

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

DIVISION

PATRICK HARDY

PLAINTIFF

V.

NO.

**6th & CENTER, LLC;
POWER KITCHEN & BAR, INC.
d/b/a POWER ULTRA LOUNGE;
and HERMAN LEWIS**

DEFENDANTS

COMPLAINT

COMES NOW the Plaintiff, Patrick Hardy, by and through his attorney, Joshua D. Gillispie, and for his cause of action against the above-named Defendants, states the following:

JURISDICTION AND PARTIES

1. The actions that led to this Complaint occurred in Little Rock, Arkansas. This Court has jurisdiction over the subject matter of this Complaint and the parties to this cause of action, and Pulaski County is the proper and appropriate venue, pursuant to A.C.A. § 16-60-112.
2. Plaintiff Patrick Hardy is a resident of Little Rock, Arkansas, in Pulaski County, and was so at all times relevant to this Complaint. Plaintiff was Defendants' business invitee at all times relevant to this Complaint. Plaintiff was at the property in question for the benefit of all Defendants.
3. At all times relevant to this cause of action, and at the time of the incident described further herein, Defendant "6th & Center, LLC" was a for-profit corporation doing business in the State of Arkansas and can be served with process via its registered agent: Danny Brickey, Jr., 400 North Van Buren Street, Little Rock, AR 72205. "6th & Center, LLC" is, upon information and belief, affiliated with Little Rock real estate developer "Rock Capital Group."

“6th & Center, LLC” owns the property located at 220 W. 6th Street, Little Rock, Arkansas – the property on which Power Ultra Lounge operates. In exchange for payments (at least some of which were, upon information and belief, cash payments), “6th & Center, LLC” permitted Power Ultra Lounge to operate publically as a nightclub and concert venue on its property, despite that the property was not zoned for such activity; despite a lack of proper licensing and permits; despite a consistent failure to pay city and state taxes; and despite that in the twenty-four (24) months preceding the July 1st mass shooting, there were approximately forty-eight (48) incidents involving police at the premises, including no less than ten (10) violent crimes committed on the premises, including multiple prior shooting incidents.

4. At all times relevant to this cause of action, and at the time of the incident described further herein, Defendant Power Kitchen & Bar, Inc., d/b/a Power Ultra Lounge, (hereafter referred to as Power Ultra Lounge) was a corporation doing business in the State of Arkansas and can be served with process via its registered agent: Herman Lewis, 220 W. 6th Street, Little Rock, AR 72201.

Power Ultra Lounge operated illegally as a night club and concert venue in the building located at 220 W. 6th Street, Little Rock, Arkansas – which is owned by “6th & Center, LLC.” Power Ultra Lounge was permitted to do so by “6th & Center, LLC.”

5. At all times relevant to this cause of action, and at the time of the incident described further herein, Defendant Herman Lewis was a resident of Little Rock, Arkansas, in Pulaski County. Herman Lewis, with the approval of the property owner, “6th & Center, LLC,” operated Power Ultra Lounge as a nightclub and concern venue, despite that the property was not zoned for such activity; despite a lack of proper licensing and permits; despite a consistent failure to pay city and state taxes; and despite that in the twenty-four (24) months preceding the

July 1st mass shooting, there were approximately forty-eight (48) incidents involving police at the premises, including no less than ten (10) violent crimes committed on the premises, including multiple prior shooting incidents.

6.

NARRATIVE

7. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

8. On or about July 1, 2017, Defendants host a live concert at their nightclub, despite not having proper permits to do so.

9. Defendants draw Plaintiff to the live concert through advertising efforts on social media and radio. Plaintiff has never been to the club before.

10. Defendants charge Plaintiff money to enter the premises for the live concert.

11. Defendants' nightclub takes up two floors of the premises and the musical act is performing on the second floor.

12. Defendants know this particular musical act, Finese2Tymes, was involved in a shooting just days prior to this event.

13. Defendants know their nightclub has long been a hotspot for violent crimes, including multiple incidents of gun violence.

14. Defendants allow the musical act to bring guns into the nightclub.

15. Defendants allow hundreds of guests into the premises to see the show – more people than local laws permit.

16. Defendants fail to screen the people entering the club for firearms.

17. Defendants sell alcohol to the guests, including bottle service – which is not permitted under Arkansas law. Bottle service is the practice of selling full bottles of liquor to an individual or group of individuals.

18. Defendants fail to provide a safe amount of exits given the number of guests at the nightclub.

19. Defendants provide no warning about any of this.

20. Gunfire suddenly breaks out mid-song from seemingly every direction, as Plaintiff sits watching the show;

21. The crowd erupts into panic and chaos;

22. Terrified patrons chaotically search for exits;

23. A bullet strikes Plaintiff in his arm;

24. The single stairwell leading to the ground floor quickly swells with bodies and becomes clogged;

25. The single fire escape is flooded with terrified people as well.

26. Bodies slam violently together in the desperate push towards safety.

27. People are trampled.

28. Muzzles flash and bullets fly from all directions.

29. Plaintiff hears the “pop, pop, pop” of gunfire.

30. He hears shrieks of terror and screams of pain.

31. He sees the clogged and impassable exits.

32. He sees blood and writhing bodies on the floor.

33. He hears “pop, pop, pop.”

34. He jumps from the second story window onto an awning, landing on his right side.

35. This day, July 1, is Plaintiff's 29th birthday.

COUNT ONE: NEGLIGENCE

36. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

37. Defendants owed Plaintiff the duty of using ordinary care to keep its premises in a reasonably safe condition. Defendants' premises were defective in multiple ways; the defects in the premises were apparent to Defendants, though not to Plaintiff; and the defects in the premises caused Plaintiff's injuries.

38. Defendants, due to significant evidence establishing foreseeability with regards to Plaintiff's injury, owed Plaintiff the duty of exercising reasonable care to prevent the injuries he suffered.

39. Defendants breached the duty owed Plaintiff by failing to use ordinary care and exercise reasonable diligence to maintain and secure the premises in a reasonably safe condition on the date of the incident forming the basis of this action.

40. Defendants breached the duty owed Plaintiff by failing to use ordinary care and exercise reasonable diligence to discover and prevent acts of violence, such as suffered by Plaintiff on the date of the incident forming the basis of this action.

41. Defendants breached the duty owed Plaintiff by failing to use ordinary care and exercise reasonable diligence to render assistance to Plaintiff in order to prevent injury on the date of the injury forming the basis of this action.

42. Defendants knew, or should have known through the exercise of ordinary care and reasonable diligence, that the probability of a violent crime being committed against a business invitee on its premises was foreseeable and likely to happen.

43. Defendants knew, or should have known through the exercise of ordinary care and reasonable diligence, that events similar to the one that caused Plaintiff's injuries had previously and recently occurred on the premises, and within a recent enough period of time as to give Defendants adequate notice that similar incidents would occur.

44. Defendants knew, or should have known under the totality of the circumstances, that the nature, condition, and location of the premises, along with prior similar incidents on the premises, made Plaintiff's injuries foreseeable.

45. Defendants' negligence specifically consisted of the following:

- a. Failing to warn of the unsafe conditions on its premises, and that previous crimes had occurred on its premises, including violent crimes and shootings;
- b. Failing to maintain necessary and proper security measures to prevent injury;
- c. Failing to maintain and provide adequate employee staffing to prevent injury to Plaintiff;
- d. Failing to render adequate assistance to prevent injury to Plaintiff;
- e. Failing to adequately employ guards and provide proper training for employees in proper safety, security, and protection procedures to prevent injury to Plaintiff;
- f. Failing to adequately develop and maintain adequate and appropriate safety, security, and protection procedures and policies to prevent injury to Plaintiff;
- g. Failing to screen patrons for guns;

- h. Failing to adhere to city code designed to enhance citizen safety;
- i. Failing to adhere to city and state laws designed to enhance citizen safety;
- j. Failing to provide and maintain sufficient entry and exit locations;
- k. Failing to adhere to laws regulating capacity;
- l. Failure to maintain adequate surveillance cameras; and
- m. Failure to adequately employ and/or use security guards.

46. Defendants knew or should have known that in the twenty-four (24) month period preceding the incident forming the basis of this lawsuit, the City of Little Rock Police Department received, reported, and/or responded to approximately forty-eight (48) known requests for police service or assistance to the premises, including, but not limited to, the following:

- a. one (1) Aggravated Assault;
- b. four (4) Batteries;
- c. two (2) Assaults;
- d. two (2) Shots Fired Incidents;
- e. three (3) Terroristic Threatening Offenses;
- f. one (1) Robbery; and
- g. five (5) Criminal Mischiefs

47. Defendants knew or should have known that, in the twenty-four (24) month period preceding the incident forming the basis of this lawsuit, criminal activity on contiguous and other commercial business locations within a close proximity, such as to constitute a comparative sampling for the purposes of determining foreseeability of criminal incidents on the Defendants' property, had occurred and was available to place Defendant on notice that a similar

incident such as the one occurring to Plaintiff would occur if adequate and appropriate safety, security, and protection procedures and policies were not implemented and maintained.

48. Defendants failed by omission to implement and maintain an adequate incident/occurrence reporting system and/or policy and procedure which would have identified the inherent risk to business invitees that a harmful event was foreseeable and likely to happen if reasonable steps were not implemented to prevent the occurrence of a similar incident as the one forming the basis of this lawsuit.

49. All of the foregoing acts and omissions on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages suffered by Plaintiff, as set forth herein.

50. The negligence of unknown employees and staff of Defendants is imputed to Defendants, as they were acting within the scope of their employment.

COUNT TWO: NEGLIGENCE PER SE

51. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

52. Defendants Power Ultra Lounge and Herman Lewis, on the date of the incident forming the basis of this lawsuit, held a privilege license issued by the Arkansas Alcoholic Beverage Control Board.

53. Defendants, as a licensee of the Arkansas Alcoholic Beverage Control Board, are mandated to comply with specific declared policy of the General Assembly of the State of Arkansas as enumerated in *A.C.A. § 3-3-218*, and is held to a high duty of care in the operation of its business.

54. Plaintiff was, on the date of the incident forming the basis of this litigation, a member of the class of individuals intended to be protected by A.C.A. § 3-3-218.

55. Defendants owed Plaintiff the duty of using ordinary care to keep its premises in a reasonably safe condition. Defendants' premises were defective in multiple ways; the defects in the premises were apparent to Defendants, though not to Plaintiff; and the defects in the premises caused Plaintiff's injuries.

56. Defendants, due to significant evidence establishing foreseeability with regards to Plaintiff's injury, owed Plaintiff the duty of exercising reasonable care to prevent the injury he suffered.

57. Defendants breached the duty owed Plaintiff by failing to use ordinary care and exercise reasonable diligence to maintain and secure the premises in a reasonably safe condition on the date of the incident forming the basis of this action.

58. Defendants breached the duty owed Plaintiff by failing to use ordinary care and exercise reasonable diligence to discover and prevent acts of violence, such as suffered by Plaintiff on the date of the incident forming the basis of this action.

59. Defendants breached the duty owed Plaintiff by failing to use ordinary care and exercise reasonable diligence to render assistance to Plaintiff in order to prevent injury on the date of the injury forming the basis of this action.

60. Defendants knew, or should have known through the exercise of ordinary care and reasonable diligence, that the probability of a violent crime being committed against a business invitee on its premises was foreseeable and likely to happen.

61. Defendants knew, or should have known through the exercise of ordinary care and reasonable diligence, that events similar to the one that caused Plaintiff's injuries had

previously and recently occurred on the premises, and within a recent enough period of time as to give Defendants adequate notice that similar incidents would occur.

62. Defendants knew, or should have known under the totality of the circumstances, that the nature, condition, and location of the premises, along with prior similar incidents on the premises, made Plaintiff's injuries foreseeable.

63. Defendants' negligence specifically consisted of the following:

- a. Failing to warn of the unsafe conditions on its premises, and that previous crimes had occurred on its premises, including violent crimes and shootings;
- b. Failing to maintain necessary and proper security measures to prevent injury;
- c. Failing to maintain and provide adequate employee staffing to prevent injury to Plaintiff;
- d. Failing to render adequate assistance to prevent injury to Plaintiff;
- e. Failing to adequately employ guards and provide proper training for employees in proper safety, security, and protection procedures to prevent injury to Plaintiff;
- f. Failing to adequately develop and maintain adequate and appropriate safety, security, and protection procedures and policies to prevent injury to Plaintiff;
- g. Failing to screen patrons for guns;
- h. Failing to adhere to city code designed to enhance citizen safety;
- i. Failing to adhere to city and state laws designed to enhance citizen safety;
- j. Failing to provide and maintain sufficient entry and exit locations;
- k. Failing to adhere to laws regulating capacity;
- l. Failure to maintain adequate surveillance cameras; and

m. Failure to adequately employ and/or use security guards.

64. Defendants knew or should have known that in the twenty-four (24) month period preceding the incident forming the basis of this lawsuit, the City of Little Rock Police Department received, reported, and/or responded to approximately forty-eight (48) known requests for police service or assistance to the premises, including, but not limited to, the following:

- a. one (1) Aggravated Assault;
- b. four (4) Batteries;
- c. two (2) Assaults;
- d. two (2) Shots Fired Incidents;
- e. three (3) Terroristic Threatening Offenses;
- f. one (1) Robbery; and
- g. five (5) Criminal Mischiefs

65. Defendants knew or should have known that, in the twenty-four (24) month period preceding the incident forming the basis of this lawsuit, criminal activity on contiguous and other commercial business locations within a close proximity, such as to constitute a comparative sampling for the purposes of determining foreseeability of criminal incidents on the Defendants' property, had occurred and was available to place Defendant on notice that a similar incident such as the one occurring to Plaintiff would occur if adequate and appropriate safety, security, and protection procedures and policies were not implemented and maintained.

66. Defendants failed by omission to implement and maintain an adequate incident/occurrence reporting system and/or policy and procedure which would have identified the inherent risk to business invitees that a harmful event was foreseeable and likely to happen if

reasonable steps were not implemented to prevent the occurrence of a similar incident as the one forming the basis of this lawsuit.

67. All of the foregoing acts and omissions on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages suffered by Plaintiff, as set forth herein.

68. The negligence of unknown employees and staff of Defendants is imputed to Defendants, as they were acting within the scope of their employment.

69. Defendants Power Ultra Lounge and Herman Lewis, as licensees of the Arkansas Alcoholic Beverage Control Board on the date of the incident forming the basis of this litigation, were required to comply with the higher duty imposed by A.C.A. § 3-3-218 to protect public welfare, health, and safety. Defendants failed to do so, and said failure constitutes negligence per se.

COUNT THREE – DECEPTIVE AND UNCONSCIONABLE TRADE PRACTICES

70. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

71. Defendants knowingly made false representations as to the characteristics, quality, and standard of its services. Defendants engaged in unconscionable and deceptive business and industry practices, in violation of A.C.A. § 4-88-107.

72. Defendants represented that Plaintiff would be safe at the premises, that he would not be exposed to unnecessary risk of harm, and that he would enjoy himself.

73. Defendants intended for Plaintiff to rely upon these representations. Plaintiff did rely on these representations.

74. Plaintiff suffered damages as a result, and Defendants' conduct was a proximate cause of those damages.

DAMAGES

75. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

76. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff sustained injuries that include, but are not limited to, the following:

- (a) pain and suffering visited upon the Plaintiff due to his injuries;
- (b) future pain and suffering;
- (c) emotional distress suffered by Plaintiff after the event and continuing through the present;
- (d) scars and disfigurement resulting from a gunshot wound;
- (e) loss of income from his employment; and
- (f) any and all other damages allowed under state and federal law.

PUNITIVE DAMAGES

77. Plaintiff hereby incorporates by reference all previous paragraphs as if fully set forth herein.

78. When viewed from the standpoint of the Defendants, at the time of the acts and omissions, their conduct involved an intentional and reckless disregard of the known risks and dangers to visitors, guests, and patrons, given the occurrence of recent similar acts of violence and crime as that suffered by Plaintiff.

79. Defendants had actual subjective awareness of the risks and dangers to Plaintiff and other invitees. Defendants intentionally and recklessly disregarded known prior acts of violence and crime, placing Plaintiff's and other invitees' safety in jeopardy.

80. Defendants intentionally and recklessly failed to assess the risk of a foreseeable crime, failed warn of the risk, and failed to maintain adequate safety, security, and crime prevention measures.

81. Defendants' conduct displayed a conscious indifference to the rights, safety, and welfare of Plaintiff and others in Plaintiff's position.

82. Plaintiff seeks punitive damages, in an amount deemed appropriate by the Court, in order to punish Defendants, and to deter other similarly-situated entities from engaging in similar conduct.

JURY DEMAND

83. Plaintiff respectfully demands a trial by jury.

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff, by and through his attorney, Joshua D. Gillispie, respectfully requests recovery for all damages previously pled herein, and for compensatory damages for the reasons previously pled and in an amount previously prayed for and/or allowed by common law or by statute, in an amount left to the sound discretion of the jury, but in an amount necessary to satisfy the jurisdictional limits of this Court or any other Court, unless said damages are set, in whole or in part, by statute, for punitive damages, for his attorney fees and all costs herein expended, and for all other relief to which Plaintiff is justifiably entitled.

Respectfully submitted by:

/s/ Joshua D. Gillispie
ABA # 2010131
GREEN & GILLISPIE
Attorneys at Law
1 Riverfront Place, Suite 605
North Little Rock, AR 72114

(501) 244-0700
(501) 244-2020, fax
josh@greenandgillispie.com