



IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

BLAKE NOVACEK,)
)
 Plaintiff,)
)
 vs.)
)
 BETA THETA PI CORPORATION)
 OF OKLAHOMA;)
 GAMMA PHI CHAPTER OF BETA)
 THETA PI;)
 BETA THETA PI;)
 SHANE MUSELMANN; and)
 GAVIN MARTINDALE;)
)
 Defendants.)

DISTRICT COURT
FILED

SEP 29 2017

Case No. _____
DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

CJ-2017-03872

JEFFERSON D. SELLERS

JURY TRIAL DEMANDED
ATTORNEY LIEN CLAIMED

PETITION

COMES NOW, the Plaintiff, Blake Novacek, by and through his attorneys, Michael P. Atkinson, Dru Prosser, Kristopher K. McVay, and for his Petition against the listed Defendants alleges and states the following:

PARTIES

1. Plaintiff, Blake Novacek, is a resident of the State of Texas.
2. Defendant Beta Theta Pi Corporation of Oklahoma (BTP Corp.), a non-profit corporation, is incorporated in Oklahoma with its principal place of business in Cleveland County.
3. Defendant Gamma Phi Chapter of Beta Theta Pi (Gamma Phi) is an unincorporated association with its principal place of business in Cleveland County, Oklahoma.
4. Defendant Beta Theta Pi, a non-profit corporation, is incorporated in Ohio with its principle place of business in Oxford, Ohio.
5. Defendant Shane Muselmann is a resident of Tulsa County, Oklahoma.

6. Defendant Gavin Martindale is a resident of Tulsa County, Oklahoma.

JURISDICTION AND VENUE

7. Jurisdiction is proper in State of Oklahoma because all relevant acts and omissions of Defendants occurred in Oklahoma and in violation of Oklahoma law.

8. This Court may exercise jurisdiction over Defendant Beta Theta Pi Corporation of Oklahoma because it is incorporated in Oklahoma.

9. This Court may exercise jurisdiction over Gamma Phi under 12 O.S. § 182, and because its principle place of business is in Oklahoma.

10. This Court may exercise jurisdiction over Defendant Beta Theta Pi because its minimum contacts with the State of Oklahoma are such that Defendant's Due Process rights would not be violated by being hailed to this Court.

11. This Court may exercise jurisdiction over Defendants Muselmann and Martindale because they are residents of the State of Oklahoma.

12. Venue is proper in this Court under 12 O.S. § 139 and 12 O.S. § 143 because Defendants Muselmann and Martindale are residents of Tulsa County.

GENERAL ALLEGATIONS

13. Plaintiff, Blake Novacek, was a student at the University of Oklahoma (OU) during the fall semester of 2015.

14. Plaintiff was pledging to the Gamma Phi Chapter of Beta Theta Pi fraternity during the fall semester of 2015.

15. Beta Theta Pi pledges were required to memorize certain fraternity information, or "pledge facts," as part of the initiation and admission process.

16. In the early morning hours of October 11, 2015, Beta Theta Pi pledges were called to the fraternity house near OU's campus, where nearly 100 current members and alumni awaited.
17. Upon information and belief, Defendant Muselmann and a number of other members were intoxicated due to alcohol and/or illicit drug use, which was rampant among the members of the Gamma Phi Chapter of Beta Theta Pi.
18. The fraternity members and alumni blindfolded the pledges, put pillowcases on their heads, and took them to individual members' rooms in the fraternity house.
19. Plaintiff was taken by members and alumni to the room of Defendant Muselmann who showed Plaintiff a video of hogs being slaughtered and asked Plaintiff if he knew what the video meant.
20. Defendant Muselmann then began asking Plaintiff pledge facts, and when Plaintiff was unable to recite some facts correctly, Defendant Muselmann, who was heavily intoxicated, became enraged and negligently swung a baseball bat which came into contact with Plaintiff's abdomen causing Plaintiff to fall backwards and strike his head on a hard object, knocking Plaintiff unconscious.
21. Plaintiff awoke hours later on a couch in the fraternity house. His clothes had been laundered and were folded beside him.
22. Plaintiff was then confronted by Defendant Gavin Martindale who told Plaintiff to keep his mouth shut about the hazing incident or else the fraternity would ruin Plaintiff's and his family's reputation, damage his property, and have him kicked out of school.
23. Several months later, Plaintiff met with the pledge class president who asked Plaintiff not to file a report about the hazing incident. Plaintiff told the pledge he would not file a

complaint, but Plaintiff's car was vandalized the next day anyway.

24. Defendant Gamma Phi is well-known in the community and among the OU administration as having a reputation of hazing pledges.
25. Defendant BTP Corp. was created to establish and maintain the Gamma Phi Chapter at OU and promotes the moral and social culture of the fraternity, including the culture of hazing within the fraternity.
26. Defendant Beta Theta Pi, the fraternity's national organization, is composed of the individual members of each of Beta Theta Pi's chapters as well as living alumni. Beta Theta Pi exercises control over its subordinate chapters to ensure each chapter achieves national fraternity academic and membership goals and follows fraternity traditions and rituals. Beta Theta Pi has the power to control its members through disciplinary actions, including suspending chapter operations completely. Nevertheless, Beta Theta Pi tolerates hazing ceremonies among its chapters and has failed to act to prevent pledges from being injured by fraternity hazing.
27. Defendant Muselmann became a member of the fraternity on January 30, 2015, and has served and continues to serve in a leadership position within the Gamma Phi chapter.
28. Defendant Martindale became a member of the fraternity on January 30, 2015, and continues to be an active member of the Gamma Phi Chapter.

FIRST CAUSE OF ACTION- Negligence
Against Each Defendant

29. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

- 30. Defendants Muselmann, Martindale, Gamma Phi, and BTP Corp. owed a duty to exercise reasonable care in running the day-to-day operations of the fraternity as well as initiating and admitting new members.
- 31. Defendants Muselmann, Martindale, Gamma Phi, and BTP Corp. breached that duty by engaging in reckless and dangerous behavior during the initiation process which put their pledges at risk of serious injury.
- 32. Defendant Beta Theta Pi owed a duty of reasonable care to protect its pledges, including Plaintiff, from hazing and other unlawful activity during the pledge process.
- 33. Defendant Beta Theta Pi breached its duty because it knew pledges were being hazed or otherwise subjected to illegal activity at Gamma Phi and other chapters around the country, and failed to act to protect them.
- 34. Defendants' negligence caused damages including serious bodily injury, such as traumatic brain injury, physical pain and suffering, permanent disability, past and future medical expenses, past and future emotional distress, loss of wages and future earning capacity, and other economic and non-economic damages.
- 35. Plaintiff's injuries and damages were the direct and proximate result of Defendants' negligence.

SECOND CAUSE OF ACTION- Negligence per se
Against Each Defendant

- 36. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.
- 37. Defendants Beta Theta Pi, BTP Corp., and Gamma Phi, acting through its agents, Defendants

Muselmann and Martindale, violated 21 O.S. § 1190 by recklessly and intentionally endangering Plaintiff's physical and mental health for the purpose of initiation into the fraternity. Section 1190 made hazing a misdemeanor, enforceable against both individuals and organizations. Section 1190 established a statutory standard of care for fraternity members and organizations, and Plaintiff is among the class of persons the State Legislature intended to protect in enacting the statute. Plaintiff's injuries, both physical and mental, were the exact type of injuries intended to be prevented by the statute.

38. Defendants' violations of 21 O.S. § 1190 were the direct and proximate cause of Plaintiff's injuries and damages.
39. Defendants' negligence caused damages including serious bodily injury, such as traumatic brain injury, physical pain and suffering, permanent disability, past and future medical expenses, past and future emotional distress, loss of wages and future earning capacity, and other economic and non-economic damages.

THIRD CAUSE OF ACTION-Intentional Infliction of Emotional Distress
Against Defendants Muselmann and Martindale

40. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.
41. Defendant Muselmann's hazing of Plaintiff on October 11, 2015, including blindfolding him, forcing him against his will into a fraternity member's room, forcing him to watch videos of hogs being slaughtered, and beating him with a baseball bat for missing pledge facts, was so extreme and outrageous as to go beyond all possible bounds of decency and would be considered atrocious and utterly intolerable in a civilized society.

42. Defendant Martindale's subsequent threats to ruin Plaintiff's and his family's reputations, damage his property, and get him kicked out of school if he talked to anyone about being hazed were so extreme and outrageous as to go beyond all possible bounds of decency and would be considered atrocious and utterly intolerable in a civilized society.
43. Defendants intentionally and/or recklessly caused severe emotional distress to Plaintiff beyond that which a reasonable person could be expected to endure.
44. Defendants' IIED caused damages, including physical and emotional pain and suffering, permanent disability, past and future medical expenses, past and future emotional distress, loss of wages and future earning capacity, and other economic and non-economic damages.

FOURTH CAUSE OF ACTION- Civil Conspiracy
Against Each Defendant

45. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.
46. Defendants, acting through their members and respective agents, coordinated and planned for nearly 100 fraternity members and alumni to haze pledges in the early morning hours of October 11, 2015, and subsequently colluded to blackmail Plaintiff to ensure his fear of the fraternity would compel his silence about the culture of hazing in Beta Theta Pi.
47. Defendants' acts of hazing and blackmail were in violation of 21 O.S. § 1190 and 21 O.S. § 1488 respectively.
48. Defendants' conspiracy caused damages to Plaintiff, including serious bodily injury, such as traumatic brain injury among other injuries, physical pain and suffering, permanent disability, past and future medical expenses, past and future emotional distress, loss of wages and future

earning capacity, and other economic and non-economic damages.

49. Defendants' conspiracy was the direct and proximate cause of Plaintiff's damages.

FIFTH CAUSE OF ACTION- Vicarious Liability
Against Beta Theta Pi, BTP Corp., and Gamma Phi

50. Plaintiff incorporates each and every allegation of the preceding paragraphs as if fully set forth herein.

51. Defendants Martindale and Muselmann are members of Beta Theta Pi under its corporate structure.

52. Defendants Martindale and Muselmann acted as agents of Beta Theta Pi at all times relevant to this action.

53. Defendant BTP Corp. and Gamma Phi are the agents of Beta Theta Pi.

54. Defendants Martindale and Muselmann also acted as agents of both Gamma Phi and BTP Corp. at all times relevant to this action.

55. Defendants Beta Theta Pi, BTP Corp., and Gamma Phi control or have the right to control the actions of their respective agents, including carrying out the day-to-day operations of the fraternity, implementing academic improvement programs, ensuring observance of fraternity traditions and rituals, and imposing discipline for violation of fraternity standards and rules.

56. Defendants Martindale and Muselmann were acting through the course of their agency relationship with Beta Theta Pi, BTP Corp., and Gamma Phi when they hazed Plaintiff as part of the official fraternity initiation and admission process.

57. Defendants Beta Theta Pi, BTP Corp., and Gamma Phi are liable for the negligence and other wrongful acts of their respective agents which caused damages to Plaintiff, including serious bodily injury, such as traumatic brain injury, physical pain and suffering, permanent

disability, past and future medical expenses, past and future emotional distress, loss of wages and future earning capacity, and other economic and non-economic damages.

PUNITIVE DAMAGES
Against All Defendants

58. The intentional, wanton, and reckless conduct of Defendants in disregard for Plaintiff's safety and well-being was conducted with the full knowledge of the risk of severe emotional and physical injuries to Plaintiff and other pledges.
59. Such actions were extremely detrimental to Plaintiff and to the student body at large.
60. The acts of Defendants were wrongful, culpable, and so egregious that punitive damages should be awarded against them to set an example to others similarly situated so that such inexcusable conduct will not be tolerated in our community.

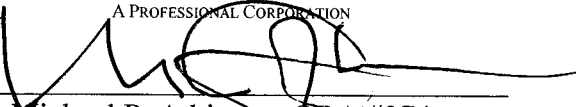
PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff prays for judgment against the Defendants each in sum in excess of \$75,000, punitive damages in excess of \$75,000, together with interest thereon, all costs of this action, and for such other relief to which he may be entitled.

Respectfully submitted,

**ATKINSON, HASKINS, NELLIS,
BRITTINGHAM, GLADD & FIASCO**

A PROFESSIONAL CORPORATION



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