

IN THE CIRCUIT COURT OF FOURTH JUDICIAL CIRCUIT,
IN AND FOR DUVAL COUNTY, FLORIDA

AMANDA N. FOURNIER,

CIRCUIT CIVIL DIVISION

Plaintiff,

CASE NO.: 16-2013-CA-010759-XXXX-MA

vs.

SHAHAB DERAZI,
a Florida resident,

Defendant.

_____ /

SECOND AMENDED COMPLAINT

COMES NOW the Plaintiff, AMANDA N. FOURNIER, by and through her undersigned attorneys, and sues the Defendant, SHAHAB DERAZI (hereinafter “DERAZI”) and states that at all times material:

1. This is an action for damages in excess of this Court’s minimum jurisdictional amount of \$15,000.00.

THE PARTIES

2. Plaintiff is a resident of Gainesville, Alachua County, Florida, and is *sui juris* in all respects.

3. Defendant DERAZI is a resident of Jacksonville, Duval County, Florida.

4. Defendant DERAZI is a landlord of a single family home as contemplated by §83.51, Fla. Stat. (2012).

GENERAL ALLEGATIONS

5. In approximately 2009, DERAZI purchased a two-story residential home located at 14712 Stacey Road, Jacksonville, Duval County, Florida (hereinafter the “Stacey Road home”). DERAZI purchased the home from a foreclosure proceeding.

6. DERAZI intended to rent the home when he purchased it.
7. DERAZI owns other rental homes.
8. DERAZI had a non-delegable duty owed to invitees in general at the Stacey Road home, and the Plaintiff in particular, to comply with the requirements of applicable building and housing codes pursuant to §83.51, Fla. Stat. (2012) or, in the absence of applicable building and housing codes, to maintain the porches and all other structural components in good repair and capable of resisting normal forces and loads.
9. DERAZI knowingly chose to not have the home inspected at the time of purchase for latent or patent defects notwithstanding his intention to rent the home.
10. DERAZI knowingly chose to not the home inspected at the time of renting or leasing the home to his tenants.
11. Between 2009 and 2013, DERAZI rented the home to various persons but never had the home inspected for latent or patent defects.
12. Between 2009 and 2013, DERAZI was required to comply with the requirements of §83.51, Fla. Stat. (2012).
13. In June 2013 DERAZI received complaints from his tenant, Daniel Diaz, at the Stacey Road home regarding a second story deck attached to the home.
14. The complaints arose from the deck's disrepair.
15. The repair of the deck involved a risk of harm if the work was not performed skillfully and carefully.
16. In response to those complaints, DERAZI hired Travis Maple, an unlicensed person to repair the deck including checking to ensure the railings were safe, met applicable codes, or were otherwise capable of withstanding normal forces and loads.

17. Travis Maple was not licensed, had never worked as a contractor, had never worked as a carpenter in construction, had never inspected a deck or deck railings for safety purposes and had no knowledge as to whether building permits were needed for the type of intended work.

18. Travis Maple was hired by DERAZI and Maple was incompetent or unfit to perform the work and to ensure that the deck railings met the building code or were otherwise capable of withstanding normal forces and loads.

19. DERAZI knew or reasonably should have known of Maple's particular incompetence or unfitness to perform the work.

20. Travis Maple replaced wood on the deck, wood on the stairwell, negligently checked the fitness of the deck railings or negligently failed to check the fitness of the deck railings, and replaced wood on the railing for the stairs.

21. Neither DERAZI or Maple adequately inspected the deck to ensure that the deck's railings could withstand normal forces or loads or that the deck's railing was properly and safely secured to vertical posts, as recommended by the manufacturer, to ensure that the deck railing did not fail and expose the tenants, or their guests, to life threatening falls.

22. On September 13, 2013, the deck and the deck railings were in a dangerous condition that was not readily apparent to invitees.

THE INCIDENT RESULTING IN THE PLAINTIFF'S INJURY

23. On or about September 13, 2013, DERAZI owned, maintained and/or was in control of the Stacey Road home in, Jacksonville, Duval County, Florida.

24. Prior to September 2013, DERAZI leased the Stacey Road home to Daniel Diaz.

25. On or about September 13, 2013, DIAZ held a “bid party” and invited students of the University of North Florida, including Plaintiff, to a fraternity sponsored social event at the Stacey Road residence for the purpose of welcoming new fraternity members.

26. Approximately 100 people attended the bid party.

27. Plaintiff attended the party as an “invitee”.

28. At that time, the second story deck and the deck railings were in a dangerous condition and said condition was unknown to the Plaintiff.

29. At that time and place, Plaintiff, along with several other individuals, was standing on the residence’s second-story deck near the deck railing.

30. At that time and place, the second story deck railing broke free, causing Plaintiff to fall to the ground and suffer severe, permanent, and disabling injuries.

COUNT I
NEGLIGENCE OF DERAZI

Plaintiff re-alleges and incorporates herein paragraphs 1 through 30 and further alleges that:

31. At all times material, DERAZI, as owner of the subject property, had a duty to his tenants, his tenants’ invitees and the Plaintiff in particular to reasonably inspect and maintain the Stacey Road residence in a condition that would protect his tenants, their invitees and the Plaintiff from non-obvious dangers.

32. DERAZI breached his duty to the Plaintiff in one or more particulars including, but not limited to:

- a. Negligently failing to inspect the Stacey Road residence in general, and the deck and its railings in particular, upon purchasing the home;

- b. Negligently failing to inspect the Stacey Road residence in general, and the deck and its railings in particular, upon leasing the home to DIAZ;
- c. Negligently failing to inspect the Stacey Road residence in general, and the deck and its railings in particular, upon being notified by Defendant Diaz that the deck was in disrepair;
- d. Negligently failing to hire qualified personnel to repair and inspect the deck and its railings;
- e. Negligently failing to apply for and receive a construction permit for the repairs to the deck and its railing;
- f. Negligently failing to request and receive an inspection by a qualified government codes inspector to ensure the repair and the inspection of the deck and its railing were competently and safely carried out;
- g. Negligently failing to comply with the requirements of §83.51, Fla. Stat. (2012);
- h. Negligently failing to inspect and maintain the deck and deck railing, thereby causing or creating a dangerous condition which was neither open nor obvious.
- i. Negligently hiring Travis Maple to perform work that involved a risk of harm if not performed carefully and skillfully.
- j. Negligently hiring Travis Maple, who was unqualified and lacked the requisite knowledge and skill to perform an inspection of the property and advise DERAZI regarding needed repairs and who, in fact, performed an inadequate inspection which resulted in a failure to discover faulty railing, which ultimately gave way and led to Plaintiff's injuries.

33. As a direct and proximate result of the foregoing negligence, Plaintiff suffered bodily injury and resulting pain and suffering, impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money. The injuries to the Plaintiff are permanent within a reasonable degree of medical probability and the Plaintiff will continue to suffer the losses in the future.

COUNT II
NEGLIGENT HIRING, RETENTION,
OR SUPERVISION BY DEFENDANT DERAZI

Plaintiff re-alleges and incorporates herein paragraphs 1 through 33 and further alleges that:

34. At all times material, DERAZI, as owner of the Stacy Road home, had a duty to his tenants, his tenants' invitees and the Plaintiff in particular to reasonably hire, retain, or supervise qualified personnel to inspect and repair the second story deck and its railings and to inquire as to a contractor's qualifications, obtain references and make at least a minimal inquiry of whether the contractor operates in the area under a license and business name. *See Suarez v. Gonzalez*, 820 So. 2d 342 (Fla. 4th DCA 2002).

35. Upon being notified by Diaz of the disrepair of the deck, DERAZI had a duty to invitees in general, and the Plaintiff in particular, to hire an individual that was competent and fit to perform repair of the deck.

36. DERAZI knew, or reasonably should have known, that repairing the deck and checking its railings would involve a risk of harm unless it was skillfully and carefully done.

37. DERAZI hired Travis Maple to repair the deck and knew at the time, or reasonably should have known, that Maple was not competent or fit to perform the work or to competently check the deck railings.

38. DERAZI breached his duty to the Plaintiff in one or more particulars including, but not limited to:

- a. Negligently hiring a person not licensed as a contractor to inspect and/or repair the deck and its railings;

- b. Negligently failing to inquire as to Travis Maple's qualifications, his references, or make a minimal inquiry as to whether he was a contractor and licensed in the area with a business name;
- c. Negligently failing to adequately supervise Travis Maple in light of Maple's lack competence or fitness to perform the required work;
- f. Negligently hiring Maple who was not competent or fit to perform the work.

39. Travis Maple performed the work in an incompetent or unfit manner resulting in the deck and its railings remaining in a dangerous and unfit condition upon completion of Maple's work.

40. The dangerous and unfit condition of the deck consisted of the deck railings being incapable of withstanding normal forces and loads.

41. The deck railings being incapable of withstanding normal forces and loads caused the Plaintiff to fall and be permanently injured.

42. As a direct and proximate result of the foregoing negligence, including Maple performing the work in an incompetent or unfit manner, Plaintiff suffered bodily injury and resulting pain and suffering, impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, and loss of ability to earn money. The injuries to the Plaintiff are permanent within a reasonable degree of medical probability and the Plaintiff will continue to suffer the losses in the future.

COUNT III
NON-DELEGABLE DUTY OF DERAZI

The Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 and further alleges that:

43. As a landlord, DERAZI had a non-delegable duty of care when undertaking to make repairs or improvements to the Stacey Road home.

44. DERAZI's non-delegable duty was owed to invitees in general and the Plaintiff in particular.

45. DERAZI breached said duty of care when he negligently hired Travis Maple to perform work on the deck and its railings and said work involved a risk of harm to persons using the deck unless the work was carefully and skillfully done.

46. DEERAZI knew, or reasonably should have known, that Travis Maple was not competent or fit to perform the work.

47. Travis Maple left the deck and its railing in a dangerous condition, to wit: the railings on the deck were unsafe and not capable of withstanding normal forces and loads.

48. Said dangerous condition caused Plaintiff to fall and be permanently injured.

49. As a direct and proximate result of the DERAZI's breach of his non-delegable duty, Plaintiff suffered bodily injury and resulting pain and suffering, impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, exacerbation of pre-existing conditions, loss of earnings, and loss of ability to earn money. The injuries to the Plaintiff are permanent within a reasonable degree of medical probability and the Plaintiff will continue to suffer the losses in the future.

COUNT IV
VICARIOUS LIABILITY OF DERAZI

The Plaintiff realleges and incorporates by reference paragraphs 34 through 49 and further alleges that at all times material:

50. DERAZI negligently hired and/or supervised Travis Maple to perform work that involved a risk of harm if not skillfully and carefully done.

51. DERAZI has a non-delegable duty owed to the Plaintiff and is liable for any negligence of Travis Maple.

52. DERAZI is vicariously liable for all negligent acts or omissions by Travis Maple.

53. As a direct and proximate result of the foregoing, Plaintiff suffered bodily injury and resulting pain and suffering, impairment, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, exacerbation of pre-existing conditions, loss of earnings, and loss of ability to earn money. The injuries to the Plaintiff are permanent within a reasonable degree of medical probability and the Plaintiff will continue to suffer the losses in the future.

WHEREFORE, Plaintiff prays that this Honorable Court enter judgment against the Defendants for compensatory damages, costs, interest where applicable, and requests a jury trial on all issues so triable.

AVERA & SMITH, LLP

/s/ Mark A. Avera

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