

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
February 13, 2003 Session

SHAMERY BLAIR, ET AL. v. WEST TOWN MALL

Appeal from the Circuit Court for Knox County
No. 1-229-00 Dale C. Workman, Judge

FILED APRIL 4, 2003

No. E2002-02005-COA-R3-CV

HOUSTON M. GODDARD, P.J., concurring

I concur with the result reached in this case but, like Judge Susano, disagree as to the "method of operation" theory advanced by Judge Swiney.

Consequently, it appears that upon remand, in view of the concurring opinions of Judge Susano and myself, that theory should not be presented to the trier of the fact.

I also point out that if the evidence remains substantially the same as in the present record, West Town Mall might well be entitled to a directed verdict because of the shifting burden of proof, *vis-a-vis*, a motion for summary judgment and a motion for directed verdict.

HOUSTON M. GODDARD, PRESIDING JUDGE