

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

FILED
JAN 23 2014
CIRCUIT COURT CLERK
BY _____
D.C.

TIMOTHY MATTHEWS,

Plaintiff,

v.

CT NO.: CT-000344-14
JURY DEMANDED DIV III

UNION REALTY COMPANY GP; BELZ
INVESTCO GP; URCO, INC; BELZ
ENTERPRISES; KROGER CO.; KROGER
LIMITED PARTNERSHIP I; and CENTRAL
DEFENSE, LLC,

Defendants.

COMPLAINT

COMES NOW the Plaintiff, by and through the undersigned counsel, and for cause of action against the Defendants, would respectfully state as follows:

JURISDICTION AND VENUE

1. Plaintiff Timothy Matthews is an adult resident of Shelby County, Tennessee.
2. Defendant Union Realty Company GP is a Tennessee corporation licensed to do business in Shelby County, Tennessee. At all times material hereto, Defendant Union Realty Company GP owned, managed, and operated a shopping center known as Southgate Shopping Center located at 1977 South Third Street, Memphis, TN 38109. Defendant Union Realty Company GP can be served at 5118 Park Avenue, Memphis, TN 38187.
3. Defendant Belz Investco GP is a Tennessee corporation licensed to do business in Shelby County, Tennessee. At all times material hereto, Defendant Belz Investco GP owned, managed and operated a shopping center known as Southgate Shopping Center located at

1977 South Third Street, Memphis, TN 38109. Defendant Belz Investco GP can be served at 100 Peabody Place, Suite 1400, Memphis, TN 38103.

4. Defendant URCO, Inc. is a Tennessee corporation licensed to do business in Shelby County, Tennessee. At all times material hereto, Defendant URCO, Inc. owned, managed and operated a shopping center known as Southgate Shopping Center located at 1977 South Third Street, Memphis, TN 38109. Defendant URCO, Inc. can be served at 100 Peabody Place, Suite 1400, Memphis, TN 38103.
5. Defendant Belz Enterprises is a Tennessee corporation licensed to do business in Shelby County, Tennessee. At all times material hereto, Defendant Belz Enterprises owned, managed and operated a shopping center known as Southgate Shopping Center located at 1977 South Third Street, Memphis, TN 38109. Defendant Belz Enterprises can be served at 100 Peabody Place, Suite 1400, Memphis, TN 38103.
6. Defendant Kroger Co. is an Ohio Corporation with its principal place of business located at 1014 Vine St, Cincinnati, Ohio 45202-1100. Defendant Kroger Co. is licensed to do business in Tennessee, and its registered agent for service of process is Corporation Service Company, located at 2908 Poston Avenue, Nashville, Tennessee 37203-1312. Defendant Kroger Co. owns and operates a number of supermarkets in the greater Memphis area, including the supermarket located within the Southgate Shopping Center located at 1977 South Third Street, Memphis, TN 38109.
7. Defendant Kroger Limited Partnership I is an Ohio Limited Partnership with its principal place of business located at 1014 Vine St, Cincinnati, Ohio 45202. Defendant is licensed to do business in Tennessee, and its registered agent for service of process is Corporation Service Company, located at 2908 Poston Avenue, Nashville, Tennessee 37203-1312. Upon

information and belief, Defendant Kroger Limited Partnership I owns and operates a number of supermarkets in the greater Memphis area, including the supermarket located within the Southgate Shopping Center located at South Third Street and Belz Boulevard, Memphis, TN 38109.

8. Defendant Central Defense LLC is a Tennessee corporation licensed to do business in Shelby County, Tennessee and its registered agent for service of process is Larry Carroll, 6084 Apple Tree Drive, Suite 1, Memphis, TN38115. At all times material hereto, Defendant Central Defense LLC provided security services at the Southgate Shopping Center located at 1977 South Third Street, Memphis, TN 38109.
9. All of the wrongs complained of occurred within Shelby County, Tennessee.
10. This Court has jurisdiction.
11. Venue is proper in Shelby County.
12. This case was filed within the applicable statute of limitations.

DEFINITIONS

Plaintiff incorporates by reference as if fully set forth each and every allegation in the Complaint.

13. Whenever the term “Defendants” is utilized within this suit, such term collectively refers to and includes all named Defendants in this lawsuit.
14. Whenever the term “Southgate Defendants” is utilized within this suit, such term collectively refers to and includes Defendant Union Realty Company GP, Defendant Belz Investco GP, Defendant URCO, Inc., and Defendant Belz Enterprises.
15. Whenever the term “Kroger Defendants” is utilized within this suit, such term collectively refers to and includes Defendant Kroger Co. and Defendant Kroger Limited Partnership I.

NATURE OF DEFENDANTS' LIABILITY

16. AGENCY IN GENERAL - Whenever in this suit it is alleged that any of the Defendants did any act or thing or failed to do any act or things, it is meant that the officers, agents, or employees of the designated corporations respectively performed, participated in, or failed to perform such acts or things while in the course and scope of the their employment and/or agency relationship with said Defendants.
17. CORPORATE NEGLIGENCE - Plaintiff further alleges that Defendants are liable for their own corporate negligence independent of the negligence of any employee, servant or agent.
18. AGENCY - CENTRAL DEFENSE LLC: At all times material to this suit, Defendant Central Defense LLC acted as an agent of Southgate Defendants and Kroger Defendants. As such, Southgate Defendants and Kroger Defendants are liable for the acts and omissions of Defendant Central Defense LLC alleged herein.
19. AGENCY - KROGER LIMITED PARTNERSHIP I: At all times material to this suit, Kroger Limited Partnership I acted as an agent of The Kroger Co. As such, The Kroger Co. is liable for the acts and omissions of Kroger Limited Partnership I alleged herein.
20. JOINT ENTERPRISE - SOUTHGATE DEFENDANTS: Each of the Southgate Defendants remains liable for the acts of the other Southgate Defendants because Southgate Defendants operated their business as a joint enterprise. Southgate Defendants engaged in a joint venture and acted in concert in the operation, management, and maintenance of the Southgate Shopping Center. These entities entered into an agreement with the common purpose of operating, managing, and maintaining the Southgate Shopping Center. These entities had an equal right to control their venture as a whole, as well as to control the operation and management of the subject facility.

21. JOINT ENTERPRISE - KROGER DEFENDANTS: Each of the Kroger Defendants remains liable for the acts of the other Kroger Defendants because Kroger Defendants operated their business as a joint enterprise. Kroger Defendants engaged in a joint venture and acted in concert in the operation, management, and maintenance of the Kroger supermarket located within the Southgate Shopping Center. Kroger Defendants entered into an agreement with the common purpose of operating, managing, and maintaining the Kroger supermarket located within the Southgate Shopping Center. Kroger Defendants had an equal right to control their venture as a whole, as well as to control the operation and management of the subject facility.

FACTS

22. Southgate Defendants own, manage, and operate the Southgate Shopping Center, including the parking lot, located at South Third Street and Belz Boulevard, Memphis, TN 38109.
23. At all time pertinent, the Southgate Shopping Center had several tenants, including a Kroger supermarket.
24. Kroger Defendants own, manage, and operate the Kroger supermarket, including the parking lot, located within the Southgate Shopping Center.
25. Defendant Central Defense provided security services for the Southgate Shopping Center, including the parking lot.
26. A special relationship existed between Plaintiff and Defendants, as Plaintiff was a patron of Southgate Defendants and Kroger Defendants.
27. Defendants owed a duty to Plaintiff to take reasonable measures to protect the customers of Southgate Shopping Center and the Kroger supermarket from foreseeable criminal attack, including discovering that such acts are being done or are likely to be done and/or giving a

warning to enable the visitors to avoid the harm or otherwise protect them against it.

28. At the location of the Southgate Shopping Center and within a one-half (1/2) mile radius thereof, there were numerous previous reports of criminal activities, including robberies, burglaries, assaults, and other violent crimes.
29. Defendants knew or had reason to know that there was a likelihood of conduct on the part of third persons in general which was likely to endanger the safety of customers, even though Defendants may not have had reason to expect it on the part of any particular individual.
30. Under the circumstance, Defendants were required to take precautions against criminal conduct and to provide a reasonably sufficient number of servants to afford reasonable protection.
31. On September 12, 2013, around 4:30 p.m., Andre Taylor, Matthew Taylor, and Devon Johnson arrived at the Southgate Shopping Center and parked in front of Kroger.
32. Andre Taylor parked the truck, opened the hood, and began acting as if the truck was experiencing maintenance problems.
33. Meanwhile, Matthew Taylor began walking around the Southgate Shopping Center parking lot in front of Kroger looking for someone to rob.
34. Despite the suspicious activity, Defendants failed to take any precautions against the criminal conduct, such as calling the police, dispatching security officers, and/or warning patrons.
35. At some point thereafter, Plaintiff arrived at the Southgate Shopping Center and parked his car in the parking lot in front of Kroger.
36. As Plaintiff was preparing to get out of his car and enter the Kroger supermarket, Matthew Taylor approached Plaintiff, pointed a gun at him, and took money out of Plaintiff's pocket. At some point during the robbery, Matthew Taylor shot Plaintiff, causing catastrophic and

permanent injuries.

37. Upon information and belief, Defendants failed to conduct any meaningful investigation of this incident to evaluate the appropriateness of its security measures.

LIABILITY

Plaintiff incorporates by reference each and every allegation of this Complaint as if fully set forth verbatim.

38. Defendants were under a duty to provide a reasonably safe location for patrons of the Southgate Shopping Center and the Kroger supermarket located therein.

39. Defendants breached this duty including, but not limited to, the following ways:

- a. Failure to provide a sufficient number of security personnel;
- b. Failure to properly hire, train, supervise, and discipline security personnel;
- c. Failure to implement and enforce policies and procedures concerning security personnel;
- d. Failure to implement and enforce proper policies and procedures designed to protect customers from criminal activity;
- e. Failure to monitor criminal activity in the area and to weigh the foreseeable harm against alternative conduct designed to prevent the harm;
- f. Failure to implement a best practices plan, including a security plan, which is generally accepted within the industry in order to prevent harm and protect customers;
- g. Failure to provide a sufficient number of operable security cameras and to publicize the use of security cameras;
- h. Failure to recognize that criminal activity was occurring on the premises;

- i. Failure to intervene in order to disrupt, delay or stop the criminal activity after being placed on specific notice that criminal activity was occurring or about to occur on the premises;
 - j. Failure to take any actions to investigate and remove Andre Taylor, Matthew Taylor, and Devon Johnson from the premises;
 - k. Failure to call the police after being placed on specific notice that criminal activity was occurring or was about to occur on the premises; and
 - l. Failure to warn customers that criminal activity was occurring or about to occur so that customers could take action to protect their safety;
40. Based on the history of criminal activity on the premises and the immediate surrounding area, it was highly foreseeable that patrons such as Plaintiff visiting the Southgate Shopping Center, including the Kroger supermarket, would be the subject to a violent criminal attack.
41. In addition, the location of the Southgate Shopping Center was in a high-crime area that further made criminal attacks on customers highly foreseeable.
42. As a result of the Defendant's negligence set forth herein, Plaintiff was shot numerous times and sustained serious, permanent and life threatening injuries which required extensive medical and surgical treatment.

DAMAGES

Plaintiff incorporates by reference each and every allegation of this Complaint as if fully set forth verbatim.

43. As a direct and proximate result of the acts and omissions of Defendants, Plaintiff suffered severe and permanent personal injuries which would otherwise not have occurred. The injuries and damages for which Plaintiff seeks compensation from Defendants include, but

are not limited to, the following:

- a. Physical pain - past and future;
- b. Mental anguish - past and future;
- c. Loss of enjoyment of life - past and future
- d. Permanent injuries;
- e. Disfigurement;
- f. Loss of earnings and earning capacity;
- g. Statutory and discretionary costs; and,
- h. All such further relief, both general and specific, to which Plaintiff may be entitled under the premises.

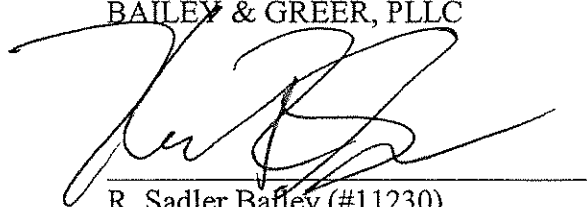
PRAYERS FOR RELIEF

Plaintiff incorporates by reference as if fully set forth verbatim each and every allegation in the Complaint.

44. WHEREFORE, PREMISES CONSIDERED, Plaintiff sues the Defendants for his injuries and damages and prays for a judgment against the Defendants for an amount considered fair and reasonable by a jury and for all such further relief, both general and specific, to which he may be entitled under the premises.. The Plaintiff objects to requesting a specific dollar amount in the Complaint as the amount of compensatory damages sustained by Plaintiff is left to the sound discretion of the jury, to the extent a specific dollar amount is required by law to be set forth in the Complaint, the amount of compensatory damages should not exceed Twenty-Five Million (\$25,000,000.00) Dollars.
45. A JURY IS RESPECTFULLY DEMANDED.

Respectfully submitted,

BAILEY & GREER, PLLC

A handwritten signature in black ink, appearing to read 'R. Bailey', is written over a horizontal line. The signature is stylized and cursive.

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