

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR THE COUNTY OF HILLSBOROUGH, STATE OF FLORIDA
CIRCUIT CIVIL DIVISION

BRIAN GORDON, an individual,

Plaintiff,

Case No:

vs.

08 29220
DIVISION A

DINEEQUITY, INC., a Foreign Corporation,
INTERNATIONAL HOUSE OF PANCAKES, INC.
a Foreign Corporation,
ANTHONY DAVIS, an individual,
MICHAEL BENNETT, an individual, and
JOHN DOE, an individual,

Defendants.

FILED
CLERK OF CIRCUIT COURT
2008 DEC 15 AM 10:25
HILLSBOROUGH COUNTY
CIRCUIT CIVIL

PLAINTIFF'S COMPLAINT FOR DAMAGES AND
DEMAND FOR TRIAL BY JURY

COMES NOW, the Plaintiff, BRIAN GORDON, by and through his undersigned attorney and files this, his Complaint for Damages and Demand for Trial by Jury against the Defendants, DINEEQUITY, INC. (hereinafter referred to as "DINEEQUITY"), INTERNATIONAL HOUSE OF PANCAKES, INC. (hereinafter referred to as "IHOP"), ANTHONY DAVIS (hereinafter referred to as "DAVIS"), MICHAEL BENNETT (hereinafter referred to as "BENNETT") and JOHN DOE and alleges as follows:

JURISDICTIONAL ALLEGATIONS

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of interest and costs.

2. The Plaintiff, BRIAN GORDON, was at all times material to this suit an individual lawfully residing within the State of Florida.
3. The Defendant, DINEEQUITY, is a Foreign corporation, authorized to do business in the State of Florida, and conducting business in Hillsborough County, Florida.
4. The Defendant, IHOP, is a Foreign corporation or other business entity that is and was authorized to conduct business in the State of Florida, and is conducting business in Hillsborough County, Florida.
5. At all times relevant to this action, Defendants, DINEEQUITY and IHOP owned, operated or otherwise controlled in whole or in part a late night restaurant located at 4910 Spruce Street, Tampa, Hillsborough County, Florida (hereinafter referred to as “the Restaurant”). The incidents which give rise to this action occurred on the premises of the Restaurant.
6. At all times material to this action, Defendants, DINEEQUITY and IHOP employed, retained, gave authority to, or contracted with various persons to provide services for the Restaurant. At all times material to this action, these personnel were acting within the course and scope of their agencies or employments thereby rendering Defendants, DINEEQUITY and IHOP liable for their acts and omissions.
7. At all times material hereto, DAVIS, was a resident of Tampa, Hillsborough County, Florida.
8. At all times material hereto, BENNETT was a resident of Tampa, Hillsborough County, Florida.
9. At all times material hereto, JOHN DOE is and was a heretofore unidentified individual residing in Tampa, Hillsborough County, Florida.

FACTUAL ALLEGATIONS

10. On or about October 13, 2008, the Plaintiff was physically present at the Restaurant as a patron or invitee of the Defendants, DINEEQUITY and IHOP.
11. At that same time and place, Defendant, DAVIS, was physically present as a patron or invitee of the Defendants, DINEEQUITY and IHOP.
12. At that same time and place Defendant, DAVIS, demonstrated to be intoxicated, belligerent, profane, verbally abusive, physically threatening, disorderly, hostile, and continuously and persistently harassed restaurant staff and patrons for an extended period of time with conduct including:
 - a. Defendant, DAVIS, identified himself as a professional football player playing for the Tampa Bay Buccaneers and said “all you mother fuckers can do for me is pay to come see me on Sunday”.
 - b. Defendant, DAVIS, addressed two female patrons as “sluts” and “whores” and said “I got my civil rights and I can say whatever I want to say. You ain’t my mother”.
 - c. Defendant, DAVIS, yelled at the cook and waitress in the back of the restaurant saying “Where’s my mother fucking food! Give me my food! Mother fucker!”.
13. Defendant, DAVIS, threatened the Plaintiff with physical harm and telephoned co-defendants BENETT and JOHN DOE and summoned them for assistance and weapons.
14. Defendant, BENNETT, arrived with Defendant, JOHN DOE, by automobile, exited the vehicle, and threatened the Plaintiff with physical harm.
15. Defendant, BENNETT, brandished a black handgun in a holster and said “Is there a problem?”.

16. Defendant, BENNETT, identified himself as a professional football player playing in the National Football League.
17. Defendant, BENNETT, has prior to this subject matter incident demonstrated a history and propensity for altercations in parking lots at which time gunshots were fired, including but not limited to an incident occurring on or about May 12, 2003 in Minneapolis, Minnesota.
18. On or about October 13, 2008, while present as a patron in the restaurant parking lot, Plaintiff was physically assaulted and/or the subject of physical battery as committed upon him by Defendants, DAVIS, BENNETT and JOHN DOE.
19. No employees, agents, servants or other personnel of Defendants, DINEEQUITY and IHOP attempted to restrain or otherwise prevent these assailants from attacking the Plaintiff and rather affirmatively encouraged and otherwise assisted Defendants, DAVIS, BENNETT and JOHN DOE in committing the assault and/or battery.
20. As a result of the assaults and/or batteries, and the failures of Defendants, DINEEQUITY and IHOP, Plaintiff sustained severe bodily injury including psychological trauma, other bodily injury, lost wages or income, other economic damages, permanent injury, pain and suffering, emotional and psychological distress, future impairment, past and future medical expenses, as well as painful and expensive surgery and medical care and future medical care, treatment and expense attendant to his injuries.

COUNT I – NEGLIGENCE
(as to DINEEQUITY and IHOP)

21. Plaintiff adopts and re-alleges paragraphs 1 through 20 above as if fully set forth herein.
22. At all times relevant, Defendants, DINEEQUITY and IHOP maintained possession and control of the Restaurant. These Defendants maintained a duty to exercise ordinary and

reasonable care in the operation of its restaurant. These duties include, but are not limited to:

- a. maintain order between its patrons, its agents and others;
 - b. investigate the qualifications, competency and training of its agents, employees, contractors, or other personnel;
 - c. provide adequate training for its agents, employees, contractors, or other personnel;
 - d. supervise its employees, agents, contractors, or other personnel;
 - e. take reasonable and necessary actions to protect its patrons from foreseeable danger, physical attack or criminal activity;
 - f. exercise ordinary and reasonable care in the maintenance of the premises in a reasonably safe condition;
 - g. Defendants, DINEEQUITY and IHOP adopted policies on business conduct including a policy that “strictly prohibits any form of harassment in the workplace” and expressly defined physical harassment to include “unnecessary or offensive touching, or impeding or blocking movement” and further expressly defined “harassing conduct” to include “threatening, intimidating or hostile acts”;
23. Defendants, DINEEQUITY and IHOP further resolved in their “Business Conduct Policy” that “the safety and security of employees is of primary importance.” Defendants expressly represented in their “Business Conduct Policy (the “Code”)” that employees “are responsible for maintaining our facilities free from recognized hazards”;
24. Defendants DINEEQUITY and IHOP by and through their authorized employees, representatives, agents, and other personnel breached their duties by:

- a. failing to protect Plaintiff or otherwise intervene or stop the attacks on Plaintiff;
 - b. failing to adequately supervise employees;
 - c. failing to maintain adequate security services and personnel in the Restaurant in general or under the late night circumstances surrounding this subject matter attack;
 - d. permitting individuals with dangerous propensities and/or impaired faculties in the Restaurant and permitting such individuals unfettered access to both public and employee areas within the Restaurant and to otherwise permit such individuals to fight in and about the Restaurant;
 - e. failing to stop fights, permitting fights to escalate, and failing to summon the authorities or otherwise protect the Plaintiff from attack.
25. As a direct and proximate result of these acts and omissions by Defendants, DINEEQUITY and IHOP, the Plaintiff was injured and sustained damages, including bodily injury, permanent injury and future impairment, scaring, disfigurement, past and future pain and suffering, past and future medical expenses, and past and future lost income and wages, other economic damages, mental anguish, emotional distress, pain and suffering, and the loss of capacity for the enjoyment of life.

WHEREFORE, the Plaintiff demands judgment for general damages and in an amount to be determined at trial in trial in this matter, interest, costs and any other relief that this Court deems just and proper. The Plaintiff further demands a trial by jury of all issues so triable.

COUNT II – ASSAULT AND BATTERY
(as to Defendant, BENNETT)

26. Plaintiff, BRIAN GORDON, re-alleges and re-avers paragraphs 1 through 20 above as if fully set forth herein.

27. On or about October 13, 2008, Defendant, BENNETT, willfully and maliciously brandished a firearm and displayed same to Plaintiff and otherwise threatened Plaintiff with the weapon.
28. On or about October 13, 2008, Defendant, BENNETT, willfully and maliciously assaulted and beat Plaintiff.
29. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money. These losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against Defendant and a trial by jury.

COUNT III – ASSAULT AND BATTERY
(as to Defendant, DAVIS)

30. Plaintiff, BRIAN GORDON, re-alleges and re-avers paragraphs 1 through 20 above as if fully set forth herein.
31. On or about October 13, 2008, Defendant, DAVIS, willfully and maliciously assaulted and beat Plaintiff.
32. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money. These losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against Defendant and a trial by jury.

COUNT IV – ASSAULT AND BATTERY
(as to Defendant, JOHN DOE)

33. Plaintiff, BRIAN GORDON, re-alleges and re-avers paragraphs 1 through 20 above as if fully set forth herein.
34. On or about October 13, 2008, Defendant, JOHN DOE, willfully and maliciously assaulted and beat Plaintiff.
35. As a result, Plaintiff suffered bodily injury and resulting pain and suffering, disability, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings and loss of ability to earn money. These losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff demands judgment for damages against Defendant and demands a trial by jury.

COUNT V – CIVIL REMEDY FOR CRIMINAL PRACTICES ACT, FLORIDA
STATUTES § 772 (as to Defendants, DAVIS, BENNETT and JOHN DOE)

36. Plaintiff, BRIAN GORDON, re-alleges and re-avers paragraphs 1 through 20, and paragraphs 26-35 above as if fully set forth herein.
37. Defendants, DAVIS, BENNETT, and JOHN DOE conspired and/or endeavored to conduct or otherwise participate in the assault and battery of Plaintiff.
38. Pursuant to Florida Statute §772.104, Plaintiff is entitled to threefold the actual damages suffered by him as a result of the attack and is further entitled to recover reasonable attorney's fees and court costs.

WHEREFORE, the Plaintiff demands judgment for damages against Defendants and a trial by jury.

COUNT VI – NEGLIGENCE PER SE -- VIOLATION OF NFL POLICY
(as to Defendants, DAVIS and BENNETT)

39. Plaintiff, BRIAN GORDON, re-alleges and re-avers paragraphs 1 through 20 above as if fully set forth herein.
40. Defendants, BENNETT and DAVIS are employed as professional football players by member clubs of the National Football League (hereinafter referred to as “NFL”).
41. Defendants, BENNETT and DAVIS, are subject to NFL policies.
42. The NFL promulgated and otherwise adopted the following “Guns and Weapons Policy”:

“Guns and Weapons Policy
(This policy applies to all employees of the NFL and its member clubs, including players.)

Prohibitions

Whether possessed legally or illegally, guns and other weapons of any kind are dangerous. You and your family can easily be the losers if you carry or keep these items in your home. You must not possess these weapons while traveling on league-related business or whenever you are on the premises of the following:

_A facility owned, operated or being used by an NFL club (for example, training camp, dormitory, locker room, workout site, parking area, team bus, team plane, team hotel/motel);

_A stadium or any other venue being used for an NFL event (for example, a game, practice or promotion);

_A facility owned or operated by the NFL or any league company. Put simply, the league, the Players Association and law enforcement authorities urge you to recognize that you must not possess a gun or other weapon at any time you are performing any service for your team or the NFL.

Legal Possession

In some circumstances, such as for sport or protection, you may legally possess a firearm or other weapon. However, we strongly recommend that you not do so.

Any weapon, particularly a firearm, is dangerous, especially so when it is in a vehicle or within reach of children and others not properly trained in its use.

Understanding the Law

If you legally possess a weapon, you must understand the local, state and federal laws that apply. The NFL Security representative in your area will help you get information about these laws. You should be aware that if you take a weapon from one place to another, for example across state lines, a different set of laws may apply in the new place.

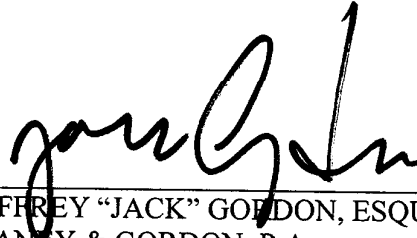
Discipline

If you violate this policy on guns and other weapons, you are subject to discipline, including suspension from playing. And if you violate a public law covering weapons, for example possession of an unlicensed firearm, you are not only subject to discipline, including suspension from playing, but also subject to criminal prosecution.

Remember, be careful and understand the risks.”

43. Plaintiff is a third party beneficiary of this NFL Guns and Weapons policy.
44. Violation of company policy or industry standards is admissible as non-conclusive evidence of negligence. See Dean Witter Reynolds, Inc. v. Hammock, 489 So.2d 761 (Fla. 1st DCA 1986); Steinberg v. Lomenick, 531 So.2d 199 (Fla. 3rd DCA 1988).
45. Defendants, BENNETT and DAVIS, violated the NFL Guns and Weapons Policy.
46. As a result of the assault and/or batteries and violations of this NFL policy as committed by Defendants, Plaintiff has sustained bodily injury including psychological trauma, loss of wages or income, economic damages, permanent injury, pain and suffering, emotional and psychological distress, past and future medical expenses, as well as painful and expensive surgery and medical care and future medical care, treatment and expense attendant to his injuries.

WHEREFORE, the Plaintiff demands judgment for damages in excess of Fifteen
Thousand Dollars (\$15,000.00) against Defendants and a trial by jury of all issues so triable.



JEFFREY "JACK" GORDON, ESQUIRE
MANEY & GORDON, P.A.
101 East Kennedy Boulevard, Suite 3170
Tampa, Florida 33602
(813) 221-1366
Florida Bar #836760
Counsel for Plaintiff