

File #: 7628

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

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JENNIFER JONES and ALICIA SGRO, a minor under the Age of
Eighteen Years, by her Mother, Natural Guardian, THERESE
SGRO,

Plaintiffs,

-against-

WAL-MART STORES INC., ARBOR PROPERTY TRUST, EQK
GREEN ACRES L.P., SECURITAS SECURITY SERVICES USA,
INC., and JANE DOE, being an unknown Assailant,

Defendants.
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**VERIFIED
COMPLAINT**

Index No.
Date Purchased:

Plaintiffs, JENNIFER JONES and ALICIA SGRO, a minor under the Age of Eighteen
Years, by her Mother, Natural Guardian, THERESE SGRO, by their attorneys BARON
ASSOCIATES P.C., as and for their Verified Complaint herein, respectfully allege as follows:

PRELIMINARY STATEMENT

1. This action arises from a horrifying harbinger to the infamous stampede at
the Wal-Mart store in Valley Stream, Nassau County, State of New York, early in the morning on
November 28, 2008, the day after Thanksgiving. Retailers call the day an annual 'Black Friday'.

2. Upon information and belief, defendant WAL-MART STORES INC. had
been advertising a sale of electronic appliances on said Black Friday at said store. The prices
would last for only a six-hour period – beginning at five in the morning. Around one in the
morning, a crowd of over two thousand people began to gather. Eventually, the horde crashed
into the store, knocking off the doors, trampling a worker to death and seriously injuring others,
more specifically, plaintiffs herein.

THE PARTIES

3. Plaintiff JENNIFER JONES (“JONES”) is a resident of the County of Nassau, State of New York.

4. Plaintiff ALICIA SGRO (“SGRO”) is a resident of the County of Nassau, State of New York. SGRO is a minor child.

5. In the instant action, SGRO is acting by and through her mother, natural guardian and next best friend, THERESE SGRO.

6. Upon information and belief, defendant WAL-MART STORES INC. (the “Store Owner”) located at 77 Green Acres Road, Valley Stream, New York 11581, in the southwest section Green Acres Shopping Mall, (the “Subject Premises”) is a Delaware corporation with its principal office and place of business at 702 S.W. 8th Street, Bentonville, Arkansas.

7. Upon information and belief, defendant ARBOR PROPERTY TRUST (the “Mall Owner”), formerly known as EQK GREEN ACRES L.P., is a Delaware real estate investment trust. Said defendant owns and operates the Green Acres Mall (the “Mall”) and has a principal office and place of business at the Mall. The Mall is home both to the aforesaid store and to the parking lot adjacent thereto.

8. That at all times herein mentioned, defendant Store Owner was the lessee of the Subject Premises located at the Subject Premises.

9. Upon information and belief, defendant SECURITAS SECURITY SERVICES USA, INC., (“Security”) is a Delaware corporation doing business in New York.

10. Upon information and belief, the Mall is a regional enclosed shopping mall with approximately two million square feet of retail space. The Mall is located at the

intersection of the Sunrise Highway and Green Acres Road in Valley Stream, Nassau County.

11. Upon information and belief, even if the defendant Mall Owner had primary responsibility for maintaining the parking lot, the defendant Store Owner (a) possessed the right to control certain aspects of the lighting and (b) otherwise shared control.

12. Upon information and belief, the defendant Security, the security company, was retained by defendants WAL-MART STORES INC., ARBOR PROPERTY TRUST and EQK GREEN ACRES L.P. to secure the aforesaid store and to the parking lot adjacent thereto.

13. As used in this Complaint, the term "Commercial Defendants" means the defendant Store Owner, and the defendant Mall Owner, the defendant Security, and each of them.

14. With regard to defendant "JANE DOE", the name is fictitious and represents the woman who committed the assault and battery herein described (the "Assailant").

THE PERIOD BEFORE BLACK FRIDAY

15. Upon information and belief, in the period before the subject Black Friday, the defendant engaged in specific marketing and advertising campaign designed precisely to generate a large crowd and atmosphere of hysteria and chaos.

16. Upon information and belief, the defendant had strived very hard to create a menacing, unruly crowd and knew that its labors might well succeed.

17. Upon information and belief, the defendant expected the mayhem to occur and intentionally disregarded the risks associated with the so-called 'blitz' sale.

18. Upon information and belief, integral to the design of the sale was emplacing in the shoppers a feeling of anxiety. Each member of the crowd would experience

fear of being smashed, while vertical, or trampled, while horizontal: that fall to the ground would be a prelude to burial thereunder. Afterwards, once inside the store, each shopper would have a feeling of emotional freedom and release that would cause him or her to do more purchasing.

19. Upon information and belief, employees, management and the parent organization had significant prior knowledge of the lack of security and potential for chaos – which chaos, in fact, they were doing their utmost to create.

20. The defendant took giant steps to make sure that the various Black Friday incidents would occur – and minimal steps to prevent them.

BLACK FRIDAY

21. When things get as ugly as the Black Friday stampede, they do not start suddenly.

22. In the wee hours of the subject Black Friday, the defendant's seeds of chaos were bearing fruit, as the swarm of would-be shoppers was burgeoning. Badly hit by a grievous recession, these people had elected to barter sleep, in order to put substance in their Christmas stocking. The multitude was spilling out of the sidewalk and pouring across the parking lot.

23. During those hours, the defendant allowed and/or caused to be taped next to the doors a handwritten sign saying, "Blitz Line Starts Here."

24. The defendant's intentional sensationalism of a sales event – during very tough economic times – was about to cause mayhem, injury and death.

THE ASSAULT AND BATTERY

25. On or about fifteen minutes before four o'clock in the morning (3:45 a.m.) on the subject Black Friday, the crowd of squeezed Long Islanders included JONES and SGRO, who are aunt and niece.

26. At that time, the crowd was pushing back and forth. Near JONES and SGRO, a woman sued herein as defendant JANE DOE was on the verge of violence.

27. JONES said, in words or in substance, "But we can't move anywhere." Undaunted, the woman elevated and agitated her hands toward the faces of aunt and niece. SGRO added, in words or in substance, "Calm down."

28. Then the woman punched JONES in the head, with such force as to break JONES' glasses. For good measure, the woman punched SGRO in the face and knocked SGRO, who was and is fourteen (14) years old, to the ground. To conclude the communication, the woman pulled SGRO up by the hair and knocked her down again.

29. At that time, JONES and SGRO, and each of them, experienced a grievous fear of being smashed and trampled.

30. The dreadful incident took place approximately ten (10) feet away from the main entrance to the store.

31. Before the police could find the woman, she had vanished. Before the crowd could pour into the store, JONES and SGRO had arrived at a medical triage center.

INVITATION

32. At all times pertinent, the Commercial Defendants held the subject store open to the public and invited thereto the public.

33. At all times pertinent, the defendant Mall Owner held the Mall open to the public and invited thereto the public.

34. At all times pertinent, JONES and SGRO were at the premises at the invitation of the Commercial Defendants and in connection with their respective businesses.

35. At all times pertinent, there existed a special relationship between the Commercial Defendants, on the one hand, and JONES and SGRO, on the other hand. Specifically, by virtue of (a) the relationship among the Commercial Defendants and (b) the advertising issued by the Store Owner, the Commercial Defendants had invited JONES and SGRO to enter and remain at the Mall for business dealings.

36. At all times pertinent, JONES and SGRO had the status of business invitees: they had entered the premises in answer to the invitation, and for the advantage, of the Commercial Defendants.

FORESEEABILITY

37. At all times pertinent, the assault herein described was reasonably foreseeable to the Commercial Defendants. They had a duty to protect JONES and SGRO, as business visitors, from said assault.

38. At all times pertinent, the condition of the premises created an unreasonable risk of such harm as occurred, to such invitees as JONES and SGRO.

39. At all times pertinent, the risk was one that the Commercial Defendants themselves had created: (a) the Store Owner, by advertising but failing to heed (i) the experience of the past and (ii) the desperate mood of hard times; and (b) the Mall Owner, by failing to confront the prospect for danger.

40. Upon information and belief, this was not the first year in which the Store Owner had run a Black Friday sale. A year before, and previous to that, the Commercial Defendants had squarely been confronted with the potential for chaos. In the totality of circumstances, the assault and battery by defendant JANE DOE was fully foreseeable to the Commercial Defendants.

41. At all times pertinent, security measures were available – such as handing out good-for-purchase tickets, canceling the sale, sending the crowd home and stationing more security personnel, crowd control, additional and trained security, etc. Such measures were neither too burdensome nor too vague, and they would have been efficacious to prevent the mishap to JONES and SGRO.

42. Upon information and belief, prior incidents at such sales, including without limitation other violent offenses and incidents requiring police intervention, were sufficiently similar to the instant occurrence to make it foreseeable.

43. In this year, of all years, in which the bite of a horrible recession has raised tension throughout the land, the potential for violence cannot have been less.

44. At all times pertinent, JONES and SGRO were lawfully on the premises. The Commercial Defendants knew, and should have known, of the probability of assaultive conduct such as occurred herein, and they failed to take reasonable protective measures.

RECKLESSNESS

45. The conduct herein-mentioned of the Commercial Defendants was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency. It was atrocious and utterly intolerable in a civilized community.

46. The conduct herein-mentioned of the Commercial Defendants evinced a high degree of moral turpitude and demonstrated such wanton dishonesty as to imply a criminal indifference to civil obligations.

DAMAGE

47. As a result of the aforesaid conduct of the defendants, plaintiffs JONES and SGRO, and each of them, has suffered significant damages and injuries. Each of the plaintiffs have endured emotional, mental and physical anguish and psychological trauma causing her to loose enjoyment of life and undergo unwanted pain and suffering. Each of the plaintiffs has suffered from recurrent fear of impending death, helplessness and anxiety. Each of the plaintiffs was and will be compelled to remain away from her usual duties and vocation and to incur various obligations in an effort to heal and cure herself, all to her damage.

FIRST CAUSE OF ACTION:
NEGLIGENCE

AGAINST THE COMMERCIAL
DEFENDANTS

48. Plaintiffs JONES and SGRO incorporate by reference and re-allege the allegations of paragraphs 1 through 47.

49. By reason of the aforesaid facts, the Commercial Defendants owed to plaintiffs JONES and SGRO, and each of them, a duty of reasonable care.

50. The aforesaid conduct of the Commercial Defendants constituted negligence, in breach of said duty.

51. That at all times herein mentioned, the Commercial Defendants, its agents,

servants, employees and/or representatives, were negligent in failing to maintain and control the Subject Premises.

52. That at all times herein mentioned, the Commercial Defendants, its agents, servants, employees and/or representatives, negligently managed the Subject Premises.

53. That at all times herein mentioned, the Commercial Defendants, its agents, servants, employees and/or representatives were negligent in that they failed to supervise the Subject Premises.

54. That at all the times herein mentioned, it was the duty of the Commercial Defendants, its agents, servants, representatives, and/or employees, to operate the Subject Premises, to keep and maintain the Subject Premises in a reasonable good and safe condition, to provide and maintain security personnel and security in a good and proper manner so as to protect the well being of its customers, including providing and/or maintaining adequate and proper security and/or protection for the safety of those lawfully upon its aforementioned premises against harm.

55. That the aforesaid incident and resulting injuries to plaintiffs were caused through no fault of their own but was solely and wholly by reason of the negligence of the Commercial Defendants, its agents, servants, representatives and/or employees in that the Commercial Defendants was negligent in improperly owning, operating, maintaining, supervising and controlling the Subject Premises; in failing to take precautions and actions for the safety and well-being of patrons; in failing to properly train their employees and in improperly training their employees; in failing to properly organize and control employees; in failing to protect the plaintiffs from actual and imminent harm; in improperly and/or negligently supervising said premises so as to prevent law-abiding individuals from being exposed to harm;

in failing to properly supervise the operation of the Subject Premises and in improperly supervising the operation of said premises; and in generally being negligent and reckless in the operation of the Subject Premises, all in violation of applicable laws, rules, statutes, ordinances and regulations.

56. By reason of said negligence, plaintiffs JONES and SGRO, and each of them, has been damaged in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

SECOND CAUSE OF ACTION:
GROSS NEGLIGENCE

—
AGAINST THE COMMERCIAL
DEFENDANTS
—

57. Plaintiffs JONES and SGRO incorporate by reference and re-allege the allegations of paragraphs 1 through 56.

58. The aforesaid conduct of the Commercial Defendants evidenced a high degree of moral culpability, was so flagrant as to transcend mere carelessness, constituted willful and wanton negligence and recklessness and constituted gross negligence.

59. By reason of said gross negligence, plaintiffs JONES and SGRO, and each of them, has been damaged in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

60. By reason of said breach, plaintiffs JONES and SGRO, and each of them, are entitled to punitive damages of no less than twenty-five million dollars (\$25,000,000.00).

THIRD CAUSE OF ACTION:
FALSE IMPRISONMENT
—
AGAINST THE COMMERCIAL
DEFENDANTS
—

61. Plaintiffs JONES and SGRO incorporate by reference and re-allege the allegations of paragraphs 1 through 60.

62. At all times pertinent, the Commercial Defendants intended to confine the members of the early-morning crowd, including without limitation JONES and SGRO, to a 'line'. So confining the shoppers would help engender the aforementioned feelings of anxiety and release.

63. At all times pertinent, JONES and SGRO, and each of them, was conscious of this confinement to the line.

64. Even if a would-be blitz beneficiary had chosen to leave the broad amorphous line and go home – any physical movement was viewed with suspicion, as a possible attempt to cut ahead in the vague line. Any movement was likely to bring physical retribution from a crowd member who felt his or her place threatened.

65. At all times pertinent, the Store Owner was engaged in a bait-and-switch scheme. Although the Store Owner had advertised certain low-priced goods, those goods were actually in short supply, and the Store Owner intended shoppers to be switched to high-priced goods.

66. Integral to the scheme was the Store Owner's intent fraudulently to induce customers to buy goods that they had not intended to purchase, when they rose sleep-deprived to flock to the store.

67. Integral to said scheme was the Store Owner's intent fraudulently to

induce financially-squeezed Long Islanders to rely upon advertisements in which the words “while supplies last” fraudulently were relegated to small print.

68. In truth and in fact, there never were supplies of the various electronic appliances in genuine correspondence to the horde of would-be shoppers that was expected to, and did, appear outside the doors.

69. At all times pertinent, the Store Owner fraudulently had used allurements, enticement and persuasion to overcome the natural unwillingness and resistance of people to rise in the middle of the night and make vital economic decisions with uncharged mental batteries.

70. Any consent to be confined to the line was vitiated by the fraud with which the Store Owner had procured it and by the duress of sleep-deprivation in which the Store Owner had engaged.

71. Even if JONES and SGRO had consented to come to the line as it stood when they arrived, they did not consent to be in the line as it stood at the time that they were victimized.

72. In the moments before defendant JANE DOE attacked them, JONES and SGRO were highly desirous to move away – just as the worker who was trampled to death would have liked – but the pressing of the crowd did not permit this.

73. By reason of the aforesaid facts, the aforesaid conduct of the Commercial Defendants constituted false imprisonment.

74. By reason of said false imprisonment, plaintiffs JONES and SGRO, and each of them, has been damaged in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction.

75. By reason of said false imprisonment, plaintiffs JONES and SGRO, and

each of them, are entitled to punitive damages of no less than twenty-five million dollars (\$25,000,000.00).

FOURTH CAUSE OF ACTION:
ASSAULT

AGAINST JANE DOE

76. Plaintiffs JONES and SGRO incorporate by reference and re-allege the allegations of paragraphs 1 through 75.

77. The aforesaid conduct of defendant JANE DOE constituted assault upon plaintiffs JONES and SGRO, and each of them.

78. Said conduct was willful, intentional and unwarranted, and without any just cause or provocation.

79. By reason of said assault, plaintiffs JONES and SGRO, and each of them, has been damaged in an amount to be proven at trial, but estimated to be no less than ten million dollars (\$10,000,000.00).

PRAYER FOR RELIEF

WHEREFORE, plaintiffs JENNIFER JONES and ALICIA SGRO respectfully demand judgment as follows:

1. On the first cause of action, for negligence, against the defendants WALMART STORES INC., ARBOR PROPERTY TRUST, EQK GREEN ACRES L.P., and SECURITAS SECURITY SERVICES USA, INC., damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction;

2. On the second cause of action, for gross negligence, against the defendants WAL-MART STORES INC., ARBOR PROPERTY TRUST, EQK GREEN ACRES L.P., and SECURITAS SECURITY SERVICES USA, INC., (a) damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction and (b) punitive damages of no less than twenty-five million dollars (\$25,000,000.00);

3. On the third cause of action, for false imprisonment, against defendant WAL-MART STORES INC., ARBOR PROPERTY TRUST, EQK GREEN ACRES L.P., and SECURITAS SECURITY SERVICES USA, INC., (a) damages in an amount that exceeds the jurisdictional limits of all lower courts that would otherwise have jurisdiction and (b) punitive damages of no less than twenty-five million dollars (\$25,000,000.00);

4. On the fourth cause of action, for assault, against defendant JANE DOE, damages in an amount to be proven at trial, but estimated to be no less than ten million dollars (\$10,000,000.00); and

5. Granting to plaintiffs JENNIFER JONES and ALICIA SGRO such other and further relief as this Court deems just and proper.

Dated: Brooklyn, New York
December 16, 2008

BARON ASSOCIATES P.C.
Attorneys for Plaintiffs
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Brooklyn, New York 11229
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ATTORNEY'S VERIFICATION

BRUCE BARON, ESQ., an attorney duly admitted to practice before the Courts of the State of New York, affirms the following to be true under the penalties of perjury:

I am an attorney at BARON ASSOCIATES, P. C., attorneys of record for Plaintiff(s), Jennifer Jones and Alicia Sgro, a minor under the Age of Eighteen Years, by her Mother, Natural Guardian, Therese Sgro. I have read the annexed **COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief, as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my files.

I make the foregoing affirmation because Plaintiffs are not presently in the county wherein I maintain my offices.

DATED: Brooklyn, New York
December 16, 2008

A large, bold, handwritten signature in black ink, appearing to be 'B. Baron', is written over a horizontal line.

BRUCE BARON, ESQ.