Filed in Douglas District Court
*** EFILED ***
Case Number: D01CI150010787
Transaction ID: 0003246332
Filing Date: 01/12/2016 01:13:53 PM CST

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

RITA SUNDERMANN, Plaintiff, vs. HY-VEE, INC., and SWEETBRIAR I, LLC Defendants.	)))))))))	CASE NO: CI-15-10787 **AMENDED COMPLAINT**

COMES NOW the Plaintiff, Rita Sundermann, and for her cause of action against the Defendants, alleges and states as follows:

1. The Plaintiff is a resident of Omaha, Douglas County, Nebraska.

2. The Defendant, Hy-Vee, Inc. (hereinafter, "Hy-Vee"), was at all times relevant herein the owner of a retail store, located at 3410 North 156th Street, Omaha, Douglas County, Nebraska (hereinafter the "Property"), and was at all times relevant herein, in control of the Property.

3. The Defendant, Hy-Vee is a Foreign Corporation with its principle office located in West Des Moines, Iowa.

4. The Defendant, Sweetbriar I, LLC (hereinafter, "Sweetbriar I") was at all times relevant herein the owner of real property, located on the southwest corner of 156th Street and West Maple Road, on which property was built the Hy-Vee filling station and convenience store.

THE PROPERTY

5. In 2004, Sweetbriar I owned real estate on the southwest corner of 156th Street and Maple Road, which property, Sweetbriar I zoned and developed for commercial use.

6. Sweetbriar I entered into an agreement directly or through agents to allow Hy-Vee to build a retail store in 2004, and later a filling station and convenience store.

7. At all times relevant, Sweetbriar I knew or reasonably should have known of the plans to construct these facilities by Hy-Vee and how those plans were carried out.

8. In 2004, Hy-Vee built a retail grocery store at 156th Street and West Maple Road.

9. One year later, Hy-Vee built a filling station and convenience store immediately east of the grocery store at this same location.

10. On the north side of the filling station and convenience store there is a small

grassy area, then a narrow drive to enter and exit the parking area, and finally a row of six "right angle" or "90-degree" parking stalls.

11. At all times relevant to this matter, there was located on the grassy area between the building and the drive, on the north of the building, an air compressor and hose for filling tires.

DUTY

12. A property owner in Nebraska must exercise reasonable care when the property owner's conduct or premises creates a risk of physical harm. (Restatement (Third) of Torts: Liability for Physical and Emotional Harm).

SCOPE OF LIABILITY

13. The combination of traffic entering and exiting the parking lot, pedestrian traffic, right-angle parking and a tire-filling station foreseeably increased all forms of foot and vehicular traffic conflicts.

14. The combination of traffic entering and exiting the parking lot, pedestrian traffic, right-angle parking and a tire-filling station created a foreseeable risk to:

a. Pedestrians;

b. Customers using the compressor;

c. Drivers using the parking stalls;

d. Drivers using the entrance/exit and customers using the filling station.

15. The combination of traffic entering and exiting the parking lot, pedestrian traffic, right-angle parking and tire-filling station created a foreseeable risk of property damage, serious physical injury or death.

BREACH

16. Original designs for the filling station provided additional separation between the parking stalls to the north, and the proposed location of the tire-filling station.

17. During the construction phase the two areas were put into closer proximity.

18. At the Hy-Vee filling station described above, there was no designated space or location to park for exclusive use of the tire filling station.

19. In order to use the compressor to fill the tires of a car, the user would have to bend very low or squat to attach and hold the air hose to the tires of the vehicle.

20. In order to use the compressor, drivers could pull up to the south curb of the drive on the north end of the building, park his or her car and get out and begin filling the tires.

21. Cars in this position for tire filling obstructed the flow of traffic.

22. The right-angle parking spaces were 24 feet from the south curb, to the north of this area.

23. On or about March 2, 2012, in the late afternoon, a driver parked his pickup truck in one of the right-angle parking stalls, north of the convenience store.

24. Shortly after this, a second driver, Sundermann, entered the drive intending to put air into the tires of her car.

25. The second driver, Sundermann, saw that the parking in front of the convenience store was full.

26. The second driver, Sundermann, stopped her car at the south curb of the entrance, to use the tire compressor.

27. The first driver returned and began backing his vehicle out of the parking stall.

28. The first driver could not see Sundermann who was squatting low to fill her tire.

29. The first driver backed into and over Sundermann.

LEGAL CAUSE (PROXIMATE CAUSE)

30. The design of this area of the convenience store parking and drive areas was not reasonable.

31. The Plaintiff's injury was a direct result of the negligence of the Defendants as set forth further herein.

32. The proximate cause (legal cause) of the aforesaid accident was the negligence of the Defendants as follows:

a. One or both Defendants did not follow the original design for the premises;

b. One or both Defendants placed the air-filling station in an area of high conflict between cars and foot traffic

c. One or both Defendants failed to reasonably inspect the premises for dangerous conditions.

d. One or both Defendants failed to reasonably detect conditions on the Property;

e. One or both Defendants failed to take reasonable steps to protect customers from encountering the hazard to the Plaintiff.

f. One or both Defendants did not provide a designated "protected area" for drivers to use the tire-filling station.

g. One or both Defendants did not provide a designated area, restricted from other use for the tire-filling station.

h. One or both Defendants did not provide barriers to the compressor preventing use by drivers stopped along the curb area.

i. One or both Defendants did not post signs prohibiting use of the compressors along the curb area.

j. One or both Defendants did not post warnings on the compressor or at the curb area prohibiting use of the compressor at the curb location.

k. One or both Defendants did not post warnings to persons parked in the stalls to the north, to be alert for pedestrians, customers using the compressor, or traffic behind.

DAMAGES

33. As a legal result (proximate result) of the negligence of One or both Defendants as aforesaid, the Plaintiff sustained personal injuries resulting in:

a. Physical pain;

b. Emotional suffering;

c. Fear;

d. Worry;

e. Anxiety;

f. Stress;

g. Inconvenience;

h. Scarring;

i. Impairment;

j. Sleeplessness; and

k. Loss of enjoyment of life.

34. The Plaintiff's injuries are permanent and she may reasonably expect to suffer future:

a. Physical pain;

b. Emotional suffering;

c. Fear;

d. Worry;

e. Anxiety;

f. Stress;

g. Inconvenience;

h. Scarring;

i. Impairment;

j. Sleeplessness; and

k. Loss of enjoyment of life.

35. As a legal result (proximate result) of the negligence of one or both Defendants as aforesaid, Plaintiff sustained personal injuries resulting in medical expenses to date and Plaintiff may reasonably expect to incur future medical expenses.

THEREFORE, Plaintiff prays for a judgment against the Defendants for her medical expenses past and future; for past and future physical pain, emotional suffering, fear, worry, anxiety, stress, inconvenience, scarring, impairment, sleeplessness and loss of enjoyment of life; for general damages resulting from the negligence of the Defendants; for costs herein expended herein; and for such other and further relief as the Court may deem appropriate.

DATED this 12th day of January, 2016.

RITA SUNDERMANN, Plaintiff,

By _____

Matthew A. Lathrop, #19558
MILLER LATHROP, PC, LLO
9290 West Dodge Rd., Suite 100
Omaha, NE 68114
(402) 558.4900
ATTORNEY FOR PLAINTIFF

Certificate of Service

I hereby certify that on Wednesday, January 13, 2016 I provided a true and correct copy of the Amended Complaint to the following:

Hy-Vee, Inc. service method: Certified Mail

Sweetbriar II, LLC service method: Certified Mail

Signature: /s/ Lathrop,Matthew,A (Bar Number: 19558)