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IN THE STATE COURT OF CLAYTON COUNTY
STATE OF GEORGIA

JUN 11 2015

ROGER KIRSCHENBAUM, as Administrator of the
Estate of FLORENCIO GOMEZ-MENDEZ,
Deceased, and PASCUALA PEREZ-HERNANDEZ,
Individually, and as Next Friend and Guardian of
MARIA MAGDALENA GOMEZ-PEREZ,
ERMENEGILDO GOMEZ-PEREZ, and ANTONIO
GOMEZ-PEREZ, Minors,

Plaintiffs,

v.

JAMCO PROPERTIES, INC. and CLAYTON
CARRIAGE APTS, LLC,

Defendants.

Hail Correa
CLERK, STATE COURT
CLAYTON COUNTY

CIVIL ACTION FILE

NO. 2015CV00848E

COMPLAINT

COME NOW Plaintiffs in the above-styled action, and hereby file this Complaint as follows:

1.

On or about January 24, 2015, Florencio Gomez-Mendez died and is survived by his wife Pascuala Perez Herndandez and their three children, Maria Magdalena Gomez-Perez, Ermenegildo Gomez-Perez, and Antonio Gomez-Perez. Florencio Gomez-Mendez resided in Clayton County, Georgia at the time of his death.

2.

Plaintiff Pascuala Perez-Hernandez brings this case individually and as next friend and legal guardian of her children, Maria Magdalena Gomez-Perez, Ermenegildo Gomez-Perez, and Antonio Gomez-Perez. Plaintiffs state their intention to bring each and every claim permissible under Georgia law and all other applicable law, and seek all special damages, economic losses,

medical expenses, necessary expenses, pain and suffering, and all compensatory, special, actual, general, and punitive damages permissible under Georgia law on her own behalf and on behalf of her minor children. As the wife and children of Florencio Gomez-Mendez, Plaintiffs have the right to bring this wrongful death claim and are entitled to recover for the full value of Florencio Gomez-Mendez's life.

3.

Plaintiff Roger Kirschenbaum, as the anticipated duly appointed Administrator of the Estate of Florencio Gomez-Mendez, states his intention and desire to bring each and every permissible, proper, and authorized claim for damages under Georgia law, including personal injury, funeral and burial expenses, and economic, punitive, and other damages as proven by the evidence at trial.

4.

Defendant JAMCO Properties, Inc. (hereinafter referred to as "Defendant(s)" or "JAMCO") is a Georgia corporation subject to the jurisdiction of this Court and may be served through its registered agent, Heath Massey, at 878 Third Street, Suite 2000, Atlanta, Georgia 30318.

5.

Jurisdiction is proper as to Defendant JAMCO.

6.

Defendant JAMCO has been properly served with process in this action.

7.

Defendant Clayton Carriage Apts, LLC (hereinafter referred to as "Defendant(s)" or "Clayton Carriage"), is a Georgia limited liability company subject to the jurisdiction of this

Court and may be served through its registered agent, Heath Massey, at 878 Third Street, Suite 2000, Atlanta, Georgia 30318.

8.

Jurisdiction is proper as to Defendant Clayton Carriage.

9.

Defendant Clayton Carriage has been properly served with process in this action.

10.

The cause of action at issue in this case occurred in Clayton County, Georgia and Defendants have an office and transact business in Clayton County. Thus, venue is proper pursuant to O.C.G.A. § 14-2-510(b)(3).

11.

At all times mentioned herein, Defendants owned, operated, controlled, and managed the apartment complex located at 415 Sylvia Drive, Forest Park, Georgia 30297, commonly known as Bradford Ridge Apartments (hereinafter “the Premises”).

12.

On January 24, 2015, Florencio Gomez-Mendez was Defendants’ invitee and a lawful invitee on the Premises.

13.

On January 24, 2015, while on the Premises, Florencio Gomez-Mendez was shot and killed by unknown assailants.

14.

The assailants were negligently allowed to enter the Premises because Defendants failed to implement adequate security to prevent individuals like the assailants from entering the Premises.

15.

In July 2013, Steven Diaz, a thirteen-year-old boy, was shot and killed at the Premises.

16.

No changes were made to the security measures at the Premises after Steven Diaz was killed.

17.

In the five years before Florencio Gomez-Mendez was shot, there were numerous instances of criminal activity at the Premises, including aggravated assaults, shootings and robberies.

18.

As a direct and proximate result of Defendants' negligence, Florencio Gomez-Mendez sustained serious injuries and died at the Premises.

19.

Florencio Gomez-Mendez was a completely innocent victim and exercised ordinary care and diligence at all times herein and under the circumstances then existing.

20.

Defendants breached the duty owed to Florencio Gomez-Mendez by failing to exercise ordinary care to keep the Premises safe.

21.

Prior to and on January 24, 2015, the Premises was negligently maintained, inspected, secured, patrolled and managed. Defendants had knowledge, both actual and constructive, of the need to properly maintain, secure, inspect, patrol, and manage the Premises, but failed to exercise ordinary care.

22.

Defendants had actual and constructive knowledge prior to the shooting death of Florencio Gomez-Mendez of the need to patrol, secure, inspect, manage and control access to the Premises and to deter criminal activity from entering or occurring on the Premises, but failed to exercise ordinary care.

23.

Defendants had actual and constructive knowledge of criminal activity existing at the Premises and in the surrounding area prior to the attack on and wrongful death of Florencio Gomez-Mendez. Said prior criminal activity was negligently permitted to exist and remain at the Premises.

24.

Defendants had actual and constructive knowledge of criminal activity existing at the Premises and in the surrounding area prior to the attack on and wrongful death of Florencio Gomez-Mendez, but negligently failed to warn Florencio Gomez-Mendez.

25.

There was no contract security at the Premises when Florencio Gomez-Mendez was shot.

26.

There were no gates preventing unauthorized people from entering the Premises when Florencio Gomez-Mendez was shot.

27.

Defendants negligently failed to warn their invitees, including Florencio Gomez-Mendez, of the existence of the aforementioned criminal activity and the likelihood of further criminal attacks at the Premises.

28.

Defendants negligently failed to maintain adequate security devices to permit proper use of the Premises, thereby causing an unreasonable risk of injury to their invitees, including Florencio Gomez-Mendez.

29.

At all times mentioned herein, Defendants controlled the management of the Premises, and had the legal duty to keep the Premises in a state consistent with the due regard for the safety of their invitees, including Florencio Gomez-Mendez. Defendants breached said duties and failed to act as similarly situated businesses in like circumstances.

30.

Defendants were negligent and said negligence proximately caused the wrongful death of Florencio Gomez-Mendez in the following ways, to-wit:

- a) Violation of O.C.G.A. § 51-3-1 by failing to use ordinary care to keep the Premises safe;
- b) Violation of O.C.G.A. § 44-7-13;
- c) In failing to properly inspect and maintain the Premises;

- d) In failing to warn of the latent dangers on the Premises;
- e) In failing to implement adequate security measures to prevent or deter crime from occurring at the Premises;
- f) In failing to properly train and supervise their employees in regard to the maintenance and safety of the Premises; and
- g) In failing to properly retain, entrust, hire, train and supervise said employees.

31.

Defendants were negligent in failing to maintain, inspect, secure, patrol and manage the Premises, thereby creating an unreasonable risk of injury to their invitees, including Florencio Gomez-Mendez.

32.

Defendants knew of, or with the exercise of due care for the safety of their invitees, should have known of the dangerous and hazardous conditions existing on the Premises and the failure to maintain, inspect, secure, patrol, and manage the Premises and that said conditions were likely to result in the injuries suffered by Florencio Gomez-Mendez.

33.

Defendants were and are *negligent per se*.

34.

Defendants had constructive knowledge of the dangerous and hazardous conditions existing on the Premises through the knowledge of their employees and agents and due to the prior criminal activity and dangers associated with the Premises and surrounding areas.

35.

Defendants negligently failed to maintain a policy, procedure or system of investigating, reporting, and warning of the aforementioned criminal activity and negligently maintained the Premises.

36.

After Steven Diaz was shot in July 2013, Defendants did not hire contract security for the Premises.

37.

After Steven Diaz was shot, Defendants did not alter or enhance the crime prevention measures at the Premises.

38.

Defendants are liable for the assault, battery and wrongful death of Florencio Gomez-Mendez. Said assault, battery and death of Florencio Gomez-Mendez were done without necessity, privilege, or consent.

39.

Because Defendants had knowledge of, or in the exercise of reasonable care, should have had knowledge of the dangerous environment of the Premises, Defendants are liable for the negligent supervision, hiring, training and retention of their employees and the entrustment of the Premises to their agents and employees. Said negligence was the proximate cause of the injuries to and death of Florencio Gomez-Mendez.

40.

Defendants negligently represented to their invitees that the Premises was properly maintained.

41.

Defendants negligently failed to provide adequate security protection, security personnel or a security presence on the Premises.

42.

Defendants' acts and omissions rise to the level of conscious indifference to consequences, such that punitive damages are appropriate.

43.

Defendants had actual knowledge of the dangerous and hazardous conditions existing at the Premises due to the direct knowledge of their employees and agents.

44.

Defendants are liable for the assault, battery and wrongful death of Florencio Gomez-Mendez. Said assault, battery, and death of Florencio Gomez-Mendez were done without necessity, privilege, or consent.

45.

Because Defendants had knowledge of, or in the exercise of reasonable care, should have had knowledge of the dangerous environment of the Premises, Defendants are liable for the negligent supervision, hiring, training and retention of their employees and the entrustment of the Premises to their agents and employees. Said negligence was the proximate cause of the injuries to and death of Florencio Gomez-Mendez.

46.

Defendants negligently failed to act on their knowledge of prior crimes and failed to act to deter or warn of prior criminal activity, loitering, trespassing and the dangerous environment of the Premises.

47.

Defendants failed to take appropriate action to remedy or reduce the danger to their invitees, including Florencio Gomez-Mendez, and allowed the dangerous environment on the the Premises to continue to exist unabated, thereby creating a nuisance.

48.

Defendants' negligence was a cause in fact and a proximate cause of the injuries to and wrongful death of Florencio Gomez-Mendez.

49.

As a direct and proximate result of Defendants' negligence, jointly and severally, Florencio Gomez-Mendez sustained catastrophic injuries, conscious pain and suffering, and ultimately became aware of his impending death.

50.

As a result of Defendants' negligence, Plaintiffs state their intention to seek all special, compensatory, general, incidental, consequential, economic, and other damages permissible under the laws of the State of Georgia, including but not limited to:

- a) Personal injuries;
- b) Pain and suffering;
- c) Mental anguish, fright, shock, and terror;
- d) Funeral and burial expenses;
- e) Future lost wages and earning capacity;
- f) The full value of Florencio Gomez-Mendez's life;
- g) Consequential damages to be proven at trial; and
- h) Punitive Damages.

51.

Each of the foregoing acts and omissions constitute an independent act of negligence on the part of Defendants, and one or more of all above-stated acts were the proximate causes of the injuries to and wrongful death of Florencio Gomez-Mendez.

52.

Defendants acted with willful misconduct, malice, fraud, oppression, wantonness and an entire want of care raising the presumption of a conscience indifference to the consequences. Accordingly, Plaintiff is entitled to recover punitive damages from each of the Defendants, in accordance with the enlightened conscience of an impartial jury.

53.

Because Defendants' actions evidence a species of bad faith, were and are stubbornly litigious, and have caused Plaintiffs undue expense, Plaintiffs are entitled to recover their necessary expenses of litigation, including an award of reasonable attorneys' fees and expenses required by this action pursuant to O.C.G.A. § 13-6-11, as well as any other statutory or common law basis.

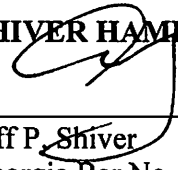
WHEREFORE, Plaintiffs pray for a judgment to be awarded to them and against the Defendants and for the following:

- a) Process issue and Defendants be served as provided by law;
- b) Plaintiffs have a trial by jury;
- c) Plaintiffs be awarded actual damages in amounts to be shown at trial from Defendants;

- d) Plaintiffs Pascuala Perez-Hernandez, Maria Magdalena Gomez-Perez, Ermenegildo Gomez-Perez, and Antonio Gomez-Perez be awarded the full value of Florencio Gomez-Mendez's life pursuant to O.C.G.A. § 51-4-1 et seq.;
- e) Plaintiff Roger Kirschenbaum, as Administrator of the Estate of Florencio Gomez-Mendez, be awarded all general, punitive, special, compensatory, incidental, consequential, and all other permissible damages in accordance with the enlightened conscience of an impartial jury;
- f) Plaintiffs be awarded attorneys' fees and cost of litigation in an amount which will be proven through the evidence at the time of trial;
- g) Plaintiffs be awarded interest and costs; and
- h) Plaintiffs be awarded such other relief as this Court deems just and proper.

TRIAL BY JURY IS HEREBY DEMANDED.

Respectfully submitted,
SHIVER HAMILTON, LLC



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