

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROLAND HARVEY,	§
	§
Plaintiff Below,	§
Appellant,	§ No. 491, 2000
	§
v.	§ Court Below: Superior Court
	§ of the State of Delaware in and
SUPER FRESH FOOD	§ for New Castle County
MARKETS, INC., a Delaware	§ C.A. No. 95C-08-243
corporation d/b/a SUPER FRESH	§
SUPERMARKET,	§
	§
Defendant Below,	§
Appellee.	§

Submitted: July 24, 2001

Decided: July 30, 2001

Before WALSH, HOLLAND, and STEELE, Justices.

ORDER

This 30th day of July 2001, upon consideration of the briefs of the parties, it appears to the Court that:

(1) The appellant, Roland Harvey (“Harvey”), appeals from a decision of the Superior Court which denied his motion for a new trial following an adverse jury verdict in a civil trial for damages. Harvey’s suit against the appellee, Super Fresh Food Markets, Inc. (“Super Fresh”), arose out of a robbery of a Super Fresh store in Wilmington during which Harvey, a customer, was shot and seriously injured by

one of the robbers. Harvey claimed that Super Fresh was negligent in a number of particulars in its plan and operation of security.

(2) At trial, both parties offered expert testimony concerning the alleged deficiencies in Super Fresh's security. Super Fresh admitted that neither its panic button/alarm system nor its surveillance cameras were operational at the time of the robbery, but it contended that under the circumstances of a violent takeover robbery, those devices, even if functioning, would not have prevented the injury to Harvey.

(3) The case was submitted to the jury on interrogatories. By its verdict, the jury determined that Super Fresh was negligent but that such negligence was not a proximate cause of Harvey's injury and thus awarded no damages. Harvey moved, post-trial, for judgment in his favor as a matter of law or, alternatively, for a new trial, contending that the jury's answers to the interrogatories were inconsistent and against the weight of the evidence. The Superior Court denied post-trial relief, ruling that the issues of negligence and proximate cause were separately posed and the jury's verdict was legally and factually supportable.

(4) We conclude that the Superior Court ruling was clearly correct. While the evidence provided a basis for a finding of negligence against Super Fresh, the plaintiff was also required to prove that such negligence proximately caused his

injury, *i.e.*, that “but for” the defendant’s conduct, the injury producing event would not have occurred. *Culver v. Bennett*, Del. Supr., 588 A.2d 1094, 1097 (1991). The Superior Court’s instructions to the jury, and the implementing interrogatories made that distinction. Harvey took no exception to those instructions.

(5) Harvey’s contention on appeal that the standards for premises liability set forth in this Court’s decision in *Jardel Co., Inc. v. Hughes*, Del. Supr., 523 A.2d 518 (1987), dispenses with the need to establish proximate cause where negligence on the part of the premises owner is established is without merit. Apart from its discussion of punitive damages, *Jardel* focused on defining the store owner’s duty of foreseeability with respect to criminal activity that might pose harm to customers. *See id.* at 525-26. No issue of proximate cause was posed and our ruling defining the duty of a premises owner did not eliminate the standard requirement for recovery in a tort action: that the violation of a duty proximately caused the claimed harm. The Superior Court’s jury instructions were consistent with this standard and we find no abuse of discretion in its refusal to grant a new trial or judgment as a matter of law.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

s/Joseph T. Walsh
Justice