

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

**CHRISTINA MOHRMANN,
Administrator of the Estate of ERIC SMITH**

Plaintiff,

Civil Action No.: 22-C- 45

v.

**WEST VIRGINIA UNIVERSITY BOARD OF GOVERNORS,
and
AMERICAN CAMPUS COMMUNITIES, INC.,
AMERICAN CAMPUS COMMUNITIES SERVICES, INC.,
AMERICAN CAMPUS COMMUNITIES OPERATING PARTNERSHIP, L.P.,
AMERICAN CAMPUS COMMUNITIES HOLDINGS, LLC, and
AMERICAN CAMPUS DEVELOPERS, LLC,
Collectively d/b/a AMERICAN CAMPUS COMMUNITIES,**

Defendants,

COMPLAINT

NOW COMES the Plaintiff, Christina Mohrmann, and for her Complaint against the Defendants West Virginia University Board of Governors and American Campus Communities, Inc., American Campus Communities Services, Inc., American Campus Communities Operating Partnership, L.P., American Campus Communities Holdings, LLC, and American Campus Developers, LLC states as follows:

Jurisdiction and Venue

1. Defendant West Virginia University Board of Governors (hereinafter WVUBOG) owns and operates West Virginia University ("WVU") and owns and controls real property in Monongalia County, West Virginia located at or near 60 Newton Avenue, Morgantown WV. Said property is a residential student apartment complex named College Park. (hereinafter, "College Park"). The WVUBOG is a State Agency.

FILED

FEB 15 2022

JEAN FRIEND, CLERK

2. Defendant American Campus Communities, Inc., is a company, partnership, organization or other business entity located at 12700 Hill Country Blvd, Suite T-200, Austin TX.

3. Defendant American Campus Communities Services, Inc., is a company, partnership, organization or other business entity located at 12700 Hill Country Blvd, Suite T-200, Austin TX.

4. Defendant American Campus Communities Operating Partnership, L.P., is a company, partnership, organization or other business entity located at 12700 Hill Country Blvd, Suite T-200, Austin TX.

5. Defendant American Campus Communities Holdings, LLC., is a company, partnership, organization or other business entity located at 12700 Hill Country Blvd, Suite T-200, Austin TX.

6. Defendant American Campus Developers LLC., is a company, partnership, organization or other business entity located at 12700 Hill Country Blvd, Suite T-200, Austin TX.

7. At all material times, defendants American Campus Communities, Inc., American Campus Communities Services, Inc., American Campus Communities Operating Partnership, L.P., American Campus Communities Holdings, LLC, and American Campus Developers LLC., (hereinafter referred to collectively as "American Campus Communities"), operated, managed, maintained and/or controlled College Park and surrounding real property, located at 60 Newton Avenue, Morgantown West Virginia.

8. The Plaintiff is a resident of Camden County, New Jersey, and serves as the representative of the Estate of Eric Smith. Her letter of Administration is attached as Exhibit "A."

9. The decedent, Eric Smith, was a resident of Camden County, New Jersey, and was a student at West Virginia University.

10. The events giving rise to the Plaintiff's Complaint occurred in Monongalia County, West Virginia.

11. Therefore, this Court has proper jurisdiction and venue over the parties and subject matter alleged herein.

12. Plaintiff hereby invokes the doctrines of *Respondeat Superior* and *Vicarious Liability*.

General Allegations

13. The plaintiff reasserts the facts and allegations from all paragraphs above as if asserted herein verbatim.

14. In the early morning hours of February 28, 2020, two men, armed with guns, who were not students at West Virginia University, were able to freely enter building 21 of the College Park complex.

15. Building 21 is a residential student housing apartment building that contains common entryways and hallways leading to individual apartments.

16. Building 21 has a lock system on the common entryways and lobbies that prevents non-residents from entering the building.

17. Defendants had the control over the lock system, and could have locked the outside, lobby, and stairwell doors to prevent persons from gaining entry to the building.

18. However, all Defendants negligently, carelessly, and recklessly failed to lock the doors that would prevent non-residents from gaining entry into building 21 on February 28, 2020.

19. Prior to February 28, 2020 Defendants knew or should have known that non-residents were continually entering the College Park complex without permission creating a dangerous condition to the students who lived there.

20. College Park was in such dangerous condition that it was a common occurrence for those without permission, including homeless men, to occupy building 21.

21. Despite its knowledge of the propensity for strangers to occupy building 21, the Defendants failed to take any appropriate action to remedy the dangerous condition, putting the community and university students at significant risk of serious injury.

22. On February 28, 2020 Defendants failed to lock any doors of Building 21 that would have prevented non-residents from gaining entry.

23. They failed to have proper security at building 21 to prevent non-residents from gaining entry.

24. They failed to monitor security cameras to prevent non-residents from gaining entry.

25. As a result, two men, who did not have permission to enter building 21, opened the unlocked doors and entered building 21 on multiple occasions on February 28, 2020.

26. After their final entry into building 21, they fired multiple shots into an apartment in building 21, killing decedent Eric Smith.

27. As a result of the Defendants' failure to provide adequate security, Eric Smith suffered severe physical, neurological, and psychological injuries and ultimately his untimely death.

28. Had the Defendants exercised reasonable care to discover that such dangerous conduct was happening at College Park, or was likely to happen, had adequate security measures in place, and taken steps to provide adequate warnings and protect their guests, Eric Smith would not have been killed.

29. At all times material hereto, Defendants knew, or had reason to know, from past experience at College Park, that there was a likelihood of this type of dangerous conduct on the part of third persons which was likely to endanger students, such as Eric Smith, and despite this knowledge, failed to take precautions against it.

30. Defendant WVUBOG is insured under a Commercial General Liability policy of insurance issued by National Union Fire Insurance Company of Pittsburgh, bearing Policy No. GL 641-22-41 with a policy period of July 1, 2019 to July 1, 2020. ("CGL Policy")

31. The CGL Policy provides insurance coverage to the WVUBOG for all sums the WVUBOG may become legally obligated to pay as damages because of bodily injury caused by the negligence or other wrongful act of the WVUBOG.

32. The Plaintiff does not seek compensatory damages against the Defendant WVUBOG beyond those which are covered by the State of West Virginia's liability insurance policy and any other applicable insurance policy.

COUNT I – WRONGFUL DEATH AND NEGLIGENCE OF WVUBOG

33. The plaintiff reasserts the facts and allegations from all paragraphs above as if asserted herein verbatim.

34. Defendant WVUBOG owns and controls real property located at 60 Newton Avenue in Morgantown, WV (hereinafter referred to as "subject property").

35. As the owner and the party that controls the subject property, Defendant WVUBOG has a duty to maintain its property in a reasonable, safe manner, including the duty and obligation to take all reasonable steps necessary to make sure occupants and visitors of the property are safe.

36. Defendant WVUBOG knew or should have known that late at night criminal activity was likely to occur on the premises if accessed by uninvited guests and that it needed to take all reasonable precautions to prevent uninvited guests from entering the premises.

37. Defendant WVUBOG knew, or should have known, that if uninvited guests obtained access to the property there was a very high risk that someone could be seriously injured or killed. As such, it was reasonably foreseeable to the Defendant that failing to prevent uninvited guests from entering the property would result in injury or death to others.

38. The Defendant WVUBOG is liable for the wrongdoing of their agents, servants and employees pursuant to the principles of agency, vicarious liability, and *respondeat superior*.

39. As a proximate result of the negligence and breaches of duty by Defendant WVUBOG by and through its agents, servants, and employees, two armed uninvited trespassers were allowed to easily open the front door of the premise and kill Eric Smith.

40. As a proximate result of the negligence and breaches of duty by Defendant WVUBOG by and through its agents, servants and employees, Eric Smith suffered permanent physical and emotional injuries which include, but are not limited to his gunshot wounds followed by his death. The Defendant WVUBOG is liable for his wrongful death.

41. As a proximate result of the above negligence and breaches of duty by the Defendant WVUBOG through its agents, servants and employees, the Plaintiff Christina Mohrmann, as Administrator of the Estate of Eric Smith, has a claim for legal damages consisting of:

- a. Sorrow, mental anguish, and solace including society, companionship, comfort, guidance, kindly offices and advice of the decedent:

- b. Compensation for reasonably expected loss of services, protection, care and assistance provided by the decedent;
- c. Past, present and future lost wages, income, benefits and household services and loss of earnings and earnings capacity;
- d. Reasonable funeral expenses.

WHEREFORE, the Plaintiff, Christina Mohrmann, Administrator of the Estate of Eric Smith demands judgement against the Defendant WVUBOG in such sum above this Court's minimum jurisdictional limit as will provide fair and just compensatory damages, pre-judgment and post-judgment interest, her costs and attorney fees, and any other relief that this Court may deem just and appropriate.

COUNT II – WRONGFUL DEATH AND NEGLIGENCE OF AMERICAN CAMPUS COMMUNITIES, INC., AMERICAN CAMPUS COMMUNITIES SERVICES, INC., AMERICAN CAMPUS COMMUNITIES OPERATING PARTNERSHIP, L.P., AMERICAN CAMPUS DEVELOPERS, LLC AND AMERICAN CAMPUS COMMUNITIES HOLDINGS, LLC

42. The plaintiff reasserts the facts and allegations from all paragraphs above as if asserted herein verbatim.

43. Defendant American Campus Communities, Inc., American Campus Communities Services, Inc., American Campus Communities Operating Partnership, L.P., American Campus Communities Holdings, LLC, and American Campus Developers, LLC (hereinafter referred to collectively as "American Campus Communities") control the real property located at 60 Newton Avenue in Morgantown, WV (hereinafter referred to as "subject property").

44. As the parties that control the subject property, American Campus Communities have a duty to maintain the subject property in a reasonable, safe manner, including the duty and

obligation to take all reasonable steps necessary to make sure occupants and visitors of the property are safe.

45. American Campus Communities knew or should have known that criminal activity was likely to occur on the premises when accessed by uninvited guests and that they needed to take all reasonable precautions to prevent uninvited guests from entering the subject property.

46. American Campus Communities knew, or should have known, that if uninvited guests obtained access to the subject property there was a very high risk that someone could be seriously injured or killed. As such, it was reasonably foreseeable to these Defendants that failing to prevent uninvited guests from entering the property would result in injury or death to others.

47. American Campus Communities are liable for the wrongdoing of their agents, servants, and employees pursuant to the principles of agency, vicarious liability and *respondeat superior*.

48. As a proximate result of the individual and collective wrongdoing, negligence and breaches of duty by American Campus Communities by and through their agents, servants and employees, two armed uninvited trespassers were allowed to access the premise and kill Eric Smith.

49. As a proximate result of the individual and collective negligence and conscious, reckless and outrageous indifference to the health, safety and welfare of others by American Campus Communities by and through their agents, servants and employees, Eric Smith suffered serious and permanent physical and emotional injuries which include, multiple gunshot wounds followed by death.

50. As a proximate result of the above wrongdoing, negligence, and breaches of duty by American Campus Communities by and through their agents, servants and employees, two

armed uninvited trespassers were allowed to easily open the front door of the premise and kill Eric Smith. American Campus Communities are liable for his wrongful death.

51. American Campus Communities' negligence, carelessness, willful and wanton conduct, as well as their conscious, reckless and outrageous indifference to the health, safety and welfare of others which led to Eric Smith's death was such that an award of punitive damages is appropriate.

52. As a proximate result of the above wrongdoing, negligence and breaches of duty by American Campus Communities by and through their agents, servants and employees, the Plaintiff Christina Mohrmann, as Administrator of the Estate of Eric Smith, has a claim for legal damages consisting of:

- a. Sorrow, mental anguish, and solace including society, companionship, comfort, guidance, kindly offices and advice of the decedent;
- b. Compensation for reasonably expected loss of services, protection, care and assistance provided by the decedent;
- c. Past, present and future lost wages, income, benefits and household services and loss of earnings and earnings capacity;
- d. Reasonable funeral expenses; and
- e. Punitive damages.

WHEREFORE, the Plaintiff, Christina Mohrmann, Administrator of the Estate of Eric Smith demands judgement against the American Campus Communities Defendants in such sum above this Court's minimum jurisdictional limit as will provide fair and just compensatory and punitive damages, pre-judgment and post-judgment interest, her costs and attorney fees, and any other relief that this Court may deem just and appropriate.

COUNT III – SURVIVAL ACTION AGAINST ALL DEFENDANTS


53. Plaintiff incorporates by reference each and every allegation set forth herein.

54. Plaintiff, Christina Mohrmann, as Administrator of the Estate of Mr. Smith, hereby brings this action pursuant to the authority granted by W.Va. Code §§ 55-7-5 through 55-7-8, also known as Actions which Survive, and claims all damages recoverable under the Survival Act.

55. As a direct, factual and proximate result of the defendants' individual and collective negligence, carelessness, recklessness, willful and wanton conduct, and conscious, reckless and outrageous indifference to the health, safety and welfare of others, by and through their agents, servants and employees, which caused Mr. Smith's death on February 28, 2020, the Plaintiff claims further damages for Mr. Smith's physical and mental pain, suffering, inconvenience, and the loss of life's pleasures that he endured prior to his death, and all other recoverable damages.

WHEREFORE, the Plaintiff, Christina Mohrmann, Administrator of the Estate of Eric Smith demands judgement against all of the Defendants in in such sum above this Court's minimum jurisdictional limit as will provide fair and just compensatory damages, pre-judgment and post-judgment interest, her costs and attorney fees, punitive damages and any other relief that this Court may deem just and appropriate.

A TRIAL BY JURY IS DEMANDED ON ALL ISSUES.



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