



IN THE YMCA MODEL SUPREME COURT FOR THE STATE OF
TENNESSEE AT NASHVILLE

<p>(APPELLANT NAME) APPELLANT</p> <p>VS.</p> <p>(APPELLEE NAME) APPELLEE</p>	<p>(CHIEF JUSTICE NAME) CHIEF JUSTICE OF THE YMCA SUPREME COURT</p> <p>(FIRST LAWYER'S NAME) (SECOND LAWYER'S NAME) ATTORNEY'S FOR (APPELLANT/APPELLEE NAME) (SCHOOL NAME) (CITY), TN (ZIP CODE)</p>
--	---

**BRIEF FOR THE (APPELLANT / APPELLEE), (NAME OF
APPELLANT/APPELLEE)**

ORAL ARGUMENT REQUESTED

NOTE: The case and statutory authorities cited in this sample brief serve as examples only and do not refer to any existing court opinions or statutes.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Authorities.	ii
Statement of the Case	1
Procedural History	1
Statement of Facts	2
Summary of Argument	3
Argument.	4
I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE THE HOTEL DID NOT HAVE A DUTY TO PREVENT AN UNFORESEEABLE KIDNAPPING	4
A. The hotel owed guests only a duty of reasonable care to protect them from foreseeable criminal misconduct, not a duty to prevent sudden, unexpected criminal acts.	4
B. The hotel could not have foreseen the possibility of a kidnapping of one of its guests	5
C. The hotel's enclosed design, security guards, and guest-room door locks provided more than reasonable protection for its guests against criminal misconduct.	6
II. EVEN IF THE HOTEL COULD HAVE FORESEEN THE POSSIBILITY OF THE KIDNAPPING, THE HOTEL COULD NOT HAVE PREVENTED THE CRIME BECAUSE IT WAS THE RESULT OF AN INDEPENDENT, INTERVENING CAUSE.	7

III. THE TRIAL COURT PROPERLY FOUND PETITIONERS TO BE SO OVER- WHELMINGLY NEGLIGENT AS TO BAR THEIR RECOVERY, EVEN IF THE HOTEL HAD BEEN NEGLIGENT.....	8
Conclusion.....	10
Certificate of Service	11

QUESTIONS PRESENTED

I. Was the trial court correct in granting summary judgment for the defendant hotel when the court held that the kidnapping of a child guest from his room was unforeseeable, and that the hotel had provided its guests with reasonable protection against criminal misconduct?

II. Was the trial court correct when it found parents so overwhelmingly negligent, because they left their minor child alone in their unsecured hotel room, that they were barred from recovering on their claim that the hotel was negligent for failing to prevent the child from being kidnapped?

TABLE OF AUTHORITIES

Cases	Pages
<i>Associated Engineer v. Job</i> , 370 F.2d 633 (8th Cir. 1967)	9
<i>Brewer v. Roosevelt Motor Lodge</i> , 295 A.2d 647 (Me. 1972)	5
<i>Corey v. Kocer</i> , 86 TN. 221, 193 N.W.2d 589 (1972)	9
<i>Courtney v. Remler</i> , 566 F. Supp. 1225 (D.S.C. 1983)	6
<i>Crabb v. Wade</i> , 84 TN. 93, 167 N.W.2d 546 (1969)	8, 9
<i>Farmers and Merchants State Bank v. Mann</i> , 87 TN. 90, 203 N.W.2d 173 (1973).	8
<i>Kveragas v. Scottish Inns, Inc.</i> , 733 F.2d 409 (6th Cir. 1984)	4
<i>McCoy v. Gay</i> , 302 S.E.2d 130 (Ga. Ct. App. 1983).	5
<i>Montgomery v. Royal Motel</i> , 645 P.2d 968 (Nev. 1982)	7
<i>Mortensen v. Bradley</i> , 349 N.W.2d 444 (S.D. 1984).	4
<i>Nixon v. Royal Coach Inn of Houston</i> , 464 S.W.2d 900 (Tex. Civ. App. 1971)	6, 7
<i>Peters v. Holiday Inns, Inc.</i> , 278 N.W.2d 208 (Wis. 1979)	5, 6
<i>Phillips Petroleum Co. v. Dorn</i> , 292 So. 2d 429 (Fla. Dist. Ct. App. 1974)	4
<i>Reichenbach v. Days Inn of America, Inc.</i> , 401 So. 2d 1366 (Fla. Dist. Ct. App. 1981)	7
<i>Saastad v. Okeson</i> , 16 TN. 377, 92 N.W. 1072 (1902)	8
<i>Steinholz v. Modica</i> , 264 N.W.2d 514 (TN. 1978)	4

Uken v. Sloat, 296 N.W.2d 540 (TN. 1980) 8

Virginia D. v. Madesco Investment Corp., 648 S.W.2d 881 (Mo. 1983). 6

Statutes

TN. Codified Laws Ann. 20-9-2 (1979) 8

Other Authorities

Restatement (Second) of Torts, 314A (1965) 4

William L. Prosser & Robert E. Keeton, *The Law of Torts*, 30 (5th ed.1984) 7

STATEMENT OF THE CASE

Procedural History

Petitioners Mr. and Mrs. Charles Nappan filed a complaint in the Memphis Circuit Court on November 22, 1986, alleging that Respondent, Holiday House Hotel, Inc. ("Hotel"), was negligent in the kidnapping of their son, Alex Nappan, from the Hotel in Memphis, Tennessee, on August 3, 1986. In their complaint, Petitioners charged that the Hotel owed Alex a duty of care to protect him from foreseeable harm, that the Hotel breached this duty, and that this breach was the proximate cause of Alex's kidnapping.

The Hotel admitted to most of the factual allegations made in the Petitioners' complaint but denied that it was in any way negligent. Consequently, the Hotel filed a motion for summary judgment on November 30, 1986.

Construing the facts most favorably to the Petitioners, the Memphis Circuit Court granted the Hotel's motion for summary judgment on December 17, 1986, dismissing Petitioners' complaint. The court held that the Hotel was not responsible for the kidnapping because the kidnapper's actions were unforeseeable as a matter of law and constituted "an independent intervening cause sufficient to relieve the defendant from liability." The court also found that the Hotel had met the required standard of care owed to Petitioners. In addition, the court found Petitioners' action in leaving their child alone in a strange place to be overwhelmingly negligent, thus barring their recovery from the Hotel.

Petitioners sought an appeal from the trial court's decision on December 19, 1986. This Court granted the appeal on December 30, 1986.

Statement of Facts

The Respondent in this case, Holiday House Hotel, Inc., owns and operates the Holiday House Hotel in Memphis, Tennessee. The Petitioners, Charles and Cynthia Nappan, are residents of Charlottesville, Virginia.

The Petitioners, with their six-year-old son, arrived at Respondent's hotel on August 3, 1986. An agent/employee of the Respondent checked Petitioners into the Hotel and gave them the keys to their room on the first floor. Petitioners' room was the third room along a closed hallway, which begins in the Hotel lobby, goes through three successive right turns, and returns to the lobby. The Hotel was installing a video camera surveillance system in this hallway, but the system was not yet functioning on August 3, 1986. The hallway, and the guest rooms that open off of it, surround an internal courtyard. Guests and visitors to the Hotel may enter this courtyard only from the Hotel lobby or through a sliding glass door located in each guest room.

After their check-in, Petitioners registered complaints about the air conditioner in their room, and the Hotel's employee at the front desk assured Petitioners that he would look into the problem. The Hotel staff was very busy, however, because of the need to check-in other guests and prepare for a convention taking place at the Hotel that day. Many Hotel employees, including two security guards, were assigned to convention activities.

Soon after checking in, Petitioners opened the rear sliding door in their room, but they closed the door when they left for dinner. Upon returning to their guest room after dinner, Petitioners reopened the sliding door, leaving the screen door locked. At 8:00 P.M., Petitioner Cynthia Nappan left the guest room to find her husband, who had gone to the Hotel's front desk. When Ms. Nappan left the room, she left six-year-old Alex Nappan alone and asleep in the room with the rear sliding door still open. By the time Petitioners returned to their room, the room's rear screen door had been ripped off its tracks from the outside and Alex was missing.

No previous criminal activity had been reported on the Hotel premises, and the only similar incident reported in the area was a kidnapping which had occurred at a local shopping center several weeks earlier.

SUMMARY OF ARGUMENT

The Tennessee Supreme Court should join the majority of other jurisdictions and hold that an innkeeper must take only reasonable precautions to protect his guests against only criminal misconduct which is foreseeable. In the pending case, the Hotel could not have reasonably foreseen the possibility of the kidnapping of one of its guests merely because of an isolated prior incident occurring two months earlier in the completely different atmosphere of a shopping mall. Moreover, no substantially similar incidents had occurred on the Hotel's premises or had been reported by other area hotels. The Hotel, therefore, did not have a duty to prevent the occurrence of such a sudden, unexpected kidnapping.

Although the Hotel did not have a duty to prevent the unforeseeable kidnapping, by virtue of its enclosed design, security guards, and guest room door locks, it provided guests more than reasonable protection against criminal misconduct in general. The parents, however, by negligently leaving their rear door both unlocked and open, enabled the kidnapper to gain access to their room. Under the circumstances, even if the Hotel could have actually foreseen the possibility of such a criminal act, its substantial security measures still could not have prevented the sudden, unprovoked kidnapping. The kidnapping therefore constituted an independent, intervening cause as a matter of law and justified the grant of summary judgment.

Finally, even if the Court determines that the remote possibility of the Hotel's negligence is a question of fact, Petitioners' recovery should still be barred because their abandonment of the child in an unsecured hotel room constitutes overwhelming negligence as a matter of law.

ARGUMENT

I. THE TRIAL COURT PROPERLY GRANTED SUMMARY JUDGMENT BECAUSE THE HOTEL DID NOT HAVE A DUTY TO PREVENT AN UNFORESEEABLE KIDNAPPING.

- A. The hotel owed guests only a duty of reasonable care to protect them from foreseeable criminal misconduct, not a duty to prevent sudden, unexpected criminal acts.

The great majority of state courts hold that an innkeeper has a duty to take only ordinary or reasonable precautions to protect his guests against the unreasonable risk of harm from third parties. *Phillips Petroleum Co. v. Dorn*, 292 So. 2d 429, 432 (Fla. Dist. Ct. App. 1974); *Restatement (Second) of Torts* 314A (1965). Because circumstances have changed drastically since feudal times when virtually no one was safe outside of castles and fortified towns, the court in *Kveragas v. Scottish Inns, Inc.*, 733 F.2d 409 (6th Cir. 1984) held that an innkeeper is no longer an insurer held liable under all circumstances for injuries to his guests caused by third party criminal actions. Recognizing these changes, forty-eight state courts flatly reject a duty of care that burdens an innkeeper to prevent criminal acts against his guests, thus making him an insurer of his guest's safety. *Phillips*, 292 So.2d at 431-432.

This Court has ruled in *Steinholz v. Modica*, 264 N.W.2d 514, 516 (S.D. 1978) that a "possessor of land owes an invitee . . . the duty of exercising reasonable or ordinary care for his safety." Applying this standard in *Mortensen v. Bradley*, 349 N.W.2d 444 (S.D. 1984) this Court held that a homeowner's duty of reasonable care to his paying boarder did not include the inspection of a defective ladder that caused the boarder's injuries. The holding in *Mortensen* should logically be extended to cases such as this,

thus putting Tennessee in line with the majority view that innkeepers owe only a duty of reasonable care to their guests.

Under a standard of reasonable care, the court in *Brewer v. Roosevelt Motor Lodge*, 295 A.2d 647 (Me. 1972) ruled a hotel must exercise due care to protect its guests against only reasonably foreseeable criminal misconduct. And, ruled the court in *McCoy v. Gay*, 302 S.E.2d 130 (Ga. Ct. App. 1983), an innkeeper does not have a duty to specifically prevent a sudden, unexpected criminal attack and, consequently, cannot be held liable for the guest's resulting harm.

- B. The hotel could not have foreseen the possibility of a kidnapping of one of its guests.

To determine whether an innkeeper should have reasonably anticipated criminal actions by a third party against one of his guests, the court in *Peters v. Holiday Inns, Inc.*, 278 N.W.2d 208 (Wis. 1979) considered such factors as the extent of similar criminal activities previously occurring on the hotel's premises, within its immediate area, or in other local hotels. Using a similar analysis in *Brewer*, the Maine court held that an innkeeper who could not have reasonably foreseen a criminal action does not have a duty to take precautions against it. *Brewer*, 295 A.2d at 652-653.

As in *Brewer*, no substantially similar incidents had occurred on the premises of the Holiday House Hotel. In *Kveragas*, the court ruled that under such circumstances, no reasonable person could find that the hotel might have anticipated such a sudden, unprovoked kidnapping. *Kveragas*, 733 F.2d at 412.

Although a few courts have held that criminal actions against guests are generally foreseeable in a modern or metropolitan society, these findings are simply inapplicable under the particular circumstances of this case. *Peters, Virginia D. v. Madesco Investment Corp.*, 648 S.W.2d 881, 887 (Mo. 1983) (en banc). The Holiday House Hotel is located in a small suburb of Memphis, and is surely not required to take the same precautions as a hotel located in a crime-ridden area of downtown St. Louis. *Virginia D.*, 648 S.W.2d at 889. Because hotel guests usually carry much money with them on trips, the court noted in *Peters*, 278 N.W.2d at 211 that assaultive crimes against guests are foreseeable in general. However, that rationale is limited to theft or robbery, and is not applicable to a case involving a kidnapping.

- C. The hotel's enclosed design, security guards, and guest room door locks provided more than reasonable protection for its guests against criminal misconduct.

When evaluating the reasonableness of a hotel's precautions, the court should especially consider the effect of the hotel's design on its security measures, stated the court in *Peters*, 278 N.W. 2d at 212. In the case at bar, the trial record shows that the Hotel supplemented its protective design by employing two security guards to patrol the premises. Even where an innkeeper has taken precautions that were quite inferior to those provided in the instant case, courts have held as a matter of law that the innkeeper did not breach his duty of reasonable care owed to his guests. *Courtney v. Remler*, 566 F. Supp. 1225, 1230 (D.S.C. 1983); *Nixon v. Royal Coach Inn of Houston*, 464 S.W.3d 900, 901 (Tex. Civ. App. 1971).

II. EVEN IF THE HOTEL COULD HAVE FORESEEN THE POSSIBILITY OF THE KIDNAPPING, THE HOTEL COULD NOT HAVE PREVENTED THE CRIME BECAUSE IT WAS THE RESULT OF AN INDEPENDENT, INTERVENING CAUSE.

To be held liable, not only must a hotel breach its reasonable duty of care to its guests, but its breach must also be the proximate cause of the guest's harm. *Kveragas*, 733 F.2d at 414-15; William L. Prosser & Robert E. Keeton, *The Law of Torts* 30 at 164-65 (5th ed. 1984). Therefore, where a hotel could not have realistically prevented harm to a guest, many courts have held as a matter of law that the criminal's action was the independent, intervening cause of the guest's harm and granted summary judgment for the hotel. *Montgomery v. Royal Motel*, 645 P.2d 968, 970 (Nev. 1982); *Reichenbach v. Days Inn of America, Inc.*, 401 So. 2d 1366, 1367 (Fla. Dist. Ct. App. 1981); *Nixon*, 464 S.W.2d at 902.

With the advantage of surprise, a criminal is generally able to carefully select the time, place, and method of the crime such that an innkeeper rarely has an opportunity to prevent the particular crime. *Reichenbach*, 401 So.2d at 1370 (specially concurring opinion). Without proof that the Hotel had actually been forewarned that one of its guests was likely to be kidnapped on that evening, affirmance of summary judgment is more than justified. *Reichenbach*, 401 So.2d at 1372.

To hold that the Hotel breached its duty of reasonable care to its guests, and was the proximate cause of the Petitioners' harm, would make the Hotel an insurer of its guests' safety. In *Courtney*, the court declared that although "there can be no doubt that armed guards in every building, twenty-four hours a day, would have provided the guests

with more protection," what is being operated is a hotel, not a prison. *Courtney*, 566 F. Supp. at 1235. A hotel is not required to make its premises impregnable to the forces of evil by anticipating and preventing any sudden, unexpected crime against one of its guests, as "the kidnapper's actions constitute an independent, intervening cause sufficient to relieve the defendant [Hotel] from liability." *Courtney*, 566 F. Supp. at 1236.

In Tennessee, a trial court is empowered to grant a summary judgment motion whenever it finds that there is "no genuine issue to any material fact." TN. Codified Laws Ann. 15-6-56(c) (1966). Because the trial court in this case had a sound basis for its ruling and properly used its discretionary powers, this court should affirm the summary judgment. *Uken v. Sloat*, 296 N.W.2d 540, 542 (TN. 1980); *Farmers and Merchants State Bank v. Mann*, 87 TN. 90, 96, 203 N.W.2d 173, 176 (1973); *Saastad v. Okeson*, 16 TN. 377, 379, 92 N.W. 1072, 1072 (1902).

III. THE TRIAL COURT PROPERLY FOUND PETITIONERS TO BE SO OVERWHELMINGLY NEGLIGENT AS TO BAR THEIR RECOVERY EVEN IF THE HOTEL HAD BEEN NEGLIGENT.

According to TN. Codified Laws Ann. 20-9-2 (1979), if Petitioners were negligent in leaving their son alone in the Hotel's guest room, they may still recover from the Hotel only if "the contributory negligence of the [Petitioners] was slight in comparison with the negligence of the [Hotel]" However, the court in *Crabb v. Wade*, 84 TN. 93, 98, 167 N.W.2d 546 (1969) held "there can be no application of this law unless both parties are guilty of negligence proximately causing or contributing to the injuries complained of." Thus, because the lower court properly ruled that the Hotel was

not negligent, this statute does not apply, and Petitioners were properly barred from recovery on their claim.

However, stated the court in *Crabb*, if both parties could be found negligent, the negligence of both parties should first be determined separately, using the “reasonable-person” standard, and then compared directly. On motions for directed verdict where the undisputed evidence of contributory negligence should bar recovery, the court in *Corey v. Kocer*, 86 TN. 221, 193 N.W.2d 589 (1972) stated that reasonable standards of conduct should be considered in ruling on the negligence.

In evaluating the quality of guest negligence in similar cases, the court in *Associated Eng’r v. Job*, 370 F.2d 633 (8th Cir. 1967) suggested criteria that includes the following: precautions guests took for their own safety, the extent to which they should have known of the risk involved through warnings or experience, and the foreseeability of injury from their action.

No factual issue exists to mitigate the Petitioners’ overwhelming negligence in the instant case. Therefore, the lower court properly determined as a matter of law that the Petitioners’ grossly negligent conduct barred any possible recovery on their claim against the Hotel.

CONCLUSION

For the above stated reasons, Respondent requests that the YMCA Model Supreme Court for the State of Tennessee at Nashville affirm the judgment of the trial court.

Respectfully submitted,

[Student Name]

[Student Name]

Attorneys for the Respondent
Name of High School
Town, TN Zip
Date of Conference

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing Brief has been sent by U.S. Mail, postage prepaid, to all appropriate parties, this ____ day of April 2013.

[Student Name]

[Student Name]