

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO. ~~2008~~ -CA- 013064
DIVISION:

-XXXX-MA

**NANCY ZANARD as Personal Representative
of the Estate of Richard Zanard,**

Plaintiff,

DIVISION CV-D

v.

**HOME DEPOT U.S.A., INC. a foreign for profit
corporation; BILLY SANDERS and MICHAEL
GRIFFITH,**

Defendants.

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COMPLAINT

COMES NOW the Plaintiff NANCY ZANARD, as Personal Representative of the Estate of Richard Zanard, deceased, by and through her undersigned counsel, and sues the Defendants, HOME DEPOT U.S.A., INC. ("Home Depot") a foreign for profit corporation; BILLY SANDERS ("Sanders") and MICHAEL GRIFFITH ("Griffith"), and alleges:

JURISDICTIONAL ALLEGATIONS

1. This is an action for wrongful death damages pursuant to §768.16-768.27, Florida Statutes, that exceeds \$75,000.00, exclusive of interest, costs and attorney's fees.
2. Richard Zanard ("the Decedent") died on November 7, 2006 in St. Augustine, St. Johns County, Florida as a result of injuries he sustained while at The Home Depot store #6443 as a lawful invitee on or about October 19, 2006.
3. At the time of his death, Richard Zanard was a resident of St. Augustine, St. Johns County, Florida. He was born on March 14, 1926, and died on November 7, 2006.

4. At all times material hereto, Plaintiff, Nancy Zanard, was a resident of St. Johns County, Florida. Nancy Zanard is the duly appointed Personal Representative of The Estate of Richard Zanard, deceased. A copy of the Letters of Administration are attached hereto and incorporated herein by this reference as Exhibit "A". Nancy Zanard was the lawful spouse of the Decedent.

5. Richard Zanard had the following "survivors" pursuant to the Florida Wrongful Death Act: his spouse Nancy Zanard, his biological son, Peter Zanard (then aged 47) and his biological son Chris Zanard (then aged 50).

6. At all times material hereto, Defendant Home Depot was a foreign for profit corporation, authorized to do business and conducting substantial business in the state of Florida. Defendant Home Depot had agents for the transaction of business and conducted business in Duval County, Florida. Accordingly, Defendant Home Depot has sufficient minimum contacts to be sued in the State of Florida in this case under both general and specific personal jurisdiction.

7. Florida courts have jurisdiction over Defendant Home Depot pursuant to Florida Statute Sections 48.193(1)(a), (b), (f) and (2), as Defendant Home Depot:

- a. Operated, conducted, engaged in and carried on a business in Florida and/or had offices in Florida;
- b. Committed a tortious act in Florida that is the subject of this action;
- c. Caused the death of the Decedent in the State of Florida as a result of acts or omissions by Defendant Home Depot outside Florida; and/or
- d. Defendant Home Depot is engaged in substantial and not isolated activity within the State of Florida.

8. At all times material hereto Defendant Sanders was a natural person and resident of St. Johns County, Florida. Upon information and belief, Defendant Sanders has since moved

out of state. Based on his residence in St. Johns County, Florida and his committing a tortious act in St. Johns County, Florida as alleged, this Court has specific and general jurisdiction over Defendant Sanders pursuant to Florida Statute 48.193.

9. At all times material hereto Defendant Griffith was a natural person and resident of St. Johns County, Florida. Upon information and belief, Defendant Griffith has since moved out of state. Based on his residence in St. Johns County, Florida and his committing a tortious act in St. Johns County, Florida as alleged, this Court has specific and general jurisdiction over Defendant Griffith pursuant to Florida Statute 48.193.

FACTUAL ALLEGATIONS

10. At all times material hereto, Defendant Home Depot owned and/or operated The Home Depot store #6334 located at 1750 US Highway 1 South in St. Augustine, St. Johns County, Florida.

11. On or about October 19, 2006, Decedent Richard Zanard was a lawful business invitee at The Home Depot store #6334.

12. On or about October 19, 2006, Defendant Sanders was a lawful business invitee at The Home Depot store #6334.

13. On or about October 19, 2006 Defendant Sanders was employed by Defendant Griffith and operating in the course and scope of his employment while shopping at Home Depot store #6334. Alternatively, Defendant Sanders was in a joint enterprise with Defendant Griffith and shopping at The Home Depot store in question in furtherance of the joint enterprise.

14. On or about October 19, 2006, Defendant Sanders entered Home Depot and purchased several large garbage cans.

15. At the check-out counter, an employee of Defendant Home Depot assisted Defendant Sanders with his purchases. The employee of Defendant Home Depot loaded the cans in a vertical stack into a regular shopping cart. The height of these garbage cans loaded into a regular shopping cart clearly obscured Defendant Sanders' vision when pushing the cart forward to exit the store.

16. The employee of Defendant Home Depot allowed Mr. Sanders to proceed out of the store and into the parking lot having created this danger and with full knowledge that his vision would be obscured as to objects and people in his path.

17. Mr. Sanders proceeded out of the Home Depot store into the Home Depot parking lot pushing the cart.

18. He could not see objects or people in his direct path due to the garbage cans that the Home Depot employee stacked in the standard shopping cart.

19. At that time and place, Richard Zanard was walking through the parking lot after purchasing items from Defendant Home Depot.

20. Defendant Sanders approached Richard Zanard and, as a result of his vision being obstructed by the stacked garbage cans, ran directly into Mr. Zanard with the Home Depot shopping cart he was pushing.

21. The force of the impact from the shopping cart knocked Mr. Zanard to the ground.

22. Mr. Zanard sustained a fractured hip as a result of the collision and fall.

23. Subsequent to the collision, Mr. Zanard was transferred to Flagler Hospital via ambulance and surgery was recommended to repair his fractured hip.

24. On October 21, 2006, Mr. Zanard underwent surgery to repair the fractured hip.

25. Directly after the surgery, while still in post-op, Mr. Zanard experienced a severe myocardial infarction status post open reduction internal fixation of his right hip.

26. Mr. Zanard was revived but his heart had suffered significant trauma and he eventually passed away due to subsequent organ failure on November 7, 2006.

27. Richard Zanard's death was a direct and proximate cause of the surgery to repair his fractured hip which was proximately caused by the negligence of the Defendants as described in more detail below.

COUNT I
NEGLIGENCE AGAINST HOME DEPOT

28. Plaintiff realleges the allegations contained within paragraphs 1-6 and 10-27 and incorporates them herein by reference.

29. Richard Zanard was a business invitee under Florida law while on Defendant Home Depot's premises and was owed the highest duties by Defendant Home Depot.

30. Given the size and nature of the products sold by Defendant Home Depot, it was reasonably foreseeable that standard shopping carts could be stacked so high as to obstruct the view of the customer as he or she pushed the cart through the store or exiting the store and in the adjacent parking lot.

31. Defendant Home Depot recognized this risk and had available to its patrons several different types of shopping carts.

32. Upon information and belief, Defendant Home Depot either failed to have a policy regarding stacking carts too high, or failed to train and enforce that policy at the Home Depot store in question.

33. By and through its agents, employees, officers and/or directors, Defendant Home Depot violated its duties to Mr. Zanard as a business invitee, and was therefore negligent, in one or more of the following ways:

- (a) Failing to train their employee on safety regarding loading/overloading of shopping carts;
- (b) Failing to ensure employees followed company policy regarding safety and the proper loading of tall objects into standard shopping carts;
- (c) Failing to monitor employees and store areas with respect to safety concerns;
- (d) Negligently hiring and/or retaining the employee or employees responsible for the overloading of the shopping cart; and/or
- (e) Failing to adopt appropriate corporate policies regarding safety and the proper loading of tall objects into standard shopping carts.

34. Defendant Home Depot is vicariously liable for the negligent acts of its agent, employees, officers and directors as alleged.

35. As a result of Defendant Home Depot's negligence, Richard Zanard died on November 7, 2005. As a direct and proximate result of his death, the decedent's estate and statutory survivors have suffered medical and funeral expenses which have become a charge against the estate or were paid by a survivor on behalf of the decedent, loss of the support and services of the decedent, the surviving spouse suffers and will continue to suffer loss of consortium, loss of the support and services of the decedent and future mental pain and suffering. The Plaintiffs will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant Home Depot, for damages, costs, prejudgment interest on out of pocket losses, and post judgment interest together with such other and further relief this Court deems equitable and just.

COUNT II
NEGLIGENCE CLAIM AGAINST DEFENDANT SANDERS

36. Plaintiff realleges the allegations contained within paragraphs 1-5, 8 and 10-27 and incorporates them herein by this reference.

37. Defendant Sanders had a duty to push the shopping cart in a reasonably safe manner and to watch for objects and people that may be in his path in the parking lot.

38. Defendant Sanders breached that duty in one or more of the following ways:

- (a) Loading or allowing the cart to be loaded with items that obstructed his view;
- (b) Failing to watch for people in his path in the parking lot;
- (c) Walking too fast through a crowded parking lot while pushing a cart stacked with garbage cans that were obstructing his view.
- (d) Failing to observe Richard Zanard; and/or
- (e) Crashing into Richard Zanard and knocking him to the ground.

39. As a result of Defendant Sanders' negligence, Richard Zanard died on November 7, 2006. As a direct and proximate result of his death, the decedent's estate and statutory survivors have suffered medical and funeral expenses which have become a charge against the estate or were paid by a survivor on behalf of the decedent, loss of the support and services of the decedent, the surviving spouse suffers and will continue to suffer loss of consortium, loss of the support and services of the decedent and future mental pain and suffering. The survivors will continue to suffer these losses in the future.

WHEREFORE, Plaintiff demands judgment against Defendant Sanders, for damages, costs, prejudgment interest on out-of-pocket losses, and post judgment interest together with such other and further relief this Court deems equitable and just.

COUNT III
NEGLIGENCE AGAINST DEFENDANT GRIFFITH

40. Plaintiff realleges the allegations contained within paragraphs 1-5, 9, 10-27 and 29-31 and incorporates them herein by this reference.

41. At the time of the incident, Defendant Sanders was either acting as the employee of Defendant Griffith or was acting as his agent or in joint enterprise with Defendant Griffith.

42. Defendant Griffith is vicariously liable for the negligent acts of his agent or employee, Defendant Sanders, who negligently pushed an overloaded shopping cart into Mr. Zanard during the course and scope of his employment with or in furtherance of his joint enterprise with Defendant Griffith.

WHEREFORE, Plaintiff demands judgment against Defendant Griffith, for damages, costs, prejudgment interest on out-of-pocket losses, and post-judgment interest together with such other and further relief this Court deems equitable and just.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury of all issues so triable herein.

Dated this ___ day of October, 2008.

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