

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CATHY BURDIN,)
)
 Plaintiff,)
)
 v.) CIVIL ACTION FILE NO.:
)
 MICHAEL SIMMONS and)
 METROPOLITAN ATLANTA RAPID) _____
 TRANSIT AUTHORITY,)
)
 Defendants.)

**COMPLAINT FOR DAMAGES
AND DEMAND FOR JURY TRIAL**

COMES NOW, Cathy Burdin, Plaintiff in the above-styled action, and files this Complaint for Damages and Demand for Jury Trial against Defendant, Michael Simmons and Metropolitan Atlanta Rapid Transit Authority, showing the Court as follows:

I.

PARTIES, JURISDICTION, & VENUE

1.

Plaintiff Cathy Burdin (hereinafter referred to as "Plaintiff") is a citizen and resident of the State of Georgia. Plaintiff submits himself to the jurisdiction and venue of this Court.

2.

Defendant Michael Simmons (hereinafter referred to as "Defendant Simmons") is a citizen and citizen of the State of Georgia, residing in Atlanta.

3.

Defendant Metropolitan Atlanta Rapid Transit Authority (hereinafter referred to as "Defendant MARTA") is a corporation, incorporated under the laws of the State of Georgia,

having a principle place of business in the State of Georgia located at 2424 Piedmont Road, NE, Atlanta, Fulton County, Georgia 30324. Defendant MARTA may be served through its registered agent Elizabeth M. O'Neill, at 2424 Piedmont Road, NE, Atlanta, Fulton County, Georgia 30324.

4.

This cause of action arises out of and is related to injuries suffered by Plaintiff, as a result of the negligence of Defendants on MARTA bus number 1620, route 196, in College Park, Fulton County, Georgia.

5.

The Court may exercise jurisdiction over the subject matter of this action.

6.

Venue, as to Defendant Simmons, is proper in Fulton County pursuant to Article VI, Section II, Paragraph IV of the Constitution of the State of Georgia.

7.

Venue, as to Defendant MARTA, is proper in Fulton County pursuant to O.C.G.A. § 14-2-510.

II.

EVENTS AND FACTS SUPPORTING CAUSE OF ACTION

8.

Plaintiff re-alleges and incorporates by reference all allegations contained in paragraphs 1 through 7 as if fully alleged herein.

9.

On January 19, 2016, Defendant MARTA owned and operated MARTA bus number 1620 (hereinafter referred to as "the MARTA bus").

10.

Defendant MARTA is a common carrier.

11.

Defendant MARTA solicits patronage of the public to enter and ride MARTA bus number 1620.

12.

The incident that gives rise to this action occurred on MARTA bus number 1620, route 196, at 3800 Main Street, College Park, Georgia 30337.

13.

On January 19, 2016, Plaintiff was a passenger on MARTA bus number 1620, route 196.

14.

MARTA bus number 1620, on route 196, stopped at 3800 Main Street, College Park, Georgia 30337.

15.

MARTA bus number 1620, on route 196, was being driven by a MARTA trainee, Defendant Simmons.

16.

MARTA bus number 1620, on route 196, was being supervised by a MARTA trainer, Derrick Collins.

17.

Defendant Simmons was an employee of Defendant MARTA at the time of the incident.

18.

Derrick Collins was an employee of Defendant MARTA at the time of the incident.

19.

Defendant Simmons was an agent of Defendant MARTA.

20.

Derrick Collins was an agent of Defendant MARTA.

21.

As passengers were exiting the MARTA bus, Defendant Simmons raised the wheelchair ramp.

22.

At the time of the incident, Defendant Simmons was acting in the course and scope of his employment and/or agency of Defendant MARTA.

23.

Under the doctrine of *respondeat superior*, Defendant MARTA is liable for the acts and/or omissions of its employee or agent and the injuries and damages suffered by Plaintiff proximately caused by those tortious acts and/or omissions.

24.

As Plaintiff was exiting the MARTA bus, her left foot was caught under the raised wheelchair ramp.

25.

Defendant Simmons lowered the wheelchair ramp while Plaintiff's left foot was caught under the ramp.

26.

Plaintiff had no warning of the wheelchair ramp being raised prior to her approaching the wheelchair ramp.

27.

Plaintiff did not require the assistance of the wheelchair ramp.

28.

The wheelchair ramp should not have been raised as passengers, including Plaintiff, were exiting the MARTA bus.

29.

Plaintiff's left foot would not have been caught in the wheelchair ramp but for the actions of Defendant Simmons.

30.

Defendant Simmons actions caused Plaintiff's left foot to be caught in the wheelchair ramp.

31.

Defendant Simmons was not attentive.

32.

Defendant Simmons was distracted.

33.

The raised wheelchair ramp caused a hazardous condition.

34.

The raised wheelchair ramp caused a dangerous condition.

35.

The raised wheelchair ramp caused an unsafe condition.

36.

Defendant Simmons was negligent.

37.

Defendant Simmons was the sole cause of the incident.

38.

Defendant MARTA's employees, and/or agents were negligent.

39.

Defendant MARTA's employees, and/or agents were the sole cause of the incident.

40.

Plaintiff could not avoid the incident.

41.

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

42.

As a result of the incident, Plaintiff was injured.

43.

As a result of Defendant Simmons negligence, Plaintiff was injured.

44.

Plaintiff's left foot was injured as a result of the incident.

45.

As a result of Defendant MARTA's negligence, Plaintiff was injured.

III.

Count One – Cause of Action

Negligence of Defendants

46.

Plaintiff re-alleges and incorporates by reference all allegations contained in paragraphs 1 through 45 as if fully alleged herein.

47.

Defendant MARTA was a common carrier and owed duties to Plaintiff and to the public at large to exercise care in the operation of the vehicle its employee was operating.

47.

Defendant Simmons owed Plaintiff a legal duty to adhere to a reasonable standard of care in operating the MARTA bus.

48.

Defendant MARTA owed Plaintiff a legal duty to adhere to a reasonable standard of care in operating the MARTA bus.

49.

Defendant Simmons breached the duty owed to Plaintiff.

50.

Defendant MARTA breached the duty owed to Plaintiff.

51.

As a direct and proximate result of the tortious acts and omissions of Defendant Simmons, Plaintiff suffered injuries, including personal injuries; medical expenses; physical and continual pain and suffering; and mental anguish.

52.

As a direct and proximate result of the tortious acts and omissions of Defendant MARTA, Plaintiff suffered injuries, including personal injuries; medical expenses; physical and continual pain and suffering; and mental anguish

53.

Defendant Simmons is liable to Plaintiff for her injuries, losses, and damages.

54.

Defendant MARTA is liable to Plaintiff for her injuries, losses, and damages.

Count Two

Negligent Hiring, Training, Supervision, and Retention

55.

Plaintiff re-alleges and incorporates by reference all allegations contained in paragraphs 1 through 54 as if fully alleged herein.

56.

Defendant MARTA had a duty to ensure its driver, trainee, and others working for or on behalf of Defendant MARTA operated vehicles owned by Defendant MARTA in a reasonable and prudent manner. Defendant MARTA also had a duty of extraordinary care to the public in general and to Plaintiff to hire, train, and supervise competent drivers and other employees to ensure that the laws of the State of Georgia were followed with respect to the operation of vehicles owned by Defendant MARTA and to ensure the appropriate standard of care was adhered to with respect to the operation of such vehicles.

57.

Defendant MARTA breached its duty of extraordinary care in one or more of the following ways:

- (a) Failing to properly investigate, review and assess the credentials and qualifications of the driver or other employees charged with the responsibility of operating vehicles for Defendant MARTA, and retaining such individuals as employees and agents of the company despite their lack of qualifications or training and;
- (b) Failing to properly train drivers and other employees charged with the responsibility of operating vehicles for Defendant MARTA.

58.

As a direct and proximate result of the various breaches of Defendant MARTA, as set forth herein, Plaintiff suffered injuries.

59.

Defendant Simmons, while in the course and scope of acting as an employee and/or agent of Defendant MARTA committed tortious acts and/or omissions which proximately caused injuries and damages to Plaintiff.

60.

Under the doctrine of *respondent superior*, Defendant MARTA is liable for the acts and/or omissions of Defendant Simmons, its employee and/or agent and the injuries and damages suffered by Plaintiff that were proximately caused those tortious acts and/or omissions.

DAMAGES

61.

Plaintiff re-alleges and incorporates by reference all allegations contained in paragraphs 1 through 60 as if fully alleged herein.

62.

As a direct and proximate cause of the negligence of Defendant Simmons, Plaintiff suffered, and will continue to suffer, personal injuries.

63.

As a direct and proximate cause of the negligence of Defendant MARTA, Plaintiff suffered, and will continue to suffer, personal injuries.

64.

As a direct and proximate cause of the negligence of Defendant Simmons, Plaintiff incurred, and will continue to incur, obligations and expenses related to her injuries and medical treatment.

65.

As a direct and proximate cause of the negligence of Defendant MARTA, Plaintiff incurred, and will continue to incur, obligations and expenses related to her injuries and medical treatment.

66.

As a direct and proximate cause of the negligence of Defendant Simmons, Plaintiff has suffered, and will continue to suffer, physical and emotional pain and suffering and mental anguish.

67.

As a direct and proximate cause of the negligence of Defendant MARTA, Plaintiff has suffered, and will continue to suffer, physical and emotional pain and suffering and mental anguish.

68.

Defendant Simmons are liable to Plaintiff for the injuries, losses, and damages she has suffered.

69.

Defendant MARTA are liable to Plaintiff for the injuries, losses, and damages she has suffered.

WHEREFORE, Plaintiff prays:

- (a) That Summons and Process be issued and served upon Defendants;
- (b) For a trial by a jury;
- (c) That Plaintiff be awarded an appropriate sum to compensate for her injuries, losses, and damages;
- (d) That Plaintiff be awarded an amount to compensate for her medical expenses (past and future) in an amount to be proven at trial;
- (e) That Plaintiff be awarded an amount to compensate for her past, present, and future physical and emotional pain and suffering and mental anguish as determined by the enlightened conscience of the jury;
- (f) For recovery of costs of litigation against Defendants; and
- (g) That Plaintiff be awarded such other and further relief as this Court deems just and proper.

This 21st day of December, 2017.

/s/ Tom Pope III _____

TOM POPE III

Georgia Bar No. 584284

DUSTIN E. DAVIES

Georgia Bar No. 266071

Attorneys for Plaintiff

HASTY POPE LLP

529 Green Street

Gainesville, Georgia 30501

(770) 535-9026 Telephone

(770) 535-9027 Facsimile