

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
FRASER STRYKER PC LLO
500 Energy Plaza, 409 South 17th Street
Omaha, NE 68102-2663
(402) 341-6000
mcoyle@fslf.com
ATTORNEYS FOR PLAINTIFF