

IN THE STATE COURT OF COBB COUNTY  
STATE OF GEORGIA

COBB COUNTY, GA  
COURT OFFICE

2016 JUN 13 AM 11:28

STATE COURT CLERK-07

BINTOU CHAM, as surviving spouse of )  
FRANKLIN CALLENS, and AEYSHA )  
HARRIS as Administrator of the estate of )  
FRANLIN CALLENS, deceased, )

Plaintiffs, )

vs. )

ECI MANAGEMENT CORP. and )  
COBB-SIX FLAGS ASSOCIATES, LTD. )

Defendants. )

CIVIL ACTION FILE

NO. 16 A-1608-6

COMPLAINT

COME NOW Plaintiffs in the above-styled action and hereby file this Complaint as follows:

1.

On or about December 13, 2015, Franklin Callens died intestate and is survived by his spouse Bintou Cham, who is his sole heir.

2.

Aeysha Harris, Franklin Callens mother, is to be the duly appointed Administrator of the Estate of Franklin Callens, deceased.

3.

Plaintiffs, individually, and on behalf of the Estate of Franklin Callens, state their intention and desire to bring each and every permissible, proper, and authorized claim for damages under Georgia law, including general, special, compensatory, consequential, economic, punitive, and other damages as proven by the evidence at trial. In particular, Plaintiffs bring a wrongful death claim on behalf of the sole surviving heir of Franklin Callens and as the

Administrator of the Estate of Franklin Calles for all claims belonging to the Estate of Franklin Callens.

4.

Defendant ECI Manangement Corp. (hereinafter "ECI") is a Georgia corporation incorporated in the State of Georgia, a resident of Cobb County, and is subject to the venue and jurisdiction of this Court.

5.

ECI may be served by serving its registered agent: Seth Greenberg, 2100 Powers Ferry Road, Suite 200, Atlanta Georgia 30339.

6.

ECI has been properly served with process in this action.

7.

Defendant Cobb-Six Flags Associates, LTD (hereinafter "CSFA") is a Georgia corporation incorporated in the State of Georgia, a resident of Cobb County, and is subject to the venue and jurisdiction of this Court.

8.

CSFA may be served by serving its registered agent: Seth Greenberg, 2100 Powers Ferry Road, Suite 200, Atlanta Georgia 30339.

9.

CSFA has been properly served with process in this action.

10.

Jurisdiction and venue are proper in Cobb County pursuant to O.C.G.A. § 14-2-510 as the cause of action at issue occurred in Cobb County, Defendants maintain an office and transact business in Cobb County and Defendants' registered agents are located in Cobb County.

11.

At all times relevant to the allegations contained herein, ECI and CSFA (hereinafter "Defendants") owned, operated, controlled, and managed the Concepts 21 Six Flags Drive Apartment Homes located at 300 Six Flags Drive, Austell, Georgia. (hereinafter "the Premises").

12.

On December 13, 2015 Franklin Callens was present as an invitee on the Premises where he resided.

13.

As he was preparing to leave for work on the morning of December 13, 2015, Mr. Callens was accosted in the parking lot of the Premises, shot, and killed.

14.

Mr. Callens was a totally innocent victim and exercised ordinary care and diligence at all times herein and under the circumstances then existing.

15.

At all times mentioned herein, Defendants controlled the management of the Premises, and had the legal duty to keep the Premises in a state consistent with the due regard for the safety of its invitees, including Mr. Callens.

16.

Defendants breached the duty owed to Mr. Callens by failing to exercise ordinary care to keep the Premises safe.

17.

Defendants knew of or with the exercise of due care for the safety of its invitees should have known of the dangerous and hazardous conditions existing on the Premises, of the failure to maintain, inspect, secure, patrol, and manage the Premises, and that said conditions were likely to result in injuries and/or death to its invitees, including Mr. Callens.

18.

Prior to and on December 13, 2015, the Premises was negligently maintained, inspected, secured, patrolled, and managed. Defendants had knowledge, both actual and constructive, of the need to properly maintain, secure, inspect, patrol, and manage the Premises, but failed to exercise ordinary care to do so.

19.

Defendants had actual and constructive knowledge of criminal activity existing on and around the Premises prior to the shooting of Mr. Callens, including prior violent crimes on the Premises and in the immediate area. Said prior criminal activity was negligently permitted to exist and remain at said premises.

20.

Defendants negligently failed to maintain adequate security devices or measures to permit proper use of the Premises, thereby causing an unreasonable risk of injury and death to its invitees, including Mr. Callens.

21.

Defendants were negligent in failing to maintain, inspect, secure, patrol, and manage the Premises, thereby creating an unreasonable risk of injury and death to its invitees, including Mr. Callens.

22.

Defendants negligently failed to warn its invitees, including Mr. Callens, of the existence of the aforementioned criminal activity and the likelihood of further criminal attacks.

23.

Defendants negligently failed to maintain a policy, procedure, or system of investigating, reporting, and warning of the aforementioned criminal activity.

24.

Defendants negligently represented to its invitees that the Premises was properly maintained and reasonably safe.

25.

Defendants failed to take appropriate action to remedy or reduce the danger to its invitees, including Mr. Callens, and allowed the dangerous environment on the Premises to continue to exist unabated, thereby creating a nuisance.

26.

Defendants were negligent and said negligence proximately caused the injuries to Plaintiffs in the following ways:

- a) Violation of O.C.G.A. § 51-3-1 by failing to use ordinary care to keep the Premises safe;
- b) Violation of O.C.G.A. § 44-7-13;

- c) In failing to properly inspect, maintain, secure, patrol and manage the Premises;
- d) In failing to warn of the latent dangers on the Premises;
- e) In failing to implement adequate security measures to prevent or deter crime from occurring at the subject property;
- f) In failing to properly train and supervise their employees in regard to the maintenance and safety of the Premises;
- g) In failing to establish adequate security policies and/or procedures; and
- h) In failing to properly retain, entrust, hire, train, and supervise said employees.

27.

Defendants were and are negligent *per se*.

28.

Each of the foregoing tortious acts and omissions constitute an independent act of negligence on the part of Defendant and one or more or all of the above stated acts and omissions proximately caused the injuries to and death of Mr. Callens.

29.

Defendants are liable for the injuries to and death of Mr. Callens.

30.

The injuries to and resulting death of Mr. Callens were the direct and proximate result of the Defendants' negligence. But for said negligence, Mr. Callens would not have suffered injuries and died. Defendants are liable for Mr. Callens' injuries, pain and suffering, the full value of his life pursuant to O.C.G.A. § 51-4-1 et seq., and all other elements of damage allowed under the laws of the State of Georgia.

31.

Defendants are liable to Plaintiffs directly, as well as under theories of *respondeat superior*, joint enterprise, and agency principles.

32.

As a direct and proximate result of Defendants' negligence Mr. Callens sustained catastrophic injuries, conscious pain and suffering, and ultimately became aware of his impending death.

33.

Plaintiffs state their intention to seek all compensatory, special, economic, consequential, general, punitive, and all other damages permissible under Georgia Law, including, but not limited to:

- a) Personal injuries;
- b) Pain and suffering;
- c) Mental anguish, fright, shock, and terror;
- d) Loss of the enjoyment of life;
- e) Wrongful death;
- f) Damages for all elements of the full value of Franklin Callens' life, tangible and intangible;
- g) Funeral and burial expenses;
- h) Incidental expenses;
- i) Past, present, and future loss of earnings;
- j) Medical expenses; and
- k) Consequential damages to be proven at trial.

34.

Plaintiffs are entitled to recover punitive damages from Defendants, because the actions of Defendants and their agents and employees showed willful misconduct, malice, fraud, wantonness, oppression, or an entire want of care which would raise the presumption of conscious indifference to consequences. Accordingly, Plaintiffs are entitled to recover punitive damages from Defendants in an amount to be determined by the enlightened conscience of an impartial jury.

35.

Defendants' actions evidence a species of bad faith. Defendants were and are stubbornly litigious and have caused Plaintiffs undue expense. Thus, Plaintiffs are entitled to recover their necessary expenses of litigation, including an award of reasonable attorneys' fees and expenses required by this action, pursuant to O.C.G.A. § 13-6-11, as well as any other applicable statutory or common law basis.

WHEREFORE, Plaintiffs pray that:

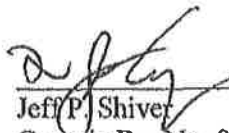
- (a) Process be issued as provided by law;
- (b) Plaintiffs be awarded actual damages in amounts to be shown at trial from Defendants;
- (c) Plaintiffs be awarded the full value of Franklin Callens' life pursuant to O.C.G.A. § 51-4-1 et seq.
- (d) Plaintiffs be awarded all general, special, compensatory, economic, punitive, and other allowable damages in accordance with the enlightened conscience of an impartial jury from Defendants and as permitted under Georgia law;



- (e) Plaintiffs have a trial by jury; and
- (f) Plaintiffs have such other relief as this Court deems just and proper.

PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY.

Respectfully submitted,  
**SHIVER HAMILTON, LLC**

  
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