationship of innkeeper and guest continued, was, in effect, absolute. This strict rule of liability had its origin at a very early date, here being decision in England supporting the doctrine as early as 1368. Some of the reasons advanced for the doctrine are interesting. In *Aria v. Bridge House Hotel*, 16 B.R.C. 538, decided in 1927, it is stated: “The law has been framed for hundreds of years that the innkeeper is liable for the safe custody of goods which come into his hands on his premises which are goods belonging to the guest and the reason of the rule is obvious. In the old days when inns were remote from the towns, and when highwaymen were rampant, it was not an uncommon thing for highwaymen and innkeepers to be in league together, and it was realized a very early stage in our existence that the only safe thing for the general public was that the innkeeper should be responsible for the **safety of his guest and his guest’s goods** (emphasis added). That law still remains. There are exceptions which have been made, notably by the Innkeepers Act 1863.” Probably most of the original reasons for the rule no longer exist; but, in the absence of statute requiring departure therefrom, it is still the law. For a further discussion of the common law doctrine see 2 Kent’s Commentaries, 592-594; 2 Street’s Foundations of Legal Liability, 294; Beale on Innkeepers and Hotels, 126.” *Shifflette v. Lilly*, 130 W.Va. 297, 300 (1947)

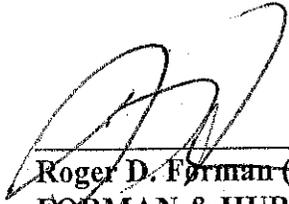
This strict or absolute liability has not been abrogated as to the personal safety of the guest remains unchanged by statute. It was therefore clearly error for the court to grant summary judgment. Only the legislature, not the courts, can alter the common law, see Cunningham v. Dorsey, 3 W.Va. 293, and it has not been changed in West Virginia.

CONCLUSION

The decision granting summary judgment to Equity Inns, Inc. is legally incorrect and should be reversed.

Appellant respectfully request the privilege of orally arguing this case before the Court.

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By counsel



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CERTIFICATE OF SERVICE

I, Roger D. Forman, counsel for the Appellant do hereby certify that service of the foregoing Reply Brief has been made this 19th day of December, 2008, by first class mail, postage prepaid, to the following:

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