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IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

ROBERT H. DeMOSS, JR., by the conservator)
of his person and property,)
Catherine Robette Campbell,)

Plaintiff,)

v.)

DILLARD'S, INC. and DILLARD TENNESSEE)
OPERATING LIMITED PARTNERSHIP,)

Defendants.)

2009 JUN -5 PM 4: 04

RICHARD R. ...

[Signature]

NO. 0901934

JURY DEMAND

COMPLAINT

Introduction

1. This case arises out of devastating injuries suffered by Robert H. DeMoss, Jr. on the top floor of the parking garage attached to the Dillard's Department Store in the Green Hills Mall in the Green Hills area of Davidson County. Mr. DeMoss was repeatedly struck in the head with an aluminum baseball bat by a violent felon and was robbed. This attack was the result of defendants' failure to take reasonable steps to protect customers from reasonably foreseeable criminal acts.

Parties

2. Robert H. DeMoss, Jr. ("Bob DeMoss") is a resident of Nashville, Davidson County, Tennessee. As a result of the devastating injuries suffered when he was attacked with an aluminum baseball bat, Mr. DeMoss is not able to manage

his own property or to make competent decisions affecting his medical care and physical well-being. Catherine Robette Campbell, the niece of Mr. DeMoss, is the Court appointed Conservator of the person and property of Robert H. DeMoss, Jr. and has authority to bring this suit in her capacity as Conservator. Ms. Campbell is likewise a resident of Nashville, Davidson County, Tennessee.

3. The defendant Dillard's, Inc. is a corporation incorporated under the laws of the State of Delaware and having its principal office in Little Rock, Arkansas. This defendant is authorized to do business in the State of Tennessee and owns and operates multiple department stores in the State of Tennessee. Its registered agent is CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

4. The defendant Dillard Tennessee Operating Limited Partnership is a limited partnership organized under the laws of the State of Tennessee. Its registered agent is CT Corporation System, 800 South Gay Street, Suite 2021, Knoxville, Tennessee 37929-9710.

Jurisdiction and Venue

5. This case arises out of an attack and injuries that occurred in Nashville, Davidson County, Tennessee in the parking garage attached to a Dillard's department store. The department store was owned and operated by the defendant Dillard's, Inc., and the parking garage and land upon which the parking garage is located were owned by the defendant Dillard Tennessee Limited Partnership. This

Court has jurisdiction over the subject matter of this action as well as personal jurisdiction over the parties. Venue lies with this Court.

Factual Allegations.

6. Dillard's, Inc. is a corporation that owns and operates a department store chain that includes more than 300 department stores in the United States. At all times relevant to this lawsuit, Dillard's, Inc. owned and operated the Dillard's Department Store located at 2126 Abbott Martin Road in Nashville, Davidson County, Tennessee. Dillard's, Inc. had control over not only the interior of the store but over the attached parking garage ("the Parking Garage") and had a duty to maintain the store and the Parking Garage in a reasonably safe condition for customers using the Parking Garage.

7. The defendant Dillard Tennessee Operating Limited Partnership is a limited partnership that, at all times relevant to this lawsuit, owned the land and buildings, including the Parking Garage, containing the Dillard's Department Store on Abbott Martin Road in Green Hills. On information and belief, said defendant leased the building, including the Parking Garage, to Dillard's, Inc. for the operation of a Dillard's Department Store. The defendant Dillard Tennessee Operating Limited Partnership had a non-delegable duty to maintain its premises, including the Parking Garage, in a reasonably safe condition for customers using the Parking Garage.

8. The Parking Garage is open to the public. There is an entrance to the Dillard's Department Store on the top floor of the Parking Garage. In turn, the department store opens to the rest of the Green Hills Mall.

9. Bob DeMoss is a sixty-three year old man who has lived his entire life in Nashville, Davidson County, Tennessee. Prior to March 3, 2009, Mr. DeMoss frequently parked on the top floor of the Parking Garage for the Dillard's Department Store and the other stores in the Green Hills Mall. From the top floor of the Parking Garage, Mr. DeMoss could directly enter Dillard's and, if he wished, walk through Dillard's into the interior of the mall. Mr. DeMoss made purchases at Dillard's, including presents for his elderly mother and sister, and at other stores in the Green Hills Mall.

10. On March 3, 2009, Bob DeMoss parked his car on the top floor of the Parking Garage and got out of the car and walked toward the Dillard's entrance.

11. At about the same time, Robert Tice, Katherine Mills, Johnathon Harris and Brittney Banister drove the car they had stolen earlier to the top floor of the Parking Garage. They went to the Parking Garage for the purpose of robbing someone to get money to buy drugs. In pursuit of that purpose, they carried an aluminum baseball bat with them in the stolen car. On information and belief, they chose this location for their criminal activity because of the minimal security and presence of victims. The Parking Garage had inadequate lighting (including lights that were not working), lacked security personnel, was not equipped with security cameras and was not properly monitored for the detection and prevention of criminal activity or for the protection of patrons of Dillard's and the rest of the Green Hills Mall.

12. In furtherance of their criminal purpose, Tice approached Mr. DeMoss from the rear and struck him in the back of his head with the aluminum baseball bat.

After Mr. DeMoss fell to the ground, Tice struck him in the head several more times with the aluminum baseball bat. He then stole Bob DeMoss' wallet and returned to the stolen car, where he was congratulated for getting the wallet, which contained approximately \$173.00. Tice, Harris, Mills and Banister left in the stolen car.

13. While Tice, Harris, Mills and Banister were fleeing and dividing the money in Bob DeMoss' wallet, Bob DeMoss was trying to get help. He was bleeding profusely and had a smashed skull and face but managed to get to the Parking Garage retaining wall. He left a blood trail and bloody handprints as he moved along the wall. Bob DeMoss was later transported by ambulance to Vanderbilt University Medical Center. He was found to have suffered extensive, catastrophic head injuries. Bob DeMoss was on a ventilator for weeks. A feeding tube had to be inserted through his abdominal wall. Mr. DeMoss is now an inpatient at Stallworth Rehabilitation Center, where caregivers are providing skilled rehabilitation care.

14. Based on what defendants knew or had reason to know, criminal acts against Dillard's customers such as Bob DeMoss were reasonably foreseeable. A very substantial amount of criminal activity had happened in or in close proximity to the Parking Garage where Bob DeMoss was attacked, including robberies, assaults, drug crimes and thefts, among other crimes.

15. Defendants knew or, with the exercise of ordinary care, should have known about the wide scope and high severity of criminal activity in and near the Parking Garage. It was reasonably foreseeable from the extensive criminal activity and other facts that criminal acts against users of the Parking Garage were likely and that those criminal acts would cause injuries.

Causes of Action

16. Defendants were guilty of negligence that was the cause in fact and legal cause of plaintiff's injuries and damages. Defendants knew or had reason to know, either from what had been or should have been observed from past experience, that criminal acts against users of the Parking Garage where Bob DeMoss was attacked were reasonably foreseeable. In spite of this knowledge, defendants failed to fulfill their duty to take reasonable steps to protect customers such as Bob DeMoss. There was a high degree of foreseeability of harm, and that probable harm was great, imposing upon defendants a substantial burden to protect their customers. Had defendants taken reasonable steps to protect Bob DeMoss and other customers from harm, he would not have been physically assaulted with an aluminum baseball bat on March 3, 2009 and would not have sustained devastating injuries.

17. Defendants negligently and carelessly violated the applicable standard of care for the illuminance of a public parking facility such as the Parking Garage. Lighting in the Parking Garage did not deliver minimum illuminance levels required to meet security needs. IESNA RP-20-98 is evidence of the standard of care applicable to defendants. This violation was the cause in fact and legal cause of the plaintiff's injuries and damages.

18. Defendants were reckless in their failure to take reasonable steps to protect Bob DeMoss and other patrons of Dillard's and the Green Hills Mall who used the Parking Garage. Defendants were aware of, but consciously disregarded, a substantial and unjustifiable risk of such a nature that its disregard constituted a

gross deviation from the standard of care that an ordinary person would exercise under all the circumstances. This is one of those most egregious of cases in which an award of punitive damages should be made.

Damages

19. Bob DeMoss suffered catastrophic injuries and damages as a result of the March 3, 2009 assault at defendants' Parking Garage. Among other injuries, he suffered a fractured skull, facial fractures, brain damage, cognitive deficits and blindness. Bob DeMoss has experienced tremendous pain and suffering and will experience pain and suffering in the future. He has lost the ability to enjoy life. He is totally and permanently disabled and impaired and will retain a permanent disfigurement as a result of his injuries. Mr. DeMoss has incurred massive medical bills and will continue to incur huge medical bills in the future. If he is ever going to live outside an institutional setting, Bob DeMoss will likely require round-the-clock care.

20. Plaintiff seeks the foregoing and all other damages allowed by law.

WHEREFORE, plaintiff prays for the following:

- a. That process issue and be served upon defendants;
- b. That a jury be empanelled to try this case;
- c. That plaintiff be awarded compensatory damages from the defendants in a fair and reasonable amount not less than \$10,000,000.00.

- d. That plaintiff be awarded punitive damages from the defendants in an amount not less than \$10,000,000.00 and sufficient to punish defendants for their misconduct and deter others from similar misconduct.
- e. Discretionary and other costs.
- f. Post-judgment interest.
- g. Such other relief to which plaintiff may be entitled.

Respectfully submitted,

NORRIS & NORRIS PLC



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