

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA

CASE NO.: 16-2015-CA-2989
DIVISION: CV-H

ROSETTA HARRIS,

Plaintiff,

vs.

PBH MAYPORT, LLC d/b/a
PROMENADE AT MAYPORT,
a foreign limited liability company,
and B H MANAGEMENT SERVICES, LLC,
a foreign limited liability company,

Defendants.

_____ /

FIRST AMENDED COMPLAINT

COMES NOW the Plaintiff, ROSETTA HARRIS, and sues Defendants, PBH MAYPORT, LLC, d/b/a PROMENADE AT MAYPORT, and B H MANAGEMENT SERVICES, LLC, and alleges:

COMMON ALLEGATIONS AS TO ALL COUNTS

1. This is an action for damages that exceeds Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, costs and attorneys' fees.
2. At all times material hereto, Plaintiff, ROSETTA HARRIS, was and remains a natural person residing in Duval County, Florida.

3. At all times material to this action, PBH MAYPORT, LLC, d/b/a PROMENADE AT MAYPORT (hereinafter "PBH MAYPORT") was a Florida corporation licensed to do business in the State of Florida.

4. At all times material to this action, B H MANAGEMENT SERVICES, LLC, was a Florida corporation licensed to do business in the State of Florida.

5. Venue in Duval County, Florida is proper as the injuries sustained by Plaintiff, ROSETTA HARRIS, occurred at 2610 SR A1A, Atlantic Beach, Florida 32233.

COUNT I

(Rosetta Harris vs. PBH Mayport, LLC, d/b/a Promenade at Mayport)

6. Plaintiff, ROSETTA HARRIS, realleges paragraphs 1 through 5 as though fully set forth herein.

7. At all times material hereto, Defendant, PBH MAYPORT was the owner and in possession of that certain business located at 2610 SR A1A, Atlantic Beach, Florida 32233, said business being that of an apartment complex, open to the general public, including the Plaintiff herein.

8. On or about December 24, 2014, Plaintiff, ROSETTA HARRIS, was a resident of Defendant, PBH MAYPORT's apartments located at the above address when Plaintiff was leaving her apartment walking down the steps in the stairwell.

9. At said time and place, Plaintiff was lawfully upon the premises of the Defendant, PBH MAYPORT, who owed Plaintiff a duty to exercise reasonable care for her safety.

10. At all times material hereto, including December 24, 2014, Defendant, PBH MAYPORT, knew or should have known that residents would ascend and descend the staircase located outside Plaintiff's residence.

11. On December 24, 2014, Defendant, PBH MAYPORT, breached its duty owed to Plaintiff by committing one or more of the following omissions or commissions:

- a) Negligently failing to maintain or adequately maintain the steps in the stairway, thus creating a hazardous condition to members of the public utilizing said steps in the stairway, including the Plaintiff herein, thus creating an unreasonably dangerous condition for Plaintiff;
- b) Negligently failing to inspect or adequately inspect the steps in the stairway, as specified above, to ascertain whether the steps in stairway constituted a hazard to pedestrians utilizing said steps in the stairway, including the Plaintiff herein, thus creating an unreasonably dangerous condition to the Plaintiff;
- c) Negligently failing to inspect or adequately warn the Plaintiff of the danger of the steps in the stairway, when Defendant knew or through the exercise of reasonable care should have known that said steps in the stairway were unreasonably dangerous and that Plaintiff was unaware of same; and
- d) Negligently failing to correct or adequately correct the unreasonably dangerous condition of the steps in the stairway on Defendant's premises, when said condition was either known to Defendant or had existed for a sufficient length of time such that Defendant should have known of same had Defendant exercised reasonable care.

12. Prior to December 24, 2014, Defendant, PBH MAYPORT, negligently attempted to repair one or more stairs on the subject stairwell on which Plaintiff, ROSETTA HARRIS, fell.

13. As a result, while Plaintiff was descending the subject stairs on or about December 24, 2014, one of the steps gave way and caused Plaintiff to slip and fall down the steps, sustaining injuries as set forth.

14. The dangerous condition of the step of the subject staircase constituted a latent danger which would not have been discoverable by Plaintiff, ROSETTA HARRIS, even with the exercise of reasonable care.

15. As the business entity that owned the subject premises and described herein, Defendant, PBH MAYPORT, knew or should have known of the existence of the dangerous condition that existed on the subject stairwell, including, but not limited to the improperly repaired step on which Plaintiff, ROSETTA HARRIS, stepped and which gave way and caused Plaintiff to fall.

16. At all times material hereto, including December 24, 2014, the conditions referenced above independently and/or aggregately constituted an unsafe and dangerous condition.

17. As a direct and proximate result of the negligence of Defendant, PBH MAYPORT, Plaintiff suffered bodily injury in and about her body and extremities, resulting in pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning, loss of the ability to earn money, and aggravation of previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, the Plaintiff, ROSETTA HARRIS, sues the Defendant, PBH MAYPORT, LLC, d/b/a PROMENADE AT MAYPORT, for damages and demands judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus interest and costs, and such other and further relief as this Court may deem meet and just, and demands trial by jury of all issues so triable.

COUNT II

(Rosetta Harris vs. B H Management Services, LLC)

18. Plaintiff, ROSETTA HARRIS, realleges paragraphs 1 through 5 as though fully set forth herein.

19. At all times material hereto, Defendant, B H MANAGEMENT SERVICES, LLC, was the property management company which managed the premises and/or property located at 2610 SR A1A, Atlantic Beach, Florida 32233, said business being that of an apartment complex, open to the general public, including the Plaintiff herein.

20. On or about December 24, 2014, Plaintiff, ROSETTA HARRIS, was a resident of the apartments located at 2610 SR A1A, Atlantic Beach, Florida 32233, and operated, maintained and/or controlled by Defendant, B H MANAGEMENT SERVICES, LLC, when Plaintiff was leaving her apartment walking down the steps in the stairwell.

21. At said time and place, Plaintiff was lawfully upon the premises managed by the Defendant, B H MANAGEMENT SERVICES, LLC, who owed Plaintiff a duty to exercise reasonable care for her safety.

22. At all times material hereto, including December 24, 2014, Defendant, B H MANAGEMENT SERVICES, LLC, knew or should have known that residents would ascend and descend the staircase located outside Plaintiff's residence.

23. Prior to December 24, 2014, an agent or employee of Defendant, B H MANAGEMENT SERVICES, LLC, negligently attempted to repair one or more steps on the subject stairwell on which Plaintiff, ROSETTA HARRIS, fell.

24. The subject stairs/steps were in a state of disrepair, which constituted a latent danger, and additionally, the step(s) negligently repaired by an agent and/or employee of Defendant, B H MANAGEMENT SERVICES, LLC were made worse due to the aforesaid negligent repairs.

25. The dangerous condition of the step(s) of the subject staircase constituted a latent danger which would not have been discoverable by Plaintiff, ROSETTA HARRIS, even with the exercise of reasonable care.

26. At all times material hereto, including December 24, 2014, the condition(s) referenced above independently and/or aggregately constituted an unsafe and dangerous condition.

27. At all times material hereto, including December 24, 2014, Defendant B H MANAGEMENT SERVICES, LLC, had a duty to inspect or adequately warn the Plaintiff, ROSETTA HARRIS, of the dangerous condition that existed on the stairwell outside Plaintiff's residence.

28. On December 24, 2014, Defendant, B H MANAGEMENT SERVICES, LLC, breached its duty owed to Plaintiff by committing one or more of the following omissions or commissions:

- a) Negligently failing to maintain or adequately maintain the steps in the stairway, thus creating a hazardous condition to members of the public utilizing said steps in the stairway, including the Plaintiff herein, thus creating an unreasonably dangerous condition for Plaintiff;
- b) Negligently failing to inspect or adequately inspect the steps in the stairway, as specified above, to ascertain whether the steps in stairway constituted a hazard to

pedestrians utilizing said steps in the stairway, including the Plaintiff herein, thus creating an unreasonably dangerous condition to the Plaintiff;

- c) Negligently failing to inspect or adequately warn the Plaintiff of the danger of the steps in the stairway, when Defendant knew or through the exercise of reasonable care should have known that said steps in the stairway were unreasonably dangerous and that Plaintiff was unaware of same; and
- d) Negligently failing to correct or adequately correct the unreasonably dangerous condition of the steps in the subject stairway, under Defendant B H MANAGEMENT SERVICES, LLC's control, when said condition was either known to Defendant, B H MANAGEMENT SERVICES, LLC or had existed for a sufficient length of time such that Defendant, B H MANAGEMENT SERVICES, LLC should have known of same had Defendant exercised reasonable care.

29. As a result, while Plaintiff, ROSETTA HARRIS, was descending the subject stairs on or about December 24, 2014, one of the steps gave way and caused Plaintiff to slip and fall down the steps, sustaining injuries as set forth.

30. As the business entity that operated, managed, maintained and/or controlled the subject premises and described herein, Defendant, B H MANAGEMENT SERVICES, LLC, knew or should have known of the existence of the dangerous condition that existed on the subject stairwell, including, but not limited to the improperly repaired step(s) on which Plaintiff, ROSETTA HARRIS, stepped and which gave way and caused Plaintiff to fall.

31. As a direct and proximate result of the negligence of Defendant, B H MANAGEMENT SERVICES, LLC, Plaintiff suffered bodily injury in and about her body and extremities, resulting in pain and suffering, disability, disfigurement, permanent and significant


scarring, mental anguish, loss of the capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earning, loss of the ability to earn money, and aggravation of previously existing condition. The losses are either permanent or continuing and Plaintiff, ROSETTA HARRIS, will suffer the losses in the future.

WHEREFORE, the Plaintiff, ROSETTA HARRIS, sues the Defendant, B H MANAGEMENT SERVICES, LLC, for damages and demands judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus interest and costs, and such other and further relief as this Court may deem meet and just, and demands trial by jury of all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by electronic mail and via the e-Filing Portal in accordance w/ Rule 2.516, Florida Rules of Administration, this 10th day of May, 2016, to: James P. Hanratty, Esquire, Marshall Dennehey Warner Coleman & Goggin, P.C., 200 West Forsyth Street, Suite 1400, Jacksonville, Florida 32202, jphanratty@mdwecg.com and rlhartman@mdwecg.com.

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