

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

JAMES CARMICHAEL,)	
)	
Plaintiff,)	
)	CIVIL ACTION FILE NO.
v.)	
)	_____
GEORGIA CVS PHARMACY, L.L.C.,)	
MIMMS ENTERPRISES, INC., MALON D.)	
MIMMS FAMILY, L.P., and CVS)	
MANAGER #1, and CVS MANAGER #2,)	
)	
Defendants.)	

COMPLAINT

COMES NOW Plaintiff in the above-styled action, and hereby files this Complaint and shows the Honorable Court as follows.

1.

This is a renewal action filed pursuant to Georgia law O.C.G.A. § 9-11-41 following the Dismissal Without Prejudice in the State Court of Fulton County of the case styled James Carmichael v. Georgia CVS Pharmacy, L.L.C., Mimms Enterprises, Inc. and Malon D. Mimms Family, L.P. and CVS Manager #1 and CVS Manager #2 under civil action file number 14EV002214Y. All applicable costs have been paid and the renewal action is filed timely under controlling Georgia law as it is filed within six months of the dismissal of 14EV002214Y.

2.

Defendant Georgia CVS Pharmacy, L.L.C. (hereinafter referred to as “Defendant(s)” or “Defendant CVS, L.L.C.”) is a foreign limited liability corporation doing business in Georgia and is subject to the jurisdiction and venue of this Court. Service can be made on said Defendant by serving its Registered Agent as listed by the Georgia Secretary of State as CT Corporation.

CT Corporation's address is 1201 Peachtree Street, N.E., Atlanta, GA, 30361. Plaintiff has also served a second original on Defendant Georgia CVS Pharmacy, L.L.C. at 2180 Satellite Blvd., Suite 400, Duluth, GA, 30097.

3.

Jurisdiction is proper as to Defendant Georgia CVS Pharmacy, L.L.C.

4.

Venue is proper as to Defendant Georgia CVS Pharmacy, L.L.C.

5.

Defendant Georgia CVS Pharmacy, L.L.C. has been properly served with process in this action.

6.

Defendant Mimms Enterprises, Inc. (hereinafter referred to as "Defendant(s)" or "Defendant Mimms Enterprises") is a foreign corporation doing business in Georgia and is subject to the jurisdiction and venue of this Court. Service can be made on said Defendant by serving its Registered Agent: Thompson, O'Brien, Kemp & Nasuti, P.C., 40 Technology Parkway South, Suite 300, Norcross, Georgia, 30092.

7.

Jurisdiction is proper as to Mimms Enterprises, Inc.

8.

Venue is proper as to Defendant Mimms Enterprises, Inc.

9.

Defendant Mimms Enterprises, Inc. has been properly served with process in this action.

10.

Defendant Malon D. Mimms Family, L.P. (hereinafter referred to as “Defendant(s)” or “Defendant Mimms Family”) is a limited partnership doing business in Georgia and is subject to the jurisdiction and venue of this Court. Service can be made on said Defendant by serving its Registered Agent: Thompson, O’Brien, Kemp & Nasuti, P.C., 40 Technology Parkway South, Suite 300, Norcross, Georgia, 30092.

11.

Jurisdiction is proper as to Defendant Malon D. Mimms Family, L.P.

12.

Venue is proper as to Defendant Malon D. Mimms Family, L.P.

13.

Defendant Malon D. Mimms Family, L.P. has been properly served with process in this action.

14.

On December 20, 2012, Defendants were lessors and/or owners of the building at issue as well as the sidewalk and parking lot of the building at issue where CVS did business (hereinafter “the premises” and/or “the Building”).

15.

Plaintiff has a good faith belief that Defendant CVS Manager #1 (hereinafter referred to as “Defendant(s)” or “Defendant CVS Manager #1”) is a Georgia resident. Defendant CVS Manager #1 will be properly served with the Summons and Complaint as soon as Defendants provide the name of the manager(s) at the relevant times herein.

16.

Jurisdiction is proper as to Defendant CVS Manager #1.

17.

Venue is proper as to Defendant CVS Manager #1.

18.

Plaintiff has a good faith belief that Defendant CVS Manager #2 (hereinafter referred to as “Defendant(s)” or “Defendant CVS Manager #2”) is a Georgia resident. Defendant CVS Manager #2 will be properly served with the Summons and Complaint as soon as Defendants provide the name of the manager(s) at the relevant times herein.

19.

Jurisdiction is proper as to Defendant CVS Manager #2.

20.

Venue is proper as to Defendant CVS Manager #2.

21.

Defendants CVS Managers #1 and #2 were agents or employees of the remaining Defendants at the time of the incident which is the subject of Plaintiff’s Complaint.

22.

Defendants CVS Managers #1 and #2 names and addresses are currently unknown to Plaintiff.

23.

Plaintiff will substitute the named manager(s) currently known as Defendants CVS Managers #1 and #2 upon receipt of that information from Defendants or other means.

24.

At all times herein, Defendants owned, operated, controlled and/or managed the Premises located at 1455 Moreland Avenue, SE, Atlanta, Georgia 30316, known as CVS located in Fulton County, Georgia.

25.

At the time of the incident at issue, Defendants had ownership, managerial, or other similar responsibilities and duties, via statute and/or contract, which included maintenance, security, repairs, and inspection of the Premises in ensuring that it was maintained in a safe condition for use by persons and invitees, including Plaintiff. Defendants' duties included ensuring the Premises remained in a safe condition even if Defendants were not physically present on the Premises. Defendants' duties included assurance the Premises remained in a safe condition for Plaintiff pursuant to O.C.G.A. §51-3-1 by their control, occupancy, ownership, or management or delegation thereof.

26.

At the time of the incident at issue, Defendants CVS Managers #1 and/or #2 were the agents, employees, or persons with apparent agency or authority working for one or more Defendants. Defendants were actively negligent in failing to ensure that the premises were kept in a safe condition. Said Defendants acted with misfeasance and were negligent which caused and/or contributed to the incident and Plaintiff's resulting damages.

27.

On December 20, 2012, Plaintiff James Carmichael was an invitee or otherwise known by Defendants to be present at the Premises such that Defendant owed Plaintiff a duty of ordinary care.

28.

On December 20, 2012, while on the Premises, Plaintiff was a victim of aggravated assault, aggravated battery, attempted murder, and was shot multiple times with a deadly weapon. Said incident occurred at Defendants' Premises which is located within Fulton County, Georgia.

29.

Plaintiff exercised ordinary care and diligence at all times herein and under the circumstances then existing.

30.

Defendants breached their duty owed to Plaintiff by failing to exercise ordinary care to keep the Premises safe.

31.

Prior to and on December 20, 2012, the Premises were negligently repaired, maintained, inspected, secured, patrolled and managed. Defendants had knowledge, both actual and constructive, of the need to properly repair, maintain, secure, inspect, patrol and manage Defendants' Premises, but failed to exercise ordinary care in doing so.

32.

Defendants had actual and constructive knowledge of criminal activity existing on the Premises and in the surrounding area prior to the attack and shooting of Plaintiff. Said prior criminal activity was negligently permitted to exist and remain at and around Defendants' Premises.

33.

Defendants had actual and constructive knowledge of criminal activity at the subject Premises and in the surrounding area prior to the attack and shooting of Plaintiff, but negligently failed to warn Plaintiff.

34.

Defendants negligently failed to warn their invitees, including Plaintiff, of the existence of the aforementioned criminal activity and the likelihood of further criminal attacks.

35.

Defendants negligently failed to maintain adequate security devices, guards, inspection procedures, investigative measures, processes and systems to permit proper use of the Premises, thereby causing an unreasonable risk of injury to their invitees, including Plaintiff.

36.

At all times mentioned herein, Defendants controlled the management of the Premises, and had the legal duty to keep said Premises in a state consistent with the due regard of the safety of their invitees, including Plaintiff. Defendants breached said duties to Plaintiff and failed to act as similarly situated businesses and owners/occupiers would in like circumstances.

37.

Defendants were negligent in failing to repair, maintain, inspect, secure, patrol and manage Defendants' Premises at issue, thereby creating an unreasonable risk of injury to their invitees, including Plaintiff.

38.

Defendants knew of, or with the exercise of due care for the safety of their invitees, should have known of the dangerous and hazardous conditions existing on the Premises and the failure to

repair, maintain, inspect, secure, patrol and manage the Premises and that said conditions were likely to result in the injuries and damages suffered by Plaintiff.

39.

Defendants were and are *negligent per se*.

40.

Defendants had actual knowledge of the dangerous and hazardous conditions existing at the Premises due to the direct and constructive knowledge of their employees and agents.

41.

Defendants were actively negligent in failing to ensure that the Premises was kept in a safe condition. Defendants CVS Managers #1 and #2 acted with misfeasance which caused or contributed to the shooting at issue.

42.

Defendants had constructive knowledge of the dangerous and hazardous conditions existing on the Premises through the knowledge of their employees and agents and due to the prior criminal activity and dangers associated with the Premises and surrounding areas.

43.

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

44.

Defendants were negligent and said negligence proximately caused Plaintiff's injuries and damages in the following ways, to-wit:

- 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, repair, and maintain the Premises;
- d) In failing to warn of the latent dangers on the Premises;
- e) In failing to properly train and supervise their employees or independent guards in regard to the maintenance and safety of said Premises, as well as the appropriate responses to emergent situations; and
- f) In failing to properly retain, entrust, hire, train and supervise said employees.

45.

Defendants breached their duties to keep the Premises well maintained and safe via contract or agreement to which Plaintiff was a beneficiary.

46.

Defendants are liable for the assault, battery, and shooting of Plaintiff. Said assault, battery and shooting of Plaintiff was done without necessity, privilege or consent.

47.

Because Defendants had knowledge of, or in the exercise of reasonable care should have had knowledge of the dangerous environment of Defendants' Premises, Defendants are liable for the negligent supervision, hiring, training, and retention of their employees and the entrustment of said Premises to their agents and employees. Said negligence was the proximate cause of the injuries and damages of Plaintiff.

48.

Defendants negligently represented to their invitees that Defendants' Premises was properly maintained and that said Premises was safe.

49.

Defendants negligently failed to provide adequate security protection and/or adequate security personnel on its Premises.

50.

Defendants negligently failed to act on their knowledge of prior crimes, and/or suspicious activity and failed to act to deter, correct, or warn of prior criminal activity, loitering, trespassing, and the dangerous environment of the Premises.

51.

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

52.

Defendants' negligence was the cause in fact and a proximate cause of Plaintiff's injuries and damages.

53.

The injuries and damages sustained by Plaintiff were the direct and proximate result of the negligence and/or breaches of Defendants. But for said negligence and/or breaches, Plaintiff would not have suffered serious injury, physical pain, mental and psychological suffering, death and other injuries as will be proven at the trial of this matter. Defendants are liable for Plaintiff's injuries sustained, pain and suffering, and all other elements of damages allowed under the laws of the State of Georgia. Defendants are liable to Plaintiff directly, as well as under theories of *respondeat superior* and agency principles.

54.

As a proximate and foreseeable result of Defendants' negligence and/or breaches, Plaintiff received serious injuries has and will continue to endure pain and suffering, mental anguish, loss of the enjoyment of life, lost wages, and suffered other damages as will be proven at trial and permitted under Georgia law. Plaintiff states his 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;
- d) Loss of the enjoyment of life;
- e) Incidental expenses;
- f) Loss of earnings;
- g) Medical expenses; and
- h) Consequential damages to be proven at trial.

55.

Plaintiff is entitled to an award of punitive damages, without limitation or cap, because the actions of Defendants and their employees were willful and wanton and showed an entire want of care, which would raise the presumption of a conscious indifference to consequences.

56.

Because Defendants' actions were and are stubbornly litigious, and have caused Plaintiff undue expense, Plaintiff is entitled to recover his necessary expenses of litigation, including an award of reasonable attorneys' fees and expenses required by this action. (O.C.G.A. § 13-6-11).

Furthermore, Plaintiff is entitled to all expenses of litigation and attorneys' fees pursuant to all other Georgia statutory and common laws.

57.

That each of the forgoing acts and omissions constitute an independent act of negligence on the part of the Defendants and one or more or all above stated acts were the proximate causes of the injuries and damages to Plaintiff. Plaintiff states his intention to seek and assert all damages recoverable under Georgia law.

WHEREFORE, Plaintiff respectfully prays that:

- (a) Process issue as provided by law;
- (b) Plaintiff be awarded actual damages in an amount to be shown at trial from the Defendants;
- (c) Plaintiff be awarded all medical, doctor and other expenses in an amount to be proven through the evidence at the time of trial;
- (d) Plaintiff be awarded all damages for general, special, compensatory, economic, and other allowable damages in accordance with the enlightened conscience of an impartial jury from the Defendants and as permitted under Georgia law;
- (e) Plaintiff has a trial by jury; and
- (f) Plaintiff has such other relief as this Court deems just and proper.

TRIAL BY JURY IS HEREBY DEMANDED.

[signature on following page]

This 7th day of December, 2016.

JAMES A. RICE, JR., P.C.

/s/ James A. Rice, Jr. _____

James A. Rice, Jr.

Georgia State Bar No. 602811

Attorney for Plaintiff

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