

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

TINA SPENCER-SMITH,)
)
 Plaintiff,)
)
 vs.)
)
 VOLUNTEER RESTAURANT)
 ASSOCIATES, INC. d/b/a CAFÉ 290,)
 LINDA PRITTS, JOHN SCATENA, and)
 NEWBURGER-ANDES & COMPANY)
)
 Defendant.)

CIVIL ACTION FILE NO.

COMPLAINT FOR DAMAGES

COMES NOW Tina Spencer-Smith, Plaintiff in the above-styled matter, by and through the undersigned counsel, and hereby files this Complaint for Damages upon against Volunteer Restaurant Associates, Inc. d/b/a Café 290, Linda Pritts, John Scatena, and Newburger-Andes & Company (hereinafter, "Defendants") showing this Honorable Court as follows:

JURISDICTION AND VENUE

1.

The Plaintiff, Tina Spencer-Smith, hereafter referred to as Plaintiff, is a resident of the State of Georgia.

2.

Defendant, Volunteer Restaurant Associates, Inc. dba Café 290, is a Georgia corporation registered to conduct business in Georgia and/or Fulton County, Georgia, whose principle office is located at 290 Hilderbrand Road, Atlanta, Georgia 30328. Volunteer Restaurant Associates, LLC dba Café 290, is subject to the jurisdiction and venue of this Court. Volunteer Restaurant Associates, LLC dba Café 290, can be served through its registered agent: Gerald A. Benda,

1801 Peachtree Street, Suite 330, Atlanta, Fulton County, Georgia 30309.

3.

Defendant, Linda Pritts, is a citizen and resident of the State of Georgia residing at 789 Hammond Drive, Unit #1706, Sandy Springs, Fulton County, Georgia 30328. Defendant Pritts is the owner and Chief Executive Officer (CEO) of Volunteer Restaurant Associates, Inc. dba Café 290.

4.

Defendant, John Scatena, is a citizen and resident of the State of Georgia residing at 4512 Warrior Trail SW, Lilburn, Gwinnett County, Georgia 30047. Defendant Scatena is president and manager of Volunteer Restaurant Associates, Inc. dba Café 290.

5.

Defendant, Newburger-Andes & Company, is a Georgia corporation registered to conduct business in Georgia and/or Fulton County, Georgia, whose principle office is located at 201 Allen Road, NE, Suite 300, Atlanta, Georgia 30328. Newburger-Andes & Company is subject to the jurisdiction and venue of this Court. Newburger-Andes & Company can be served through its registered agent: Amy Newburger-Silver, 201 Allen Road, Suite 300, Atlanta, Fulton County, Georgia 30328.

6.

Defendant, Newburger-Andes & Company, is the owner of the property located at 290 Hilderbrand Road, Atlanta, Georgia 30328, of which Defendant Volunteer Restaurant Associates dba Café 290 is a tenant.

7.

All parties are subject to the jurisdiction and venue of this Honorable Court.

STATEMENT OF FACTS

8.

On April 25, 2015, Plaintiff Tina Spencer-Smith was an invitee on the property owned and operated by the Defendants located at 290 Hilderbrand Road, Atlanta, Georgia 30328; more specifically, Plaintiff was walking to her table in a dimly lit restaurant owned and operated by the Defendants. As she approached her table, Plaintiff attempted to pull her seat out to sit down when she tripped on a step and fell backwards. The step was dangerous and defective because of its extremely close proximity to the seat where Plaintiff was instructed to sit. Additionally, the step was dangerous due to its poor visibility in the dimly lit restaurant and its blending in with the surrounding carpet.

9.

Prior to falling, Plaintiff was exercising ordinary care with respect to her surroundings.

10.

As owners and operators of the subject premises, the Defendants each should have been aware of the dangerous condition of the staircase.

11.

Plaintiff was not aware of the dangerous condition created by Defendants' negligence.

12.

The Defendants failed to provide proper or adequate warning of the dangerous condition of the steps.

13.

As a result of the fall, Plaintiff suffered serious injuries, and the incident was immediately reported to an employee and/or manager/owner, each of whom were employed by the

Defendants.

14.

At all times alleged herein each of the Defendants, either individually or by and through their employees and/or agents, were solely responsible for the condition of, the inspection of, the maintenance of and the premises in question.

15.

At all times herein, it was the duty of the Defendants to keep and maintain the premises in a reasonably safe and proper condition, for use by its invitees, including the Plaintiff, particularly in light of the Defendant's' use of the premises.

16.

The Defendants, either individually or by and through their employee and/or agents, failed to inspect the premises and/or maintain the premises in a reasonably safe and hazard free condition.

17.

The occurrence complained of herein was due to the negligence, carelessness, and recklessness of the Defendants, either individually or by and through their employees and/or agents.

18.

The Defendants, individually or by and through their employees and/or agents, should have had reasonable and timely superior notice of the dangerous condition that existed on the property.

19.

The Plaintiff was exercising ordinary care for her safety and well-being at the time she

fell, and the occurrence happened through no fault, negligence or lack of care on her part.

FIRST CAUSE OF ACTION:

NEGLIGENT FAILURE TO KEEP PREMISES SAFE FOR INVITEES

20.

Plaintiff incorporates the allegations set forth in paragraphs 1 through 15 of Plaintiff's Complaint as if set forth fully herein.

21.

The Defendants negligently breached their legal duty to keep or maintain a safe and hazard free premises for invitees, and is, therefore, liable to Plaintiff.

22.

As the direct and proximate result of the foregoing negligence of the Defendants, Plaintiff suffered physical injuries, including but not necessarily limited to: ankle sprain and contusion of the tibia.

23.

As the direct and proximate result of the negligence of the Defendants, Plaintiff has incurred medical expenses for the treatment of the injuries described above in an amount of at least \$70,373.50.

24.

As the direct and proximate result of the foregoing negligence of the Defendants, Plaintiff has and continues to endure physical pain and suffering and may continue to incur medical expenses for the treatment of her injuries.

25.

As a direct and proximate result of the Defendants' negligence, the Plaintiff is entitled to

recover damages including past, present and future medical expenses, mental and physical pain and suffering, and such other relief as this court deems just and proper.

RESPONDEAT SUPERIOR AND/OR JOINT AND SEVERAL LIABILITY

26.

Plaintiff incorporates the allegations set forth in paragraphs 1 through 22 of Plaintiff's Complaint as if set forth fully herein.

27.

One or more of the Defendants' employees created, maintained and/or was aware of or should have been aware of a dangerous condition that existed when the Plaintiff fell on the missing step, and/or was aware of said dangerous condition within the course and scope of his/her business dealing or employment with the Defendants.

28.

One or more of the Defendants' employees failed to provide a proper or adequate warning that a dangerous and defective condition existed on its premises and/or failed to remedy the hazardous condition.

29.

Defendants are vicariously or jointly liable for said employees' actions or lack thereof by and through the doctrine of Respondeat Superior and/or Joint and Several Liability.

DAMAGES

30.

As the direct and proximate result of the foregoing negligence of Defendants, Plaintiff suffered severe physical injuries.

31.

As the direct and proximate result of the negligence of the Defendants, Plaintiff was obligated to and did expend, and will continue to expend, money for medical and hospital expenses, and continues to experience pain when performing her usual activities.

32.

As the direct and proximate result of the foregoing negligence of Defendants, Plaintiff suffered from and will continue to suffer from pain and suffering.

33.

As a direct and proximate result of the Defendants' negligence, the Plaintiff is entitled to recover damages including past, present and future medical expenses, mental and physical pain and suffering, and such other relief as this court deems just and proper.

34.

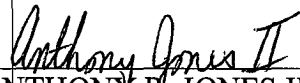
Plaintiff is entitled to recover damages including past, present, and future medical expenses; monetary damages for past, present and future mental and physical pain and suffering; past, present and future loss of earning; and such other relief as this Court deems just and proper.

TRIAL BY JURY

The Plaintiff demands a trial by jury as provided by law.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants for general and special damages as described above, together with punitive damages, and any further relief this Court deems just and proper.

Respectfully submitted this 27th day of February, 2017.



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