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Nebraska Judicial Branch

Case Summary

In the District Court of Douglas County
 The Case ID is CI 16 0004590
 Robert Kirby v. F & J Enterprises, Inc.
 The Honorable Timothy P Burns, presiding.
 Classification: Negligence-Other
 Filed on 06/02/2016
 This case is Open as of 06/02/2016

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Robert J Kirby	Michael F Coyle 409 South 17th Street #500 Omaha NE 68102 402-341-6000
Defendant ACTIVE F & J Enterprises, Inc. c/o Frank R Krejci, Reg Agent 1505 North 203rd Street Elkhorn NE 68022	Karen K Bailey 1350 Woodmen Tower Omaha NE 68102 402-348-0900
Defendant ACTIVE Maple 144 LLC c/o Gary M Gotsdiner, Reg Agent 11404 W Dodge Road, Ste 500 Omaha NE 68154	Nicholas A Buda 1500 Woodmen Tower 1700 Farnam St. Omaha NE 68102 402-344-0500
Defendant ACTIVE West Maple Road, LLC c/o David Paladino, Reg Agent 2702 Douglas Street Omaha NE 68131	Betty L Egan P.O. Box 540125 11240 Davenport St. Omaha NE 68154 402-330-6300
Defendant ACTIVE Fantasy's, Inc. c/o John Spaustat, Reg Agent 10302 Rockbrook Rd Omaha NE 68124	
Defendant ACTIVE West Maple Fantasy's, L.L.C. c/o Fantasy's Inc, Reg Agent 8930 S 137th Circle #2 Omaha NE 68138	Renee A Eveland Suite 800, Wells Fargo Ctr 1248 O St. Lincoln NE 68508 402-474-1507
Defendant ACTIVE Landmark Management Group, Inc. c/o David J Paladino, Reg Agent 2702 Douglas St Omaha NE 68131	Matthew B Reilly 10330 Regency Parkway Dr., #1 Omaha NE 68114 402-397-2200
Defendant ACTIVE Lerner Company c/o Salvadore Carta, Reg Agent 10855 W Dodge Road, Ste 270 Omaha NE 68154	David L Welch 10250 Regency Circle, Ste 300 Omaha NE 68117 402-397-5500
Defendant ACTIVE Frank Krejci 3202 N 216th Street #67 Elkhorn NE 68022	Karen K Bailey 1350 Woodmen Tower Omaha NE 68102 402-348-0900
Defendant ACTIVE	

Financial Activity

No trust money is held by the court
No fee money is held by the court

Payments Made to the Court

Receipt	Type	Date	For	Amount
227866	Electronic Trans	06/02/2016	Kirby, Robert, J	\$82.00
			Petition	\$35.00
			Filing Fee - State	\$5.00
			Automation Fee	\$8.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$6.00
			Filing Fee-JRF	\$2.00
			Legal Aid/Services Fun	\$5.25
			Complete Record	\$15.00

Register of Actions

08/24/2016 Appearance of Counsel
This action initiated by party Maple 144 LLC
Nicholas A Buda / RT
Image ID N162373E2D01

08/15/2016 Entry of Appearance
This action initiated by party West Maple Road, LLC
re: Betty Egan jm
Image ID N16228052D01

08/12/2016 Notice Filed
This action initiated by party West Maple Road, LLC

re: w/draw counsel Mary Sederstrom jm
Image ID N16225W38D01

08/12/2016 Order-Withdraw as Counsel
This action initiated by Timothy P Burns
Mary Sederstrom obo West Maple Rd LLC eNotice Certificate Attached
Image ID 001362130D01

08/10/2016 Amended Notice of Hearing
This action initiated by party Landmark Management Group, Inc.
RE: Motion for Summary Judgment on Landmark Group / RT
Hearing 08 30 16 900am CR 502
Image ID N16223KW2D01

08/09/2016 Notice-Service
This action initiated by party Fantasy's, Inc.

RE: Discovery / RT
Image ID N16222F92D01

08/08/2016 Answer
This action initiated by party Fantasy's, Inc.
PM
Image ID N162219GSD01

08/08/2016 Stipulation
This action initiated by party Robert F Krejci
RE: Additional time to plead further / RT
Image ID N162216MED01

08/05/2016 Answer
This action initiated by party West Maple Fantasy's, L.L.C.
kr

Image ID N162181PKD01

08/04/2016 Motion-Summary Judgment
This action initiated by party Landmark Management Group, Inc.
8-29-16 8:45 AM #502 jm
Image ID N16217XJUD01

08/04/2016 Answer
This action initiated by party West Maple Road, LLC
kr
Image ID N16217YBWD01

08/04/2016 Answer
This action initiated by group F&J Ent & Frank Krejci
kr
Image ID N16217X3MD01

07/21/2016 Notice-Service
This action initiated by party Lerner Company
Answer,Inter, request of documents kr
Image ID N162037L8D01

07/21/2016 Answer
This action initiated by party Lerner Company
kr
Image ID N162037KCD01

07/12/2016 Return Summons/Alias Summons
The document number is 00395251
s1
Served 07/08/2016, Certified Mail
Image ID N161949YOD01

07/12/2016 Return Summons/Alias Summons
The document number is 00395250
s1
Served 07/08/2016, Certified Mail
Image ID N161949YUD01

07/12/2016 Return Summons/Alias Summons
The document number is 00395249
s1
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Image ID N161949Z6D01

07/12/2016 Return Summons/Alias Summons
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s1

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Image ID N161949Z2D01

07/12/2016 Return Summons/Alias Summons
The document number is 00395247
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Served 07/09/2016, Certified Mail
Image ID N161949ZCD01

07/12/2016 Return Summons/Alias Summons
The document number is 00395246
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Served 07/08/2016, Certified Mail
Image ID N161949XGD01

07/12/2016 Return Summons/Alias Summons

The document number is 00395245
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Served 07/08/2016, Certified Mail
Image ID N161949XMD01

07/12/2016 Return Summons/Alias Summons
The document number is 00395244
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Served 07/08/2016, Certified Mail
Image ID N161949XWD01

07/12/2016 Return Summons/Alias Summons
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Image ID N161949YAD01

07/12/2016 Return Summons/Alias Summons
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Image ID N161949YGD01

07/12/2016 Return Summons/Alias Summons
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Served 07/08/2016, Certified Mail
Image ID N161949Y0D01

07/12/2016 Return Summons/Alias Summons
The document number is 00395238
s1

Served 07/08/2016, Certified Mail
Image ID N161949Z0D01

07/06/2016 Summons Issued on Larry D Smith
The document number is 00395251
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395251D01

07/06/2016 Summons Issued on Lori M Krejci
The document number is 00395250
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395250D01

07/06/2016 Summons Issued on Vera J Krejci
The document number is 00395249
E-MAILED: mcoyle@fraserstryker.com

Image ID D00395249D01

07/06/2016 Summons Issued on Gail Krejci
The document number is 00395248
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395248D01

07/06/2016 Summons Issued on Robert F Krejci
The document number is 00395247
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395247D01

07/06/2016 Summons Issued on Frank Krejci
The document number is 00395246
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395246D01

07/06/2016 Summons Issued on Lerner Company
The document number is 00395245
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395245D01

07/06/2016 Summons Issued on Landmark Management Group, Inc.
The document number is 00395244
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395244D01

07/06/2016 Summons Issued on West Maple Fantasy's, L.L.C.
The document number is 00395243
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395243D01

07/06/2016 Summons Issued on Fantasy's, Inc.
The document number is 00395241
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395241D01

07/06/2016 Summons Issued on West Maple Road, LLC
The document number is 00395240
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395240D01

07/06/2016 Summons Issued on Maple 144 LLC
The document number is 00395239
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395239D01

07/06/2016 Summons Issued on F & J Enterprises, Inc.

The document number is 00395238
E-MAILED: mcoyle@fraserstryker.com
Image ID D00395238D01

07/06/2016 Praecipe-Summons/Alias
This action initiated by party Robert J Kirby
s1
Image ID N16188MJGD01

06/02/2016 Complaint-Praecipe

This action initiated by party Robert J Kirby
ts no praecipe filed
Image ID N16154AQGD01

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ROBERT J. KIRBY,)
)
) Plaintiff,)
)
) vs.)
)
) F & J ENTERPRISES, INC., a)
) Nebraska corporation, MAPLE 144 LLC,)
) a Nebraska limited liability company,)
) WEST MAPLE ROAD, LLC, a Nebraska)
) limited liability company, FANTASY'S,)
) INC., a Nebraska corporation, WEST)
) MAPLE FANTASY'S, L.L.C., a)
) Nebraska limited liability company,)
) LANDMARK MANAGEMENT GROUP,)
) INC., a Nebraska corporation, THE)
) LERNER COMPANY, a Nebraska)
) corporation, FRANK KREJCI, ROBERT)
) F. KREJCI, GAIL KREJCI, VERA JANE)
) KREJCI, LORI M. KREJCI, and LARRY)
) D. SMITH,)
)
) Defendants.)

CASE NO. CI 16-_____

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW the Plaintiff, Robert J. Kirby, and for his cause of action against the Defendants, states and alleges as follows:

PARTIES

1. At all material times, Robert J. Kirby, (the "Plaintiff") has been a resident of Omaha, Douglas County, Nebraska.
2. Defendant F & J Enterprises, Inc. is a Nebraska corporation with its principal office in Elkhorn, Douglas County, Nebraska.
3. Defendant Maple 144 LLC is a Nebraska limited liability company with its principal office in Omaha, Douglas County, Nebraska.
4. Defendant West Maple Road, LLC is a Nebraska limited liability company with its principal office in Omaha, Douglas County, Nebraska.
5. Defendant Fantasy's, Inc. is a Nebraska corporation with its principal office in Omaha, Douglas County, Nebraska.

6. Defendant West Maple Fantasy's, L.L.C. is a Nebraska limited liability company with its principal office in Omaha, Douglas County, Nebraska.

7. Defendant Landmark Management Group, Inc. is a Nebraska corporation with its principal office in Omaha, Douglas County, Nebraska.

8. Defendant The Lerner Company is a Nebraska corporation with its principal office in Omaha, Douglas County, Nebraska.

9. At all relevant times, Defendant Frank Krejci was an individual residing in Douglas County, Nebraska.

10. At all relevant times, Defendant Robert F. Krejci was an individual residing in Douglas County, Nebraska.

11. At all relevant times, Defendant Gail Krejci was an individual residing in Douglas County, Nebraska.

12. At all relevant times, Defendant Vera Jane Krejci was an individual residing in Douglas County or Sarpy County Nebraska.

13. At all relevant times, Defendant Lori M. Krejci was an individual residing in Douglas County, Nebraska.

14. At all relevant times, Defendant Larry D. Smith was an individual residing in Douglas County, Nebraska (all Defendants are collectively referred to herein as the "Defendants").

15. Upon information and belief, the Defendants are or were the owners, possessors, exercised control over, and/or had or assumed responsibility, individually, jointly, through a joint venture, or in concert with each other, for maintaining the real property and roadway located near North 147th Street and West Maple Road in Omaha, Douglas County, Nebraska, including the real property and roadway located on, near, and between the property referred to as 3715 N. 147th Street, Omaha, Nebraska 68116, 3725 N. 147th Street, Omaha, Nebraska 68116, and 3801 N. 147th Street, Omaha, Nebraska 68116, including the property referred to as Hillsborough Plaza Lots 1,2,3,4 and Hillsborough Plaza Re-Plat 1 Lot 2 (the "Property").

16. Each of the Defendants is vicariously responsible for the acts or omissions of their employees, agents, or other representatives acting within the course and scope

of their employment, agency, or other representation of the respective Defendants' business interests.

COMMON ALLEGATIONS

17. On or about June 3, 2012, Plaintiff was operating a bicycle on or near the roadway located on the Property.

18. Although unknown by Plaintiff, Defendants allowed a pothole, uneven portion of pavement, and/or a defective portion of the pavement on or near the roadway located on the Property to develop and remain present for an extended period of time.

19. Defendants failed to properly maintain the Property and the roadway located on the Property by failing to fix or remedy the pothole, uneven portion of pavement, and/or a defective portion of the pavement.

20. While operating his bicycle on the Property, Plaintiff's bicycle struck the pothole, uneven portion of pavement, and/or a defective portion of the pavement located on or near the roadway located on the Property.

21. Plaintiff sustained severe and permanent injuries when he fell off his bicycle after striking the pothole, uneven portion of pavement, and/or a defective portion of the pavement.

COUNT I: NEGLIGENCE AGAINST DEFENDANTS

22. The allegations set forth in paragraphs 1 through 21 are incorporated by reference as if fully set forth herein.

23. Defendants failed to exercise reasonable care to ensure the Property and the roadway located on the Property was reasonably safe for those persons, including Plaintiff, traversing the Property, including ensuring that the roadway was level, smooth, and without potholes.

24. Defendants were negligent in one or more of the following ways:
- a. Failing to inspect the Property and the roadway located on the Property;
 - b. Failing to fix or remedy the pothole, uneven portion of pavement, and/or a defective portion of the pavement located on or near the roadway located on the Property; and/or

c. Failing to warn of the unreasonable risk of injury that existed on the Property.

25. As a direct and proximate result of Defendants' negligence, Plaintiff suffered damages and injuries as follows:

- a. Past medical expenses incurred to the date of trial;
- b. Future medical expenses;
- c. Past and future loss of enjoyment of life;
- d. Past physical and emotional pain and suffering;
- e. Future physical and emotional pain and suffering;
- f. Loss of past earnings;
- g. Loss of future earning capacity; and
- h. Permanent injury.

COUNT II: PREMISES LIABILITY

26. The allegations set forth in paragraphs 1 through 25 are incorporated by reference as if fully set forth herein.

27. Defendants either created, knew of, or, in the exercise of reasonable care, should have discovered the unsafe condition presented by the pothole, uneven portion of pavement, and/or a defective portion of the pavement on the Property.

28. Defendants knew or, in the exercise of reasonable care, should have known, that the unsafe condition presented by the pothole, uneven portion of pavement, and/or a defective portion of the pavement on the Property involved an unreasonable risk of injury to Plaintiff.

29. Defendants knew or, in the exercise of reasonable care, should have known, that entrants, including Plaintiff, would not discover the condition, realize the condition presented an unreasonable risk of injury, and/or would not be able to protect himself from the condition.

30. Defendants failed to use reasonable care to protect lawful entrants, including Plaintiff, against the danger posed by the pothole, uneven portion of pavement, and/or a defective portion of the pavement.

31. As a direct and proximate result of Defendants' failure to exercise reasonable care, Plaintiff suffered damages and injuries as follows:

- a. Past medical expenses incurred to the date of trial;
- b. Future medical expenses;
- c. Past and future loss of enjoyment of life;
- d. Past physical and emotional pain and suffering;
- e. Future physical and emotional pain and suffering;
- f. Loss of past earnings;
- g. Loss of future earning capacity; and
- h. Permanent injury.

DEMAND FOR JURY TRIAL

32. Plaintiff hereby demands a jury trial on all issues presented herein.

WHEREFORE Plaintiff respectfully requests this Court enter judgment in Plaintiff's favor against Defendants, jointly and severally, for all of his general and special damages as set forth above, the costs of this action, prejudgment interest and any other relief this Court deems equitable and just.

ROBERT J. KIRBY, Plaintiff

BY: /s/ Michael F. Coyle
Michael F. Coyle #18299
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Omaha, NE 68102-2663
(402) 341-6000
mcoyle@fslf.com
ATTORNEYS FOR PLAINTIFF