

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

LOUIS HELMBURG, III,

Plaintiff,

v.

Civil Action No. 12-C-57
The Honorable /s/PAUL T. FARRELL

THE ALPHA TAU OMEGA FRATERNITY
INC., OF HUNTINGTON, WEST VIRGINIA,
a Fraternal Organization, and TRAVIS HUGHES,

Defendants.

COMPLAINT

ADDELL CHANDLER
CIRCUIT CLERK
CABELL CO., WV

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FILED

THE PARTIES

1. Plaintiff, Louis Helmburg, III, has been a resident of Huntington, West Virginia at all times relevant hereto.

2. Defendant, The Alpha Tau Omega Fraternity Inc., of Huntington, West Virginia, (hereinafter "ATO") is a fraternal organization, which has owned a dwelling house on Marshall University Campus in Cabell County, West Virginia at all times relevant hereto.

3. Upon information and belief, Defendant, Travis Hughes, has been a resident of Huntington, West Virginia at all times relevant hereto.

JURISDICTION & VENUE

4. This court has personal jurisdiction over Defendants, ATO and Travis Hughes, in that both are believed to be residents of Cabell County, West Virginia. This court has subject matter jurisdiction over plaintiff's claim, in that it arose under and is governed by West Virginia substantive law. This court has venue over this matter, in that plaintiff's claim arose in Cabell County, West Virginia.

FACTUAL BACKGROUND

5. On May 1, 2011, at approximately 1:30 a.m., there were several persons present on the outside deck of the ATO fraternity house located on 5th Avenue in Huntington. The ATO had a "house party," and various persons, including Defendant Hughes and Plaintiff, congregated at the ATO house. Several of the people in attendance at said house party were under the legal drinking age, including Defendant Travis Hughes. Most of the persons in attendance at said house party were also consuming alcohol with the full knowledge and consent of the ATO fraternity.

6. Upon information and belief, Defendant Hughes was an ATO fraternity member on May 1, 2011.

7. Plaintiff was also present, along with his girlfriend, at the ATO house on May 1, 2011 at the aforementioned time.

8. Defendant Hughes was highly intoxicated on this date and time, and decided in his drunken stupor that it would be a good idea to shoot bottle rockets out of his anus on the ATO deck, located on the back of the ATO house.

9. Upon information and belief, there were several other ATO fraternity members on the deck at the time of this incident, including one or more officers of the fraternity. Plaintiff and his girlfriend were also present on the ATO deck.

10. Defendant Hughes placed a bottle rocket in his anus, ignited the fuse, but instead of launching, the bottle rocket blew up in Defendant's rectum, and this startled plaintiff and caused him to jump back, at which time he fell off of the ATO deck, and he became lodged between the deck and an air conditioner unit adjacent to the deck.

11. There was no railing on said deck at the time of the incident. Upon information and belief, the lack of a railing had existed for at least several months, if not years, before the incident. Upon further information and belief, the deck never had a railing when it was installed, or any time thereafter. The subject deck was approximately 3-4 feet high.

12. The subject deck was in the exclusive custody, maintenance and control of the ATO fraternity at all times relevant hereto.

COUNT I-NEGLIGENCE PER SE vs. ATO

13. Per the applicable BOCA building codes, and City of Huntington building codes, the deck in question should have had a railing, which comported with said codes.

14. The lack of a railing constituted negligence per se, in that the ATO violated the applicable building codes when it failed to construct and/or maintain a railing on its deck.

15. Plaintiff asserts that the lack of a railing was a direct and proximate cause of his injuries, which include pain and suffering, lost time from baseball with the Marshall University Baseball team, lost earning capacity, medical expenses, and other damages.

COUNT II-COMMON LAW NEGLIGENCE vs. ATO

16. ATO owed plaintiff a duty to provide a safe deck, including a railing, and also to provide a safe place, which included a duty to supervise its guests and its own fraternity members, such as Defendant Hughes, and other under age persons, from consuming alcohol on its premises, which leads to stupid and dangerous activities, such as shooting bottle rockets out of one's own anus.

17. ATO breached said duty as aforesaid, and said breach was the proximate cause of plaintiff's injuries, including pain and suffering, lost time from baseball with the Marshall University Baseball team, lost earning capacity, medical expenses, and other damages.

COUNT III-NEGLIGENCE PER SE vs. DEFENDANT HUGHES

18. Defendant Hughes also owed plaintiff and others on the ATO deck a duty of care not to drink under age, or to fire bottle rockets out of his anus.

19. Defendant Hughes breached this duty when he both drank under age, which violated the law, and attempted to fire a bottle rocket out of his anus while under the influence. The act of firing a bottle rocket, within Huntington City Limits, was also a crime.

20. Said breaches were a direct and proximate cause of plaintiff's damages, including pain and suffering, lost time from baseball with the Marshall University Baseball team, lost earning capacity, medical expenses, and other damages.

COUNT IV-COMMON LAW NEGLIGENCE vs. DEFENDANT HUGHES

21. Defendant Hughes also owed plaintiff and others on the ATO deck a common law duty to use reasonable care on the ATO deck, which he clearly did not do under the circumstances, which exposed him and others, such as plaintiff, to the very foreseeable risk of injury.

COUNT V-ULTRAHAZARDOUS ACTIVITY (STRICT LIABILITY)

22. Plaintiff asserts that the activity of underaged drinking and firing bottle rockets out of one's own anus constitutes an "ultra-hazardous" activity which exposes both of these defendants to strict liability.

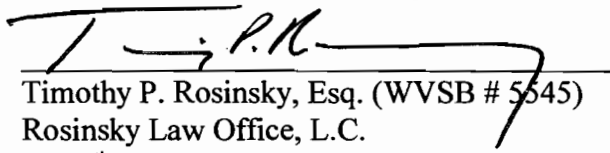
23. Plaintiff accordingly asserts a claim against both of these defendants, individually and jointly and severally, for damages including pain and suffering, lost time from baseball with the Marshall University Baseball team, lost earning capacity, medical expenses and other damages.

PRAYER FOR RELIEF

Plaintiff, Louis Helmburg, III, by counsel, requests the Court to enter a judgment against each defendant individually, and jointly and severally, for compensatory damages as set forth in his Complaint, as well as costs, attorney fees, pre-judgment and post-judgment interest.

PLAINTIFF DEMANDS A TRIAL BY JURY.

Respectfully Submitted,
LOUIS HELMBURG, III,
By Counsel:



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