

IN THE COURT OF APPEALS OF MARYLAND

No. 64

September Term, 1996

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CARRIE HOUSTON

v.

SAFEWAY STORES, INC.

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Bell, C.J
Eldridge
Rodowsky
Chasanow
Karwacki
Raker
Wilner,

JJ.

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Dissenting Opinion by Raker, J.

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Filed: July 30, 1997

I would affirm the judgment of the Court of Special Appeals affirming the trial court's grant of Safeway's Motion for Judgment N.O.V. The trial court correctly ruled that, as a matter of law, this restroom in question, located at least ninety feet inside the stock area, behind doors marked "No Admittance," was not a public facility.

The facts that the majority finds to be in dispute, in my view, are not material facts. These facts largely have no bearing on whether a restroom ought to be considered a public or nonpublic facility. The majority contends that whether persons who know where the restroom is located must nevertheless ask permission to use the restroom is a disputed fact bearing on the status of the restroom. A business's decision to require customers to ask permission to use the facilities does not change the fundamental characteristics of the restroom as public or nonpublic. Furthermore, the location or existence of a key to unlock the restroom door is not material to the determination of whether the facility is public or private. Many restrooms that are clearly public, such as those at many gas stations, nevertheless require a key. Finally, the number of people which Safeway directs to the restroom in a given time period is not material to the restroom's status. Heavy use of a nonpublic restroom does not convert that restroom into a public facility just as infrequent use of a public facility cannot make it nonpublic. Were it otherwise, businesses would have an incentive to limit sharply the use of its restroom to avoid converting it from nonpublic to public and losing the immunity conferred by the statute.

For the above stated reasons, I dissent.