

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL DISTRICT OF
HINDS COUNTY, MISSISSIPPI

DALE ARCHEY

PLAINTIFF

VS.

CIVIL ACTION NO.: 251-08-312-CIV

THE CITY OF JACKSON, MISSISSIPPI;
THE JACKSON POLICE DEPARTMENT;
OFFICER JOHN DOE; MARRIOTT HOTEL
SERVICES, INC. D/B/A THE JACKSON MARRIOTT
HOTEL; MARRIOTT INTERNATIONL
ADMINISTRATIVE SERVICES, INC.; MARRIOTT
INTERNATIONAL SERVICES, INC.; MARRIOTT
INTERNATIONAL, INC.; MARRIOTT MANAGEMENT
SERVICES, CORPORATION; AND JOHN DOES 1-6

DEFENDANTS

FILED
APR 17 2008
BARBARA DUNN, CIRCUIT CLERK
BY _____ D.C.

FIRST AMENDED COMPLAINT

**PLAINTIFF REQUESTS TRIAL BY JURY OF ALL PARTIES AND/OR
ENTITIES NOT COVERED BY THE MISSISSIPPI TORT CLAIMS ACT**

COMES NOW, Dale Archey (hereinafter referenced as "Plaintiff"), by and through their undersigned counsel and pursuant to the laws of the State of Mississippi and the Mississippi Rules of Civil Procedure, and files this FIRST AMENDED COMPLAINT against Defendants City of Jackson, Mississippi; the Jackson Police Department; Officer John Doe; Marriott Hotel Services, Inc., doing business as the Jackson Marriott Hotel; Marriott International Administrative Services, Inc.; Marriott International Services, Inc.; Marriott International, Inc., Marriott Management Services Corporation; and John Does 1-6. In support thereof, Plaintiff would respectfully show unto this Honorable Court the following, to-wit:

PARTIES

(1)

Plaintiff, Dale Archey, is a resident citizen of Hinds County, Mississippi. Plaintiff resides at 4538 Watkins Drive; Jackson, Hinds County, Mississippi.

(2)

Defendant, City of Jackson is a municipal corporation, organized and existing under and by virtue of the laws of the State of Mississippi. The City of Jackson is subject to suit pursuant to Miss. Code Ann. § 11-46-5 and 11-46-7, and may be served with process through its mayor, the Honorable, Frank E. Melton, at City of Jackson; Post Office Box 17; 219 South President Street; Jackson, Mississippi 39205.

(3)

Defendant, Jackson Police Department, is a political subdivision of a municipality and is subject to suit pursuant to Miss. Code Ann. § 11-46-5 and 11-46-7, and may be served with process through its Chief of Police, Malcolm McMillian; Jackson Police Department; Post Office Box 17; 219 South President Street; Jackson, Mississippi 39205.

(4)

Defendant, Officer John Doe, is the Jackson Police Department officer who worked as a security guard for the Jackson Marriott Hotel. Upon learning the identity of this individual, Plaintiff reserves the right to supplement. Officer John Doe may be liable for all or part of the negligible acts or omissions committed resulting in the subject incident which involved and resulted in injuries and damages to Plaintiff and in whom Plaintiffs may seek recovery of damages.

(5)

Defendant, Marriott Hotel Services, Inc. d/b/a Jackson Marriott Hotel, is a Delaware corporation with its principal place of business at Dept. 924.13 10400 Fernwood Road; Bethesda, Maryland 20817. Defendant, Marriott Hotel Services, Inc. does business within the state of Mississippi and may be served with process by and through its registered agent: Prentice-Hall Corporation Systems; 506 South President Street; Jackson, Mississippi 39201. At all relevant times, Officer John Doe worked as a security guard for the Jackson Marriott Hotel. The Jackson Marriott Hotel may be liable for all or part of the negligible acts or omissions committed resulting in the subject incident which involved and resulted in injuries and damages to Plaintiff and in whom Plaintiffs may seek recovery of damages.

(6)

Defendant, Marriott International Administrative Services, Inc. d/b/a Jackson Marriott Hotel, is a Delaware corporation with its principal place of business at Dept. 924.13 10400 Fernwood Road; Bethesda, Maryland 20817. Defendant, Marriott International Administrative Services, Inc. does business within the state of Mississippi and may be served with process by and through its registered agent: Prentice-Hall Corporation Systems; 506 South President Street; Jackson, Mississippi 39201. At all relevant times, Officer John Doe worked as a security guard for the Jackson Marriott Hotel. The Jackson Marriott Hotel may be liable for all or part of the negligible acts or omissions committed resulting in the subject incident which involved and resulted in injuries and damages to Plaintiff and in whom Plaintiffs may seek recovery of damages.

(7)

Defendant, Marriott International Services, Inc. d/b/a Jackson Marriott Hotel, is a Delaware corporation with its principal place of business at Dept. 924.13 10400 Fernwood Road; Bethesda, Maryland 20817. Defendant, Marriott International Services, Inc. does business within the state of Mississippi and may be served with process by and through its registered agent: Prentice-Hall Corporation Systems; 506 South President Street; Jackson, Mississippi 39201. At all relevant times, Officer John Doe worked as a security guard for the Jackson Marriott Hotel. The Jackson Marriott Hotel may be liable for all or part of the negligible acts or omissions committed resulting in the subject incident which involved and resulted in injuries and damages to Plaintiff and in whom Plaintiffs may seek recovery of damages.

(8)

Defendant, Marriott International, Inc. d/b/a Jackson Marriott Hotel, is a Delaware corporation with its principal place of business at Dept. 924.13 10400 Fernwood Road; Bethesda, Maryland 20817. Defendant, Marriott International, Inc. does business within the state of Mississippi and may be served with process by and through its registered agent: Prentice-Hall Corporation Systems; 506 South President Street; Jackson, Mississippi 39201. At all relevant times, Officer John Doe worked as a security guard for the Jackson Marriott Hotel. The Jackson Marriott Hotel may be liable for all or part of the negligible acts or omissions committed resulting in the subject incident which involved and resulted in injuries and damages to Plaintiff and in whom Plaintiffs may seek recovery of damages.

(9)

Defendant, Marriott Management Services, Corp. d/b/a Jackson Marriott Hotel, is a New York corporation with its principal place of business at Dept. 924.13 10400 Fernwood Road; Bethesda, Maryland 20817. Defendant, Marriott Management Services, Corp., does business within the state of Mississippi and may be served with process by and through its registered agent: Prentice-Hall Corporation Systems; 506 South President Street; Jackson, Mississippi 39201. At all relevant times, Officer John Doe worked as a security guard for the Jackson Marriott Hotel. The Jackson Marriott Hotel may be liable for all or part of the negligible acts or omissions committed resulting in the subject incident which involved and resulted in injuries and damages to Plaintiff and in whom Plaintiffs may seek recovery of damages.

(10)

Defendants, John Does 1-6 are other individuals, persons, corporations, or entities who may be liable for all or part of the negligible acts or omissions committed resulting in the subject incident which involved and resulted in injuries and damages to Plaintiff and in whom Plaintiffs may seek recovery of damages. Defendants, John Does 1-6 are other individuals, persons, corporations, or entities may be associated and/or affiliated with Defendants, City of Jackson and the Jackson Police Department.

JURISDICTION

(11)

This Court has jurisdiction over this matter pursuant to Mississippi Code Annotated § 11-46-7 (2006) any and all other statutes or Mississippi Constitutional provisions that vest authority and jurisdiction in circuit courts. As Plaintiff's claims are

for monetary damages against Defendants who are all Hinds County residents, this court has jurisdiction over both the parties and the subject matter of this suit.

(12)

On or about October 18, 2007, Plaintiff, by and through their undersigned counsel, caused to be filed and delivered by certified U.S. mail to Mayor Frank E. Melton; City of Jackson; and the Jackson Police Department a notice of claim letter regarding the act(s) and/or omission(s) set forth herein. Miss. Code Ann. § 11-46-11 (2006). A copy of this letter is incorporate herein by referenced and attached as "Exhibit A." To date, these Defendants have not responded in writing. Plaintiff submits that this notice of claims letter has been on file and these Defendants on notice at least One-Hundred and Twenty (120) days prior to filing the instant suit.

VENUE

(13)

Venue is properly established before this Court based upon Mississippi Code Annotated § 11-11-3 (1)(a)(i) (Amended 2006). Pursuant to the statute, venue is proper in the county where the Defendant resides, and for purposes of the Mississippi Tort Claims Act, a municipality is said to reside in the county where it sits.

FACTS

(14)

Plaintiff, Dale Archy, resides at 4538 Watkins Drive, Jackson, Mississippi. Prior to the incident in question, Plaintiff has been admitted to at least two (2) mental institutions and was diagnosed with multiple mental disorders.

(15)

Prior to the incident in question, Estella Archey filed a missing person's report with the Jackson Police Department regarding her son, the Plaintiff.

(16)

On or about Friday, April 13, 2007, around 4:00 am, Plaintiff was at the Jackson Marriot Hotel located at 200 Amite Street in Jackson, Mississippi. Officer John Doe, a member of the Jackson Police Department, worked security for the Jackson Marriott Hotel. Officer John Doe noticed that Plaintiff attempt to stand to his feet and leave the parking lot. An exchange occurred between Office John Doe and the Plaintiff. Smith then fired at least three (3) rounds from his service-issued revolver, striking Plaintiff in the face.

(17)

Plaintiff sustained severe physical pain, permanent scarring, disfigurement and other injuries. Plaintiff was treated at the University of Mississippi Medical Center where he was hospitalized for at least ten (10) days. At all relevant times, Plaintiff was found to be unarmed.

I.

NEGLIGENCE

(18)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of their Complaint as if set forth herein.

(19)

At the time and on the occasion in question, Officer John Doe, in his official and personal capacities, possessed a duty to exercise ordinary care in his personal capacity. Officer John Doe breached this duty of ordinary care in the following particulars, including but not limited to:

- (a) using excessive force;
- (b) using excessive force while not witnessing the commission of a misdemeanor;
- (c) using excessive force while not witnessing the commission of a felony;
- (d) making an unlawful detention;
- (e) lacking probable cause or a reasonable suspicion to make such a detention.
- (f) the act(s) and/or omission(s) in question constitute a reckless disregard for the rights and safety of Plaintiff and others.

(20)

The above act(s) and/or omission(s) constitute common law negligence and were each a proximate cause of the damages in question. The above acts proximately caused the Plaintiff to suffer losses and damages.

II.

GROSS NEGLIGENCE

(21)

Plaintiff re-alleges and hereby incorporate all of the preceding paragraphs of this Complaint as if set forth herein.

(22)

The act(s) and/or omission(s) of these Defendants, by and through its employee, servant, and/or agent Officer John Doe, when viewed objectively involved an extreme degree of risk, considering the probability and magnitude of the potential harm to Plaintiff. Officer John Doe had actual, subjective awareness of the risk, but nevertheless proceeded with reckless disregard and conscious indifference to the rights, safety or welfare of Plaintiffs herein in the following particulars, including but not limited to:

- (a) using excessive force;
- (b) using excessive force while not witnessing the commission of a misdemeanor;
- (c) using excessive force while not witnessing the commission of a felony;
- (d) making an unlawful detention;
- (e) lacking probable cause or a reasonable suspicion to make such a detention.
- (f) the act(s) and/or omission(s) in question constitute a reckless disregard for the rights and safety of Plaintiff and others.

(23)

As such, the act(s) and/or omission(s) of these Defendants, by and through its employee, servant, and/or agent Officer John Doe constitute reckless disregard as the term is defined under Mississippi law. Because Officer John Doe was an employee, servant, and/or agent of one or more of these Defendants, the principal defendant is vicariously liable for Officer John Doe's gross negligence at issue. As a result, the Plaintiff is entitled to the recovery of compensatory damages against these Defendants.

III.

RECKLESS DISREGARD FOR THE RIGHTS AND SAFETY OF PLAINTIFF

(24)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

(25)

The act(s) and/or omission(s) of these Defendants and Officer John Doe, in both his official and personal capacities, constitute a reckless disregard for the rights and safety of the Plaintiff herein. Further, these act(s) and/or omission(s) were perpetrated with such callousness that a reasonable person can certainly conclude that these act(s) and/or omission(s) were carried out without any regard as to their effects. Therefore, the act(s) and/or omission(s) constitute a reckless disregard for the rights and safety of the Plaintiff as defined under Mississippi law.

(26)

The act(s) and/or omission(s) of these Defendants and Officer John Doe, in both his official and personal capacities, were a proximate cause as to the injuries and damages sustained by Plaintiff.

IV.

ASSAULT (CIVIL)

(27)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

(28)

The acts(s) and/or omission(s) of Defendant Officer John Doe, in both his official and personal capacities, establish that he committed a civil assault. The Plaintiff's reasonable apprehension of imminent harmful or offensive contact constitutes civil assault. The Defendant's overt act of shooting a gun at the Plaintiff constituted a threat or menace to the Plaintiff. Officer John Doe's apparent present ability to inflict threatened harm and use of a weapon established that he committed a civil assault.

(29)

The above act(s) and/or omission(s) constitute civil assault and were each a proximate cause of the injuries and damages sustained by the Plaintiff.

V.

BATTERY (CIVIL)

(30)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

(31)

The acts(s) and/or omission(s) of Defendant Officer John Doe, in both his official and personal capacities, establish that he committed a civil battery. A civil battery has occurred when a harmful or offensive contact with the person of plaintiff caused by the act of defendant, whether directed at plaintiff personally or at a third party. Officer John Doe committed a civil battery upon the Plaintiff when he shot the Plaintiff with his gun. The Defendants also intended to cause offensive and harmful contact with the Plaintiff when he intentionally fired rounds of ammunition at the Plaintiff.

(32)

The above act(s) and/or omission(s) constitute civil battery and were each a proximate cause of the injuries and damages sustained by the Plaintiff.

VI.

NUISANCE

(33)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

(34)

The act(s) and/or omission(s) of Defendant Officer John Doe, in his personal capacity, on the day in question, constitute an interference with the Plaintiff's use or enjoyment of their property. Courts have stated that an act constitutes a private nuisance where it causes a substantial impairment of the owner's right to use or enjoy their land. Three basis of liability have been recognized; (i) negligence: decided on a reasonable person standard; (ii) strict liability in tort: when the activity abnormally dangerous; and (iii) intentional torts: where the conduct was meant to invade protected interest and the defendant knew it was substantially certain that the protected interest would be invaded. To recover upon the Defendants intentional conduct, the Plaintiff must prove the interference was substantial, in that it would bother a person of ordinary sensibilities, and unreasonable, in that the Plaintiff should not have to deal with interference without compensation.

(35)

The actions of the Defendants on the day in question were similarly negligent, abnormally dangerous, intentional, substantial, and unreasonable.

(36)

The above act(s) and/or omission(s) constitute civil nuisance and were each a proximate cause of the injuries and damages sustained by the Plaintiff.

VII.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

(37)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

(38)

The act(s) and/or omission(s) of Officer John Doe, in his personal capacity, on the day in question caused Plaintiff severe emotional distress through Defendants' negligent conduct. The shooting of the Plaintiff was a harrowing, traumatic, and disturbing event, from which he has suffered serious emotional anguish. Plaintiff suffered emotional distress and were also placed in the zone of danger as a result of Defendants' act(s). Therefore, the act(s) and/or omission(s) constitute a negligent infliction of emotional distress as defined under Mississippi law.

(39)

The above act(s) and/or omission(s) constitute negligent infliction of emotional distress and were each a proximate cause of the injuries and damages sustained by the Plaintiff.

VIII.

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

(40)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

(41)

The act(s) and/or omission(s) of Officer John Doe, in his personal capacity, on the night in question intentionally and/or recklessly caused Plaintiff to suffer severe emotional distress. Plaintiff suffered severe emotional distress as a result of the extreme and outrageous acts. Officer John Doe's use of a weapon to shoot and harm and the Plaintiff was deliberate, calculated, and reckless. Therefore, the act(s) and/or omission(s) constitute an intentional infliction of emotional distress as defined under Mississippi law.

(42)

The above act(s) and/or omission(s) constitute intentional infliction of emotional distress and were each a proximate cause of the injuries and damages sustained by the Plaintiff.

IX.

PREMISES LIABILITY

(43)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

X.

PUNITIVE DAMAGES

(48)

Plaintiff re-alleges and hereby incorporate by reference all of the preceding paragraphs of this Complaint as if set forth herein.

(49)

The incident at issue here is that Officer John Doe, in his personal capacity, in used deadly force that was totally improper and egregious. Plaintiff did not have any weapons of any kind on his person at the time of the incident. Further, Officer John Doe never witnessed Plaintiff commit any crime(s) at any time which lead to the incident described herein. Officer John Doe's actions were egregious and reckless, and it is Plaintiff's contention that punitive damages are all that can serve to deter Officer John Doe's egregious conduct.

(50)

The act(s) and/or omission(s) of these Defendants, evidenced malice and a reckless disregard for the safety and well being of other human beings, Plaintiffs specifically request a punitive damages instruction as to all Defendants, pursuant to Mississippi Code Annotated Section 11-1-65. Punitive damages instructions may be given when the trial court so determines that the Defendant's conduct is so willful, wanton, or egregious that it evidences a reckless disregard for the rights and safety of others.

GENERAL DAMAGES

(51)

Plaintiff re-alleges and hereby incorporate by reference paragraphs 1 through 50 of their Complaint as if set forth herein.

(52)

Because of the act(s) and/or omission(s) of Defendants, Plaintiffs seek general damages as prescribed by Mississippi law.

WHEREFORE PREMISES CONSIDERED, Plaintiffs request a judgment against any and all of these Defendants for the reasons set forth herein. Further, Plaintiffs request general damages as well as punitive damages (to the extent allowed under Mississippi law) against all of the Defendant named herein. Further, Plaintiffs also pray for any and all other relief this Court deems necessary and appropriate in the interest of justice.

THIS the 17th day of April, 2008.

Respectfully submitted,

DALE ARCHEY

*By and Through His Attorneys,
SWEET & ASSOCIATES. P.A.*

By: 

DENNIS C. SWEET, III

Of Counsel:

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