

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

LINDA FARFALLA,) Case No. CI 18-
)
Plaintiff,)
)
vs.)
) COMPLAINT
)
HY-VEE, INC., HURD QUALITY II,)
LLC, and JOHN DOE, an individual, real)
unknown,)
)
Defendants.)

COMES NOW the Plaintiff, Linda Farfalla, for her cause of action against Defendants, Hy-Vee, Inc., Hurd Quality II, LLC, and John Doe, an individual, real name unknown, for injuries sustained as a result of and proximately caused by Defendants', whether one or more, failure to use reasonable care to protect the plaintiff invitee against danger. Plaintiff hereby states and alleges as follows:

CASE OVERVIEW

1. Plaintiff Linda Farfalla is an individual who resides at 1741 Park Avenue, Omaha, Douglas County, Nebraska 68105.
2. Defendant, Hy-Vee, Inc., (hereinafter "Hy-Vee") is a foreign corporation authorized to transact business in the State of Nebraska. The principal place of business for Hy-Vee, Inc. is 5820 Westown Parkway, West Des Moines, Iowa 50266. The registered agent for Hy-Vee, Inc., is CT Corporation System, 5601 South 59th Street, Lincoln, NE 68516. At all times material hereto, Hy-Vee, Inc. was engaged in the retail supermarket business.
3. Defendant, Hurd Quality II, LLC, is a foreign corporation which owns the real property located at 5150 Center Street, Omaha, Douglas County, Nebraska,

68106. The principal place of business for Hurd Quality II, LLC is 200 Fuller Road, West Des Moines, Iowa 50265. The registered agent for Hurd Quality, II, LLC is CSC-Lawyers Incorporating Service Company, Suite 1900, 233 South 13th Street, Lincoln, NE 68508.

4. At all times relevant hereto, Defendants, Hy-Vee, Inc., and Hurd Quality II, LLC were the owners and/or operators of the Hy-Vee supermarket located at 5150 Center Street, Omaha, Douglas County, Nebraska (hereinafter the “Property”) and were at all times relevant herein in control of the premises and the employees of Hy-Vee.
5. At all times relevant hereto, Defendant, John Doe, an individual, real name unknown, (hereinafter “John Doe”) was an employee of the Hy-Vee supermarket located at 5150 Center Street, Omaha, Douglas County, Nebraska.
6. The injury to the Plaintiff as hereinafter described occurred on the Property.
7. At all times material hereto, the Defendants, whether one or more, owed Plaintiff a duty to exercise reasonable care taking into account the risk of physical harm to visitors to its business premises.
8. On September 21, 2014, the Plaintiff, Linda Farfalla, visited the Hy-Vee Supermarket located at 5150 Center Street, Omaha, Douglas County, Nebraska to purchase groceries. While Plaintiff was standing in the check-out line, Defendant John Doe, an employee of the Defendants, Hy-Vee, Inc. and Hurd Quality II, LLC, pushed a cart loaded with bags of ice into Plaintiff.
9. The Plaintiff’s injuries occurred as a result of the Defendants’, whether one or more, breach of their duty to exercise reasonable care.

10. That on the occasion in question, the Defendants, Hy-Vee, Inc. and Hurd Quality II, LLC, through their agent, Defendant John Doe, were negligent in the following particulars, among others, to-wit:
 - a. Failure to maintain a proper lookout;
 - b. Failure to maintain reasonable control of the cart;
 - c. Failure to exercise the degree of care required under the circumstances; and
 - d. Otherwise being negligent.
11. That the incident hereinabove stated was due to the sole negligence of the Defendants, without any contributory negligence whatsoever by the Plaintiff.

**First Cause of Action
Negligence**

12. Plaintiff incorporates paragraphs 1-11 above as if set forth fully herein.
13. Defendants were careless and negligent in their operation of the cart, which caused Plaintiff to suffer severe personal injuries.
14. That the acts of negligence of Defendant John Doe are imputed to Defendants Hy-Vee, Inc., and Hurd Quality II, LLC under the doctrine of *respondeat superior*.
15. At all times material hereto, the Defendants owed the Plaintiff a duty to exercise reasonable care taking into account the risk of physical harm to visitors to its business premises.
16. The Defendants failed to exercise reasonable care because:
 - a. The injury to the Plaintiff would not have occurred but for the conduct of the Defendants; and
 - b. The harm to the Plaintiff was within the scope of Defendants' liability because the harm to the Plaintiff is among the same general types of danger that the Defendants should have taken reasonable steps to avoid.

17. As a direct and proximate result of the Defendants' negligent conduct, without any negligence of the Plaintiff contributing thereto, Plaintiff suffered injuries to her back that necessitated surgery.
18. As a direct and proximate result of the Defendants' negligent conduct, without any negligence of the Plaintiff contributing thereto, Plaintiff has incurred medical expenses; is certain to incur medical expenses in the future; has experienced physical and mental pain and suffering to date; and will continue to experience physical and mental pain and suffering to date.
19. Plaintiff is entitled to special and general damages arising out of this incident.

**Second Cause of Action
Respondent Superior**

20. Plaintiff incorporates paragraphs 1-19 above as if set forth fully herein.
21. At all times relevant hereto, Defendant John Doe was employed by and was an agent, servant and/or employee of Hy-Vee, Inc., and Hurd Quality II, LLC.
22. The above-described acts of Defendant John Doe were committed within the scope of his employment with Hy-Vee, Inc., and Hurd Quality II, LLC in that they were committed while and duty and in furtherance of Hy-Vee, Inc., and Hurd Quality II, LLC's business.
23. As Defendant John, Doe's employer, Defendants Hy-Vee, Inc., and Hurd Quality II, LLC are responsible for all of the negligent acts committed by Defendant, John Doe, within the scope of his employment.

**Third Cause of Action
Premise Liability**

24. Plaintiff incorporates paragraphs 1-23 above as if set forth fully herein.

25. Due to improper care, Defendants, whether one or more, through their actions, created a hazardous and unsafe condition.
26. And examination of the check-out line prior to pushing the cart would have alerted the Defendants, whether one or more, of the Plaintiff's presence. Therefore, Defendants, whether one or more, knew or should have known of the hazardous and unsafe conditions.
27. The Defendants, whether one or more, knew or should have known that the hazardous condition created and unreasonable risk of harm to Plaintiff and other visitors at Hy-Vee.
28. The Defendants, whether one of more should have expected a visitor such as Plaintiff would either:
 - a. Fail to discover the hazardous condition; or
 - b. Fail to protect him or herself against the hazardous condition.
29. The Defendants, whether one or more, failed to inspect the property to ensure safe passage and therefore failed to use reasonable care to protect Plaintiff from the hazardous condition.
30. The collision between the cart and the plaintiff due to the hazardous and unsafe condition was a proximate cause of her injuries and damages.
31. Plaintiff is entitled to special and general damages arising out of this incident.

WHEREFORE, the Plaintiff prays for an award for her damages the fairly, but not unjustly compensate the Plaintiff and are reasonable in the premises, and for any other relief deemed just under the premises.

LINDA FARFALLA, PLAINTIFF,

By: /s/ James R. Walz
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