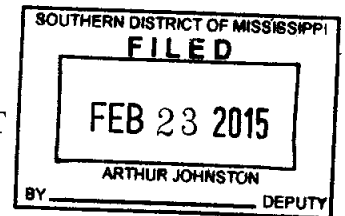


IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



LINDA GARCIA

PLAINTIFF

VS.

FICKLING MANAGEMENT SERVICES, LLC

CIVIL ACTION NO.
1:15CV51LG-RHW
DEFENDANT

JURY TRIAL DEMANDED

COMPLAINT

COMES NOW the Plaintiff, Linda Garcia, by and through counsel, and in support of this, her Complaint for damages against the Defendant, respectfully alleges the following:

1. Plaintiff Linda Garcia is an adult resident citizen of Harrison County, Mississippi, residing at 251 Eisenhower Drive, Biloxi, MS 39531.
2. Fickling Management Services, LLC, is a non-resident corporation. It may be served with process by and through personal service upon its registered agent, CT Corporation System, who may be found at 645 Lakeland East Drive, Suite 101, Flowood, MS 39232.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the parties.
5. This Court has subject matter jurisdiction over this cause, pursuant to Title 28 U.S.C §1332 as the matter in controversy exceeds the value of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.
6. Venue is proper in the United States District Court for the Southern District of Mississippi, Southern Division pursuant to Title 28 U.S.C §1391 as same is the judicial district in which a substantial part of the events or omissions giving rise to the claim occurred.

FACTUAL BACKGROUND

7. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

8. Plaintiff had previously entered into a residential lease contract with the Defendant, Fickling Management Services, LLC, and, as such, was a lawful tenant residing on the residential premises owned, operated and/or controlled by the Defendant known as Palm Isle Apartment Homes located at 251 Eisenhower Drive, Biloxi, MS.

9. On January 24, 2014, Plaintiff, Linda Garcia, was descending the stairwell located in a common area of said apartment complex when she slipped fell down the stairs causing her to sustain bodily injuries. The steps of the stairwell were covered in a sheet of ice that was clear and not visible to one exercising due care for his or her safety.

10. As a proximate cause and result of Plaintiff's fall that was directly caused by the negligence of the Defendant, including direct acts of managerial or employee negligence committed by Defendant's employees in the course and scope of their employment duties as referenced throughout the complaint, Plaintiff sustained bodily injuries and damages. Therefore, Plaintiff submits that the Defendant is vicariously liable for the acts and omissions of its employees which proximately caused the occurrence and Plaintiff's injuries and damages.

CAUSE OF ACTION Premises Liability and Negligence

11. Plaintiff incorporates the preceding paragraphs as if fully rewritten herein.

12. That the Defendant owed a duty to the Plaintiff and other foreseeable persons, to provide habitable and reasonably safe conditions in accordance with the Mississippi Residential Landlord Tenant Act found at Miss Code Anno. §89-8-1 et seq. (1972, as amended) and to act in good faith in the performance of the residential lease contract.

13. Defendant breached these duties by failing to maintain the premises in a reasonably safe condition, failing to conduct reasonable inspections to ascertain said hazardous condition; and failing to otherwise remedy said hazardous condition despite actual or constructive notice thereof.

14. Defendant's breach of these duties was a proximate and contributing cause and/or concurrent cause of the accident and the resulting injuries to the Plaintiff.

15. Defendant had a duty to design, construct, deliver and maintain said premises in a reasonably safe condition and to remedy all hazardous conditions in which they had actual or constructive knowledge of, by and through inspection and those defective and hazardous conditions that were discoverable upon reasonable diligence. Defendant breached its duty and duties to foreseeable persons, specifically the Plaintiff, and due to Defendant's failure to design, construct, deliver, maintain or otherwise provide a reasonably safe premises for the use of invitees and foreseeable persons such as the Plaintiff, its failure to warn of this unsafe condition or otherwise remedy same, and other negligent acts, Plaintiff fell and as a proximate result thereof suffered serious bodily injuries. Defendant created the hazardous condition, had actual and/or constructive knowledge of the hazardous condition and failed to remedy same within a reasonable time thereafter. Defendant had a duty to exercise reasonable care to maintain its premises in a reasonably safe condition. Defendant breached said duty by failing to adequately prepare the steps on the stairwell for icy conditions and by further failing to remedy the hazardous condition after it occurred.

16. Defendant, including those responsible for the design, construction and maintenance of the stairwell, as well as proper and preventive maintenance on the subject stairwell or steps, were negligent in failing to fulfill their responsibilities created by their

connection with the stairwell or steps and the subject premises. Therefore, the Defendant is liable for its own acts of negligence, and vicariously liable for any employee's individual and respective negligence, failure to design construct, deliver, inspect, maintain or repair the subject stairwell to a reasonably safe condition, failure to warn of any unsafe condition and otherwise negligent acts.

NEGLIGENT TRAINING AND SUPERVISION

17. The Defendant was guilty of the following negligent acts and/or omissions either at the time of or prior to the occurrence which forms the basis of this Complaint:

- a. Failing to make and/or enforce policies and procedures for routine maintenance and inspections of the stairwell, a common area, where the subject incident occurred;
- b. Failing to make and/or enforce a policies and procedures for the provision of de-icing materials where the subject incident occurred;
- c. Failing to properly and adequately train employees which were under its supervision and control of Smith; and/or
- d. Failing to otherwise properly train and supervise the duties of an apartment complex manager.

18. Defendant's breach of these duties was a proximate and contributing cause and/or concurrent cause of the accident and the resulting injuries to the Plaintiff.

DAMAGES

18. Defendant's breach of these duties was a proximate and contributing cause and/or concurrent cause of the incident and the resulting injuries to the Plaintiff.

19. As a further direct and proximate cause of Defendant's disregard for Plaintiff's safety and well being and other negligent acts, Plaintiff, Linda Garcia, suffered serious bodily

injuries and incurred substantial monetary damages. These damages include, but are not limited to the following:

- (a) past, present and future medical expenses;
- (c) past, present and future physical pain and suffering;
- (d) past, present and future mental and emotional distress;
- (e) past, present and future inconvenience and discomfort;
- (f) permanent impairment and disability; and
- (g) any other relief, which the Court or jury deems just or appropriate based upon the

circumstances;

WHEREFORE, PREMISES CONSIDERED, Plaintiff demands judgment against the Defendant for actual, compensatory damages, non-pecuniary damages, attorney's fees and costs.

Respectfully submitted, this the 17th day of February, 2014.

LINDA GARCIA, PLAINTIFF,

By:


SHANDA M. YATES

COUNSEL FOR PLAINTIFF:

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