

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

CIVIL DIVISION

CASE NO. _____

ASCHEA AUSTIN

Plaintiff,

vs.

DUNKIN’ DONUTS FRANCHISING LLC,
a Foreign Limited Liability Company registered
to do business in Florida
and SOUTH STATE ROAD DONUTS, LLC,
a Florida Limited Liability Company, and
XIOMARA HENRY

Defendants.

_____ /

COMPLAINT

COMES NOW, Plaintiff, ASCHEA AUSTIN, by and through undersigned counsel, hereby sues Defendants, DUNKIN’ DONUTS FRANCHISING, LLC a Foreign Limited Liability Company registered to do business in Florida and SOUTH STATE ROAD DONUTS, LLC, a Florida Limited Liability Company, XIOMARA HENRY and for her cause of action alleges as follows:

VENUE AND JURISDICTION

1. This is a civil action for damages for negligence, assault and battery along with damages which exceed \$15,000.00 exclusive of interest, costs, and attorney’s fees

2. At all times material hereto, ASCHEA AUSTIN (hereinafter "Plaintiff") was and is a resident of Broward County, Florida.

3. At all times material hereto, Defendant, DUNKIN'DONUTS FRANCHISING, LLC was a Foreign Limited Liability Company registered to do business in Florida.

4. At all times material hereto, Defendant SOUTH STATE ROAD DONUTS, LLC, was a Florida Limited Liability Company.

5. At all times material hereto, Defendant XIOMARA HENRY was a resident of Polk County, Florida, who, at all times material, was an employee at a Dunkin' Donuts located at 399 South State Rd 7, Margate, FL 33062 and in that capacity, the agent and employee of Defendant SOUTH STATE ROAD DONUTS, LLC

6. Venue for this action is properly laid in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, as:

- (a) The causes of action alleged in this Complaint accrued in Broward County, Florida;
- (b) Plaintiff is a resident of Broward County, Florida;
- (c) Defendants had a principal address in Broward County, Florida;

7. That all conditions precedent to this action have been performed, have occurred, or have been waived.

FACTS OF THE CASE

8. Plaintiff re-alleges and readopts paragraphs 1-7 as if set forth herein and further alleges.

9. On or about December 3, 2015, at approximately 11:42 p.m., the Plaintiff was driving in the drive-thru lane at Defendants' place of business located at 399 SR 7, Margate, FL 33068

10. Plaintiff ordered from the drive-thru window, but was displeased with the product and service. Plaintiff then became a participant in a verbal, then physical altercation with Defendants employee working the drive-thru window.

11. Plaintiff, in the course of the physical altercation with Defendants' employee, was seen to be on the ground, defending herself from the Defendants employee, who beat her on or about the face and belly, even after the Plaintiff had loudly exclaimed that the Defendants employee needed to stop the attack and that the Plaintiff was pregnant.

12. The assault did not stop. Defendants' Manager witnessed and participated in the verbal portion of the altercation, and at some point, called the Margate Police Department.

13. A report was taken, surveillance films were reviewed, as of the filing of this action, neither party has been charged in the incident.

COUNT I – NEGLIGENCE AGAINST ALL DEFENDANTS

14. Plaintiff incorporates herein by reference paragraphs 1 - 13 as if fully set forth herein.

15. On or about December 3, 2015, the Defendant(s) was/were the owner and in possession and control of the Drive-thru window and employee of the Dunkin Donuts, located at 399 SR 7, Margate, FL 33068

16. At all times material, Defendants owed a duty to the public, including Plaintiff, to exercise reasonable and ordinary care to keep and maintain its premises in a condition reasonably safe for use of the public. In particular, Defendants had a duty to take such precautions as were reasonably necessary to protect its invitees, including the Plaintiff from criminal attacks which were reasonably foreseeable.

17. The Defendants were negligent and breached its duty of reasonable care for the safety and protection of the public and the Plaintiff in all or more of the following ways:

(a) Defendants failed to properly perform a background investigation on the Defendants' employee involved in the incident. An investigation might have shown the Defendants employee's predilection towards verbal and physical assaulting of patrons at the place of business.

(b) The City of Margate Police Department investigation revealed that the Plaintiff and the Defendants' employee began to argue at the drive-thru window. Later, following the commencement of the physical and verbal assault on the Plaintiff by the Defendants' employee at the drive-thru window, the store surveillance tapes revealed the Defendants' employee tossed liquid filled cups on the Plaintiff's vehicle and then onto the Plaintiff herself. The altercation then carried on inside the business, then continued on outside in the parking lot area where there was no video surveillance camera coverage.

(c) The police investigation report also revealed that the complaint and surveillance tapes showed that the Defendants' employee was throwing cups of liquid at and on Plaintiff through the drive-thru window. It went on to state there were no cameras showing the location of the physical altercation. The reporting Officer did state that there was noticeable blood coming from Plaintiff's left nostril. The report went on to state that though both participants claimed to be victims, ***"the investigation has definitely established the identity of the offender. There is enough information to support an arrest, charge and turning over to the court for prosecution of this crime. The exact location of the offender is known so that the subject could be taken into custody now by law enforcement."***

18. The Defendants' failure to be in control of its employees was a direct and proximate cause of the serious injuries suffered by the Plaintiff.

19. Plaintiff was admitted to Coral Springs Hospital on January 3, 2016 with a 17-22 week pregnancy, complaining of right lower quadrant pain and low-grade fever, nausea and vomiting for three days.

20. In the course of discussing her situation with the admitting nurse, Plaintiff stated that a month earlier, she had been involved in an altercation with an employee at the Dunkin Donuts and that employee "had punched her in the face and kicked her in the belly at least five (5) times wearing shoes."

21. On or about January 3, 2016, as Plaintiff was admitted with elevated blood pressure, she was discussing the incident with the Nurse, who noted that at approx. 17:55 hours, "a fetus in an intact amniotic not opened was extending between pt. thighs, one push expelled entire placenta and fetus in intact sac." Plaintiff expelled an additional several blood clots and displayed a "pinkish discharge" after the dead fetus was expelled.

22. As a direct and proximate result of Defendants failure to control the violent behavior of its employee, the Plaintiff sustained bodily and internal injuries which were the direct and proximate cause of a miscarriage.

COUNT II - NEGLIGENT HIRING AND RETENTION
DUNKIN DONUTS FRANCHISING LLC and/or SOUTH STATE ROAD DONUTS LLC

23. Plaintiff incorporates herein by reference paragraphs 1 - 22 as if fully set forth herein.

24. At that time and place, Defendants had a duty to the Plaintiff and the general public to properly supervise its employee(s) which was a contributing factor in the within incident.

25. At that time and place, Defendants owed a duty to the Plaintiff to be in charge and control of the restaurant staff and to warn Plaintiff and others of all dangers in the area and of potential violent employees.

26. At that time and place, the Defendants' restaurant manager failed to properly supervise Defendants' employee and actively participated in the escalation of the situation outlined in the Complaint causing serious injuries to the Plaintiff.

27. Defendants failed to properly perform or have performed, a thorough background investigation on the employee involved in the incident. An investigation might have shown the employee's predilection towards verbal and physical assaulting of clients at the place of business.

COUNT III- NEGLIGENT SUPERVISION
SOUTH STATE ROAD DONUTS LLC

28 Plaintiff incorporates herein by reference paragraphs 1 - 27 as if fully set forth herein:

29. At all times material, Defendant's employee was employed by, of Defendant SOUTH STATE ROAD DONUTS LLC. The employee was under Defendant, SOUTH STATE ROAD DONUTS LLC's direct supervision, employ and control when she committed the wrongful acts alleged herein. The employee engaged in the wrongful conduct while acting in the course and scope of her employment with Defendant SOUTH STATE ROAD DONUTS LLC's.

30. Defendant SOUTH STATE ROAD DONUTS LLC had a duty to supervise the employee while she was interacting with the Plaintiff.

31. Defendant SOUTH STATE ROAD DONUTS LLC's breached that duty when they failed to exercise ordinary care in supervising the employee on December 3rd, 2016.

32. Defendant SOUTH STATE ROAD DONUTS LLC's failed to prevent the foreseeable misconduct of Defendant's employee from causing harm to others, including the Plaintiff herein.

33. As a direct result of Defendant SOUTH STATE ROAD DONUTS LLC's negligent conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT IV: VICARIOUS LIABILITY – SOUTH STATE ROAD DONUTS LLC

34. Plaintiff incorporates herein by reference paragraphs 1 - 33 as if fully set forth herein.

35. At all times material, the employee was employed by SOUTH STATE ROAD DONUTS LLC and was under the SOUTH STATE ROAD DONUTS LLC 's direct supervision, employ, and control when she committed the wrongful and negligent acts described herein. The employee engaged in this conduct while acting in the course and scope of her employment with SOUTH STATE ROAD DONUTS LLC and/or accomplished the wrongful act by virtue of her job-created apparent authority.

36. SOUTH STATE ROAD DONUTS LLC granted the employee authority to perform as an agent within the SOUTH STATE ROAD DONUTS LLC. SOUTH STATE ROAD DONUTS LLC held the employee out to the community as a fit and competent employee of SOUTH STATE ROAD DONUTS LLC. The employee committed the acts alleged within the apparent authority arising from her employment. Said conduct was undertaken in the course and scope of the employee's employment with the SOUTH STATE ROAD DONUTS LLC and/or was ratified by SOUTH STATE ROAD DONUTS LLC.

37. The employee was acting at least in part to serve the interests of his employer when he committed the wrongful act. Specifically, the employee was acting as a dutiful employee, as well as using the trust, power and authority of the position granted, while she was interacting with the Plaintiff.

38. By using her position and the trust, power and authority of the position conferred on her, the employee purported to act and/or speak on behalf of SOUTH STATE ROAD DONUTS LLC when she committed the tortious acts alleged herein.

39. The tortuous act committed by this employee was a foreseeable and well-known to SOUTH STATE ROAD DONUTS LLC.

40. The employee conducted her tortious conduct during her hours of employment with SOUTH STATE ROAD DONUTS LLC. Thus, SOUTH STATE ROAD DONUTS LLC is liable for the negligent and wrongful conduct of its employee under the law of vicarious liability, including the doctrine of respondeat superior.

41. As a direct result of conduct described herein, Plaintiff has suffered the injuries and damages described herein

COUNT V - NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

42. Plaintiff incorporates herein Paragraphs 1 - 41 as if fully set forth herein.

43. Defendants conduct was outrageous, Defendants acted in negligent disregard of the probability of causing emotional distress. Plaintiff suffered severe and extreme emotional distress as the actual and proximate result of Defendants' outrageous conduct.

44. The emotional distress suffered by Plaintiff was serious or severe.

45. Defendants did these acts maliciously and oppressively, and with the intent to cause injury, such that Plaintiff is entitled to an award of punitive damages.

46. All of the above injury damages were directly and proximately caused by the aforementioned negligence of the Defendants and were incurred without contributory negligence or assumption of the risk on the part of the Plaintiff, ASCHEA AUSTIN.

47. Plaintiff has been injured as alleged.

COUNT VI –ASSAULT AGAINST XIOMARA HENRY

48. Plaintiff incorporates herein by reference paragraphs 1 - 47 as if fully set forth herein.

49. on or about December 3dr, 2015 at a restaurant operated by Defendant SOUTH STATE ROAD DONUTS LLC, the Defendant, XIOMARA HENRY, with force and against the consent of Plaintiff, intentionally, Willfully, wantonly and maliciously threatened to strike Plaintiff and did raise her open hand in a manner so as to cause Plaintiff to reasonably believe she was about to be struck in a harmful and offensive manner. Due to Defendant's prior acts of threats toward Plaintiff, including, but not limited to, actually hitting and grabbing Plaintiff, a reasonable person in Plaintiff situation would have been offended by the threatened, violent touching.

50. At no time during the events described in the preceding paragraph, nor at a time prior thereto, did Plaintiff consent to any of Defendant XIOMARA HENRY's, threatened conduct.

51. As a direct and proximate result of Defendant XIOMARA HENRY's, threats, coupled with her present ability to carry them out Plaintiff felt the imminent apprehension of such contact, and she therefore suffered severe emotional distress and other injuries to her person, in an amount to be shown according to proof.

52. As a direct, legal and proximate result of the actions of Defendant, XIOMARA HENRY, Plaintiff sustained serious and permanent injuries to her person all to her damage in an amount to be shown according to proof and within the jurisdiction of the this Court.

53. As a direct, legal and proximate result of such acts of Defendant, XIOMARA HENRY, Plaintiff was compelled to employ the service of hospitals, physicians and surgeons, nurses, and the like, to care for and treat her, and did incur hospital, medical, professional and incidental expenses, and Plaintiff is informed and believes and upon such information and belief alleges, that she will necessarily be reason of her injuries, incur additional like expenses for an indefinite period of time in the future, all to Plaintiffs damage in a sum to be shown according to proof.

54. Plaintiff is informed and believes and alleges thereon that such acts directed towards the Plaintiff were malicious and belligerent, and the acts were done with conscious disregard of Plaintiff's right to be free from such tortious and criminal behavior, such as to constitute oppression, fraud or malice pursuant to Florida Law, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example of said Defendant, XIOMARA HENRY.

COUNT VII –BATTERY AGAINST XIOMARA HENRY

55. Plaintiff incorporates herein by reference paragraphs 1 - 54 as if fully set forth herein.

56. On or about December 3rd, 2015, Defendant, XIOMARA HENRY, intentionally and recklessly did acts which resulted in offensive contact with the plaintiff's person including but not limited to: hitting Plaintiff with a closed fist causing serious injury.

57. Defendant did such acts with the intent to cause a harmful or offensive contact with the body of Plaintiff.

58. As a direct, legal and proximate result of such acts of Defendant, Plaintiff sustained serious and permanent injuries to her person , all to be shown according to proof an within the jurisdiction of this court.

59. As a direct, legal and proximate result of such acts of Defendant, XIOMARA HENRY, Plaintiff was compelled to and did employ the services of hospitals physicians and surgeons, nurses, and the like, to care for and treat her, and did incur hospital, medical, professional and incidental expenses, and Plaintiff is informed an believes and upon such information and belief alleges, that she will necessarily b reason of her injuries, incur additional like expenses for an indefinite period of time in the future, all to Plaintiffs damage in a sum to be shown according to proof.

60. Plaintiff is informed and believes that such acts directed towards Plaintiff were malicious, and belligerent, and the acts were done with a conscious disregard of Plaintiff's right to be free from such tortious and criminal behavior, such as to constitute oppression, fraud or malice pursuant to Florida Law, entitling Plaintiff to punitive damages in an amount appropriate to punish and set an example or said Defendant

DAMAGES

61. As a direct result of the Defendants' conduct described herein, Plaintiff has now realized that he has suffered and will continue to suffer great pain of mind and body, severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, humiliation, and psychological injuries. Plaintiff was prevented and will continue to be prevented from performing her normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling; and, on information and belief has incurred and will continue to incur loss of income and/or loss of earning capacity.

WHEREFORE, Plaintiff demands judgment against Defendants, DUNKIN DONUTS FRANCHISING LLC, SOUTH STATE ROAD DONUTS LLC., and XIOMARA HENRY for the amount of \$5,000,000.00 (Five Million Dollars) for pain and suffering, emotional distress, medical expenses, economic and non-economic damages, compensatory damages, plus costs and attorneys' fees.

DEMAND FOR TRIAL BY JURY

Plaintiff demands a jury trial on all causes of action alleged herein triable as of right.

Dated: September 24, 2017.

Respectfully submitted,

/s/ Vincent T. Brown

Vincent T. Brown, Esq.

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