

## ***Carr v. Tiffany & Co.***

### **FACTS:**

Audrey and Bob Carr are a married couple who live in Columbia, Missouri. Both are African-American. They are planning to celebrate their 25<sup>th</sup> wedding anniversary by taking a vacation to New York. On the way to the airport in St. Louis, they stop at the Plaza Frontenac Mall to get a few things for their trip. While there, Audrey wanders into the Tiffany & Co. jewelry store and strikes up a conversation with the friendly sales clerk. When Audrey mentions she is going to New York for her anniversary, the clerk says, "Oh you simply *must* check out our flagship store on 7<sup>th</sup> Avenue. They are doing a special Christmas display! Take this 15% Off Coupon. It's your anniversary – maybe you can persuade your husband to buy you something while you are there!" "Fat chance!" says, Audrey, but she takes the coupon anyway.

The Carrs fly to New York. The next day, they buy tickets to a Broadway play and the Carrs decide to visit the Tiffany Store while they wait for the show time. They are in the store for less than a minute when a security guard confronts them and demands that they leave. They refuse and insist on an explanation. The guard grabs Audrey's arm and tries to push her toward the door. Bob shoves the guard away from his wife. The guard trips backwards and falls. A second guard appears and slams Bob up against a wall. (Both guards are wearing uniforms that say "Tiffany & Co. Security" on the back and over the front pocket.) In the meantime, a sales clerk has pressed the emergency button which summons the police. The police arrive and arrest the Carrs, who are charged with disorderly conduct. The charges are later dismissed.

The Carrs return to Columbia and consult with an attorney. The attorney files suit against Tiffany & Co. in federal district court for the Western District of Missouri. The suit alleges violation of the Carrs' civil rights under a number of federal statutes, as well as various common law torts including assault, battery, and intentional infliction of emotional distress. Audrey seeks \$50,000 and Bob seeks \$100,000 in emotional distress and punitive damages.

You are a junior associate at the law firm which represents Tiffany and you are assigned to this case. Here is some information that you know:

- Tiffany & Co. is incorporated in Delaware and has its headquarters and principal place of business in New York.
- There is one Tiffany store in Missouri, in the Frontenac Plaza Mall in St. Louis.
- Tiffany maintains a website through which anyone can purchase merchandise. Missouri customers purchased over \$500,000 in merchandise over the website last year.
- Tiffany contracts its security guards through a private company, Select Security, Int'l (SSI), which is incorporated and headquartered in the Cayman Islands. The guards, therefore, are independent contractors and not employees of Tiffany. SSI does business throughout the world, but its American contracts are exclusively for luxury stores in New York and California. SSI does no work in Missouri. SSI's General Counsel told you that they do this specifically because they do not want to be exposed to liability or appear in court in any states other than NY and CA.

Your preliminary legal research reveals the following:

Both Missouri's and New York's state tort laws provide for contribution among joint tortfeasors.

Missouri's Long-Arm Statute

§ 506.500. Actions in which out of state service is authorized--jurisdiction of Missouri courts applicable, when

1. Any person or firm, whether or not a citizen or resident of this state, or any corporation, who in person or through an agent does any of the acts enumerated in this section, thereby submits such person, firm, or corporation, and, if an individual, his personal representative, to the jurisdiction of the courts of this state as to any cause of action arising from the doing of any of such acts:

- (1) The transaction of any business within this state;
- (2) The making of any contract within this state;
- (3) The commission of a tortious act within this state;
- (4) The ownership, use, or possession of any real estate situated in this state;
- (5) The contracting to insure any person, property or risk located within this state at the time of contracting;
- (6) Engaging in an act of sexual intercourse within this state with the mother of a child on or near the probable period of conception of that child.

2. ...

3. Only causes of action arising from acts enumerated in this section may be asserted against a defendant in an action in which jurisdiction over him is based upon this section.

**YOUR ASSIGNMENT:**

**Through the course of this litigation you will be asked by the Partner to write THREE (3) short memos recommending procedural courses of action. When you do so, make sure to include all colorable arguments in support of your position, the counterarguments that the Plaintiffs are likely to make, and an analysis of your likelihood of success. Cite any relevant cases, rules, and statutes.**

**These memo assignments are set forth chronologically, as new information is revealed and additional events occur. Do not use information from later memo assignments to write earlier memos. In other words, do not use information that you learn in Memo 2 to write Memo 1.**

**PLEASE LABEL EACH MEMO CLEARLY!!**

**Memo 1 (45 Minutes)**

Write a memo addressing the following questions:

- **Should Tiffany file a Pre-Answer Motion? What are the bases for the Motion and what arguments will you make? What arguments do you expect the Carrs to make? Who is likely to win?**
- **How would Tiffany go about trying to bring SSI into the litigation? Will this be successful?**

## Memo 2 (45 minutes)

Your Pre-Answer Motion was denied and the Partner decides not to attempt to bring SSI into the case. He assigns the Senior Associate to draft an Answer, and tells you to investigate the substantive law.

The two federal statutes that the Carrs are proceeding under are Title II of the Civil Rights Act of 1964 (which prohibits racial discrimination in places of public accommodation), and 42 U.S.C. § 1981 (which prohibits racial discrimination in the making of contracts). You pull out a leading treatise on Federal Civil Rights Law and read the following:

*Title II is the federal public accommodation law intended to prevent racial discrimination in public establishments. Title II does not, however, consider retail stores as places of public accommodation. Thus, black shoppers facing racial discrimination in retail stores must look elsewhere for federal relief.*

*The other option is found in 42 U.S.C. § 1981. Section 1981 provides that all citizens have the same right to the privileges, benefits, terms, and conditions of contracts as white citizens. Black shoppers seeking relief under § 1981 must show that they sought to create a specific contract, rather than merely experiencing racial discrimination while browsing.*

You go back and look at the Carrs' Complaint, which states:

- 6. On November 15, 2013, the Plaintiffs entered a retail store owned and operated by Tiffany & Co. Once inside, they quietly browsed the displays and were in no way disruptive or disorderly.**

You pull the police report from the Carrs' arrest, which says:

`"While being led to the squad car, Male Arrestee insisted that he and his wife were 'just there to look' and had no intention of stealing anything."`

Write a memo answering the following questions:

- **How should Tiffany proceed in light of this information? What motion will you file and what arguments will you make? What will the Carrs argue? How likely are you to succeed?**
- **If your motion is successful, what does this mean for the federal court's ability to hear this case? What additional motion and supporting arguments could you make to attack the court's jurisdiction to hear this case? What will the Carrs argue to keep the case in federal court? What is the likely outcome?**

**Memo 3 (45 minutes)**

Paragraph 7 of the Plaintiffs' original Complaint states as follows:

- 7. Plaintiffs were inside the store for less than one minute when they were confronted by two security guards who were employees of Tiffany & Co. The two employees of Tiffany & Co. proceeded to physically and verbally abuse the Plaintiffs.**

When the Senior Associate Answered the Complaint, he did so thusly:

- 7. Defendant Tiffany DENIES the allegations of Paragraph Seven.**

Through the course of discovery, the Carrs seek information about the identity of the security guards. They eventually learn about SSI and the fact that the guards are actually private contractors. Once they learn this, they quickly seek to amend their complaint to add a new form of relief: They want an order requiring Tiffany to immediately terminate all contracts with SSI and to be enjoined from contracting with SSI in the future.

**Write a memo analyzing the following questions:**

- **Is the Court likely to allow the Carrs to amend their Complaint at this point? Why or why not?**
- **If the Carrs are permitted to amend their Complaint to add this form of relief, what procedural maneuver(s) do you recommend? What will you argue, what counterarguments do you expect, and what is the likely outcome?**