

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
JACKSON COUNTY, ILLINOIS

TERRI MARCUS as representative of the	)	SS:
Estate of KRISTIN DUNCAN, deceased.	)	
Plaintiff,	)	Cause No. 2020L97
	)	
v.	)	
	)	
Mellennia Housing Management, LTD, and	)	
Carbondale 2192 IL, LLC,	)	
Defendant.	)	
	)	

COMPLAINT FOR DAMAGES

COMES NOW the Plaintiff, Terri Marcus, as the representative of the Estate of Kristin Duncan, by and through the undersigned attorney, and files this complaint for damages and personal injuries against Defendant, Mellennia Housing Management, LTD, and Carbondale 2192 IL, LLC, and in support thereof state as follows:

PARTIES

1. Plaintiff, Kristin Duncan, (Hereafter “**Kristin**”), was an adult resident of Murphysboro, Illinois.

2. Personal Representative of the Estate, Terri Marcus (Hereafter “**Terri**”), is an adult resident of Murphysboro, Illinois, acting on behalf of next of kin: T. R. D., S. A. D., D. W. D., and B. S. T. S., all who are Plaintiff’s minor children.

3. Upon information and belief, Defendant, Mellennia Housing Management, LTD (Hereinafter, **Millennia** or collectively as “**Defendants**”), is an Ohio private limited company with its principal address located at 4000 Key Towers 127 Public Square, Cleveland, Ohio 44114, and

is the principal company owning and operating Carbondale Towers. Mellennia, upon the best information and knowledge of Personal Representative, may be served with process through its registered agent CT Corporation System, 208 So. LaSalle Street, Suite 814, Chicago, Illinois 60604.

4. Upon information and belief, Defendant, Carbondale 2192 IL, LLC (Hereinafter, **2192** or collectively as **“Defendants”**), is an Illinois registered private limited liability company with its principal address located at 4000 Key Towers 127 Public Square, Cleveland, Ohio 44114, and is a subsidiary company established for the operation of the Premises commonly known as Carbondale Towers. 2192, upon the best information and knowledge of Personal Representative, may be served with process through its registered agent CT Corporation System, 208 So. LaSalle Street, Suite 814, Chicago, Illinois 60604.

5. The subject property where all material events occurred was Carbondale Towers Apartments/Mill Street Apartments, 800 West Mill Street, Carbondale, Illinois, 62901 (Hereinafter **“Premises”**).

JURISDICTION AND VENUE

6. The circumstances giving rise to this Complaint took place in Jackson County, State of Illinois.

7. Pursuant to the Illinois Constitution, Article 6, §9, this Court is an appropriate venue for jurisdiction in this litigation. The Defendant’s subject property is located in Jackson and, was at all times relevant hereto availed itself to jurisdiction by the operation of the subject property in the County of Jackson, State of Illinois. The events occurred in Jackson County, Illinois, upon the property of Defendant. As all relevant agreements, licenses, invitations and/or events occurred in

Jackson County, so that this Court thereby possesses proper jurisdiction of the parties and subject matter for the purpose of presiding of this case.

8. Pursuant to, but not necessarily limited exclusively by, the aforementioned reasons, the Saline County Courts have jurisdiction over this matter and venue is appropriate in this County.

FACTS

9. Upon information and belief, Defendant, Mellennia was the principal company who owned, operated, possessed, controlled and/or maintained Premises, located at 800 West Mill Street, Carbondale, Illinois 62901 on or about May 17, 2019.

10. Upon information and belief, Defendant, Mellennia, established a subsidiary company, Defendant, 2192, which is the legal entity behind the fictional names Carbondale Towers Apartments and Mill Street Apartments.

11. On May 17, 2019, Plaintiff, upon the information and belief of the personal representative, went to visit friends, at an unidentified apartment, at Carbondale Towers.

12. It was believed that Plaintiff advised one of her children she was leaving with some friends and would return home in about an hour.

13. Some of the facts at this point are unclear to all surviving parties, but all facts known at this time elude to Plaintiff becoming involved in a dispute or an unsolicited attack.

14. Plaintiff, upon the information and belief of the personal representative, began running from door to door within the apartment complex, banging on doors and begging people to help her before “they” kill her.

15. During the time Plaintiff attempted to attain help, she was forced into the trash chute of the high rise apartment building at no lower than the sixth floor, where her purse was found still jammed in the chute following her death.

16. Plaintiff fell into the trash compactor on the first floor but remained alive.
17. She began to yell for assistance while she was trapped in the trash compactor.
18. Two different residents of Carbondale Towers heard the cries of Plaintiff and called the police to report she was trapped inside the trash compactor. One call is known to have been placed at 1:49 AM and another called was placed shortly thereafter.
19. At some point subsequent to the fall and calls to police, someone turned on the trash compactor and Plaintiff was crushed to death by the hydraulic mechanism.
20. It is unclear whether Plaintiff's unidentified assailants, an employee for Premises or an unwitting third-party is responsible for the activation of the compactor.
21. Plaintiff was deceased by the time Carbondale Police responded to the calls for assistance made by several residents of the Premises.
22. The autopsy of Plaintiff stated her death was proximately caused by "spine, pelvis, and lower extremity fractures due to blunt compression trauma by compactor."

CAUSES OF ACTION
COUNT I – NEGLIGENT SECURITY

23. The Plaintiffs repeat the allegations contained in paragraphs 1 through 16 as though set forth verbatim hereunder.
24. At all times pertinent to this cause, the Defendants had a duty of care to keep its premises in a reasonably safe condition and secure the premises for its tenants and invitees, including Kristin Duncan.
25. During the late-night hours of May 17, 2019, the Defendants negligently secured the Premises, known as Carbondale Towers, and the immediate surrounding area, which resulted in the violent and untimely death of Plaintiff.

26. A property owner has duty to protect individuals upon its property from criminal activity where a special relationship exists, e.g., business invitees, licensees, and invitees., and the conduct is foreseeable. See. Osborne v. Stages Music Hall, Inc., 312 Ill. App. 3d 141, 726 N.E.2d 728 (2000); See also. Hills v. Bridgeview Little League Ass'n, 195 Ill.2d 210, 242, 253 Ill.Dec. 632, 745 N.E.2d 1166 (2000); Elizondo v. Ramirez, 324 Ill.App.3d 67, 72, 257 Ill.Dec. 497, 753 N.E.2d 1123 (2001); Landeros v. Equity Property & Development, 321 Ill.App.3d 57, 64, 254 Ill.Dec. 351, 747 N.E.2d 391 (2001).

27. The Defendants knew or should have known of the high rate of crime on or near the Premises to the death of Plaintiff.

28. The Defendants negligently failed to provide adequate security to deter and/or detect the crime that resulted in the death of Plaintiff.

29. As owner/operator of the property known to have high rates of crime that made the events foreseeable, Defendants assumed the obligation to provide a safe and secure environment to its lessees, invitees, guests and persons otherwise on and in the immediate vicinity of the premises.

30. The Defendants failed to provide adequate security for the property despite its duty to do so, with the known high rate of criminal activity.

31. In light of the actual and/or constructive knowledge and information available to the Defendants, it was foreseeable to the Defendant that if adequate security was not provided, crimes would be committed against persons on or near the premises, including Plaintiff.

32. A cursory review of files attained under an Illinois Freedom of Information Act request to the Carbondale Police Department it can be determined, since 2015, no less than fifteen (15) reported batteries; nine (9) reported overdoses; fourteen (14) reported dead bodies; one

hundred four (104) reported incidence of disorderly conduct; ninety-seven (97) reported incidence of domestic dispute; eighty-eight (88) incidence of theft; one hundred eleven (111) reported incidence of suspicious activity; and three (3) reported incidence of shots fired/gun violence directly at the Premises. These known responses are directly to the property and do not include known dangers within the contiguous areas.

33. It is known that several residents have reported feeling unsafe and concerned for their well-being as a result of conditions known to consist at the premises.

34. While security equipment was present upon the property at the time of the incident, it was poorly maintained and much of it was improperly working or kept in unworking condition.

35. Defendant was aware, whether constructively or expressly, that its Premises was an area prone to criminal activity and activity that presented a danger for residents and invitees.

36. Defendant's negligence specifically includes, but is not limited to, the following:

- a. Failing to maintain necessary and proper security measures to prevent injury;
- b. Failing to maintain and provide adequate employee staffing to prevent injury/death to Plaintiff;
- c. Failing to render adequate assistance to prevent injury/death to Plaintiff;
- d. Failing to adequately employ guards and/or provide proper training for employees in proper safety, security and protection procedures to prevent injury/death to Plaintiff;
- e. Failing to adequately develop and maintain adequate and appropriate safety, security and protection procedures and policies to prevent injury/death to Plaintiff;
- f. Failing to adhere to city and state laws designed to enhance citizen safety; and

- g. Failing to adequately maintain any provided security measures in a safe and working condition that would deter further criminal activity for the safety of the residents and invitees.

37. The Defendants conduct, acts and omissions were negligent or were willful and reckless or constituted gross negligence and/or wantonness.

38. Defendants are liable to the estate and rightful heirs of Plaintiff for such actions and/or inactions leading to the death of Plaintiff and the injury to her heirs.

COUNT II: RES IPSA LOQUITUR

39. Plaintiff incorporates rhetorical paragraphs 1 through 32 as thought set forth verbatim, hereunder.

40. Res ipsa loquitur, although often pleaded separately from an ordinary negligence claim, is not truly an independent cause of action, but rather a rule of evidence relating to the sufficiency of plaintiff's proof to establish a defendant's negligence. Krivokuca v. City of Chicago, 2017 IL App (1st) 152397, 73 N.E.3d 525.

41. The res ipsa loquitur doctrine is a species of circumstantial evidence permitting the trier of fact to draw an inference of negligence if plaintiff demonstrates that he or she was injured (1) in an occurrence that ordinarily does not happen in the absence of negligence, (2) by an agency or instrumentality within the defendant's exclusive control. Krivokuca v. City of Chicago, 2017 IL App (1st) 152397, 73 N.E.3d 525.

42. There were known to be access locks on the doors entering the Premises and security cameras placed within the Premises, which is regularly overseen by employees, agents, and/or ostensible agents, who operate the Premises for Defendant.

43. Upon the information and belief of the Personal Representative, it is widely known that many of these security measures are maintained in poorly functioning or inoperable conditions.

44. This internal area of the Presmises is under the exclusive control of Defendants, by and through its respective agents, ostensible agents, servants, employees, and/or other representatives.

45. Plaintiff entering the compactor chute, becoming entrapped in the hydraulic compactor, and her death by blunt force would not have happened in the absences of negligence by the party or parties responsible to maintain and possessing control over the premises.

46. Due and owing to Defendants' breach of their duty to Plaintiff, Plaintiff was seriously and permanently injured, and lost her life.

47. At said time and place, the Defendants owed the Plaintiff, as an invitee upon said Premises, a duty to exercise reasonable care for her safety.

48. The Defendants, personally, and/or by their agents, ostensible agents, servants, employees, and/or other representatives breached their/its duty of care to the Plaintiff.

COUNT III: RESPONDEAT SUPERIOR

49. Plaintiff restates and reaffirms paragraphs 1 through 40 as if the same were wholly set out verbatim, hereunder.

50. To the extent that Defendant concede that Location's agents were operating and maintaining the Premises within the scope of their employment, respondent superior provides an additional standard for a direct action against Defendants.

51. In the operation of the Premises the principal/master was Millennial and personnel are the agents, employees, and ostensible agent who managed to keep the Premises

open in order to attract new residents and welcome invitees for the economic benefit of Defendants.

52. In the operation of the Premises the subsidiary, 2192, was also a known principal/master and any hired personnel by 2192 are also the agents, employees, and ostensible agent who managed to keep the Premises open in order to attract new residents and welcome invitees for the economic benefit of Defendants.

53. Premises agents was acting within the scope of their employment, and Defendants is/are vicariously liable for their negligent action or inaction pursuant to the legal theory of respondeat superior. Wilson v. Edward Hosp., 2012 IL 112898, ¶ 18, 981 N.E.2d 971, 978; Oliveira-Brooks v. Re/Max International, Inc., 372 Ill.App.3d 127, 134, 309 Ill.Dec. 889, 865 N.E.2d 252 (2007); Gilbert v. Sycamore Municipal Hospital, 156 Ill.2d 511, 525, 190 Ill.Dec. 758, 622 N.E.2d 788 (1993).

54. Defendants, under the theory of respondeat superior is/are vicariously responsible for damages resulting from a specific action or inaction of negligence any on duty employees within the scope of his/her/their employment, to the extent such action led to injury and death of Plaintiff.

COUNT IV: NEGLIGENT HIRING OF EMPLOYEES

55. Plaintiff restates and reaffirms paragraphs one (1) through (45) above, as if the same were wholly set out herein.

56. To the extent that Kroger might claim Location's agent(s)' negligence was outside of the scope of their employment, Kroger is thereby responsible for the negligent acts of hiring and retention of Employees. See, 's Doe v. Catholic Bishop of Chicago, 2017 IL App (1st) 162388, 82 N.E.3d 1229, reh'g denied (Aug. 18, 2017), appeal denied, 94 N.E.3d 649 (Ill. 2018).

See also. Carter v. Skokie Valley Detective Agency, Ltd., 628 N.E.2d 602, 604 (Ill. App. Ct. 1993); Anicich v. Home Depot U.S.A., Inc. 852 F.3d 643, 649 (7th Cir. 2017); Van Horne v. Muller, 705 N.E.2d 898, 905 (Ill. 1999); RESTATEMENT (SECOND) OF AGENCY § 219(1) (1958); see, e.g., Pyne v. Witmer, 543 N.E.2d 1304, 1308 (Ill. 1989).

57. Whether the failure of Company lies in the actions of negligent hiring, negligent retention, or negligent supervision has no significant distinction under Illinois law. To the extent the failure to inspect and/or resolve the dangerous condition is seen as being outside of the scope of agent(s)' employment, Kroger would be responsible for the negligent hiring, retention, and/or supervision of Location agent(s). See. Zahl v. Krupa, 927 N.E.2d 262, 283 (Ill. App. Ct. 2010) (citing Van Horne, 705 N.E.2d at 904).

58. At all relevant times hereto, Location's agents were present near the checkout locations within Location for the benefit of Kroger to meet a company objective.

59. Location's agents at some period of time prior to Plaintiff's fall, causing severe harm to Plaintiff, failed to reasonably inspect and/or maintain the area regularly open to and frequented by business invitees.

60. To the extent Kroger would assert Location's agents was/were performing or failing to perform a task outside the scope of his/her/their employment, Kroger is liable for the negligent hiring, retention, and supervising of any such on-duty agents at the time of Plaintiff's fall.

DAMAGES

61. The Plaintiffs repeat the allegations contained in paragraphs 1-30 as though set forth verbatim.

62. The Defendant's conduct toward the Plaintiffs, both individually and collectively as owner/operator or maintainer, was reckless.

63. The Plaintiffs charge and allege that as a direct and proximate result of one, some or all of the aforesaid acts of common-law negligence and / or violations to the Statutes of the State of Tennessee on the part of the Defendant, that Mr. Martin and Mr. Oler each have suffered serious, severe and great damages, including but not limited to:

- a) Serious and severe personal injuries resulting in death;
- b) Loss of enjoyment of life, past, present and future;
- c) Medical expenses, and
- d) Loss of earnings and/or earning capacity
- e) Loss of companionship and affection.

64. As a direct and proximate result of the negligence of the Defendant, Plaintiff,

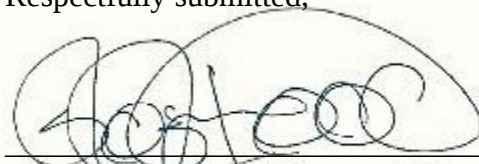
REQUESTED RELIEF

WHEREFORE, Plaintiff, by and through her personal representative, for the benefit of her heirs and estate, prays for judgment against Defendant, as follows:

- 1. That the Plaintiff be awarded compensatory damages from the Defendants in an amount to be determined at trial;
- 2. The Plaintiffs be awarded pre-judgment and post-judgment interest as allowed by law;
- 3. That the Plaintiffs be allowed to amend the Complaint in the event that there are unknown tortfeasors;
- 4. That a jury be empanelled to try the issues when joined; and
- 5. For the Plaintiff's cost herein expended; and

6. For such further relief at law and equity to which the Plaintiffs may be entitled to or permitted by the Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert T. Garwood", written over a horizontal line.

Robert T. Garwood, Esq.
MORGAN & MORGAN
20 NW3rd St., Suite 940
Evansville, Indiana 47708
Atty Numbers:
IN #: 32223-49
IL #: 6320653
KY #: 97001
FL #: 1020705

AFFIDAVIT

The Undersigned, Terri Marcus, as the representative of the Estate of Kristin Duncan, hereby certifies that the statements made in the foregoing documents are true and accurate to the best of her knowledge, information, and belief.

Pursuant to Rule 222(b) of the Illinois Rules and observing the spirit of the decision in Grady v. Marchini, 375 Ill. App. 3d 174, 178-79 (4th Dist. 2007), Plaintiff hereby attaches this affidavit to further state and support that:

1. The information as stated in the Original Complaint hereinabove attached, is true and accurate as to the recollection of the Plaintiff; and
2. The amount of damages necessary to make the Plaintiff whole is expected to exceed Fifty Thousand Dollars and No Cents (\$50,000.00).

FURTHER THE AFFIANT SAYETH NOT.

Terri Marcus
Terri Marcus, Affiant, for Plaintiff

Sworn to and subscribed before me this ____ day of _____,
2020.

NOTARY PUBLIC

County of _____, State of _____.

My Commission Expires: _____