

ORIGINAL

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NO. 221 753 B

ANGELA BISHOFF and
HEATH BISHOFF,

PLAINTIFFS,

VS.

ROADHOUSE OF TEMPLE, LTD
d/b/a TEXAS ROADHOUSE and
STEVE LEE ORTIZ

DEFENDANTS.

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IN THE DISTRICT COURT

SHELLIAN NICHAN
DISTRICT COURT
BELL COUNTY, TEXAS
[Signature]

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FILED

BELL COUNTY, TEXAS

146 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

COME NOW ANGELA BISHOFF AND HEATH BISHOFF, "Plaintiffs," and file this action against, ROADHOUSE OF TEMPLE, LTD d/b/a TEXAS ROADHOUSE RESTAURANT and STEVE LEE ORTIZ, "Defendants," and allege as follows:

1.0 Discovery Control Plan

1.1 Plaintiffs requests that discovery be conducted under Level 3.

2.0 Parties

2.1 Plaintiffs, Angela Bishoff and Heath Bishoff are husband and wife and are residents of Temple, Bell County, Texas.

2.2 Defendant, Roadhouse of Temple is a foreign Limited Partnership organized under the laws of the State of Kentucky. It is doing business in Temple, Texas, as Texas Roadhouse Restaurant located at 624 N. General Bruce Drive in Temple, Bell County, Texas, and can be served by mailing a copy of this petition along with a citation, via certified mail return receipt requested, to its registered agent for service of process, National Registered Agents, Inc., 1614 Sidney Baker Street, Kerrville, TX 78028.



2.3 Defendant, Steve Lee Ortiz is the Chief Operations Officer and Vice President for Texas Roadhouse Restaurant in Temple, Texas. He is a natural individual and a resident of the State of Texas, and may be served by mailing a copy of this petition along with a citation, via certified mail return receipt requested, to his residence located at 36 Remington Terrace, Lewisville, TX 75077-6781.

3.0 Jurisdiction & Venue

3.1 This Court has personal and subject matter jurisdiction over the parties and controversy involved in this lawsuit. The incident giving rise to this lawsuit occurred in Bell County, Texas. Defendant Roadhouse of Temple, Ltd owns and/or operates a restaurant in Temple, Bell County, Texas. Moreover, Roadhouse of Temple engages in commerce and holds itself open to the public in Bell County, Texas. Defendant, Steve Ortiz is a resident of the State of Texas. He owns, operates, controls and/or directs the Texas Roadhouse restaurant in Temple, Bell County, Texas. Moreover, Defendant Ortiz controls the operations, customs and policies of the restaurant. Therefore, Defendants have subjected themselves to the laws of the State of Texas.

3.2 Venue is proper in Bell County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code Sec. 15.002(a)(1) since all or a substantial part of the events giving rise to this claim occurred in Bell County, Texas. Moreover, venue is proper in Bell County, pursuant to Tex. Civ. Prac. & Rem. Code Sec. 15.002(a)(3) as the principal office for Roadhouse of Temple, Ltd, in Texas, is in Bell County.

4.0 Facts

4.1 This is an action to recover money damages for personal injuries sustained by Plaintiff, Angela Bishoff, on or about June 24, 2006, when she slipped and fell on peanuts and/or

peanut shell debris scattered on the floor at the Texas Roadhouse restaurant operated by Defendants at 624 N. General Bruce Drive in Temple, Bell County, Texas.

4.2 Texas Roadhouse Restaurant is a restaurant chain which, as part of its signature, style, gimmick, atmosphere and unique attraction, provides buckets of dry roasted peanuts to its customers and encourages its customers to discard the peanut shells onto the floor of the restaurant. The Texas Roadhouse restaurant in Temple, Texas, where the incident giving rise to this claim occurred, is controlled and directed by Defendant, Steve Ortiz. As a matter of course, custom and practice, customers and employees alike, routinely scatter, brush, throw, drop and discard peanuts, peanut shells and peanut debris onto the floor of the restaurant. If a customer does not throw the peanut shells and debris on the floor, the wait staff will often do it for them by sweeping the debris off the table and directly onto the floor. Little or no effort is made to sweep or clean up the debris, as the peanut shells on the floor are intended to be part of the unique atmosphere, attraction.

4.3 Defendants promulgated and effectuated a custom and practice of encouraging employees and patrons to throw peanut shells and debris on the floor of the restaurant as part of their marketing and unique attraction. Defendants routinely serve unshelled peanuts to customers who are waiting for a table and customers who are already seated, while intentionally not providing the customers with a receptacle to dispose of the peanut shells and debris. By intentionally maintaining their restaurants in a manner whereby peanut shells and debris are routinely discarded and left on the floor by employees, Defendants encourage customers to engage in the same practice, thereby creating a unique, but extremely dangerous condition.

4.4 On or about June 24, 2006, Plaintiff, Angela Bishoff, went to the Roadhouse restaurant in Temple to have dinner with her husband, Heath Bishoff. After eating dinner, Angela Bishoff got up from her seat and was walking through the restaurant when she slipped and fell on

peanuts and peanut debris that were scattered on the floor. The fall caused Angela Bishoff to fracture her left patella (knee cap). When Plaintiff was unable to get on her feet, an ambulance was called and paramedics transported Mrs. Bishoff to the Emergency Room at King's Daughters Hospital where surgery was performed to repair her fractured knee cap. Plaintiff remained hospitalized for seven days and spent months rehabilitating her knee.

5.0 Causes of Action

5.1 Plaintiffs hereby incorporate by reference the facts set forth above into each of the causes of action set forth below.

Negligence

5.2 Defendants are liable to Plaintiffs for common law negligence. As restaurant owners and operators in the business of attracting customers and providing them with a safe place to eat and drink, Defendants owed Plaintiff, Angela Bishoff, as a customer, a duty to exercise ordinary care and a duty to provide a safe environment to eat. Defendants breached their duty to Plaintiff and others by developing a signature business model that involves serving peanuts in the shell to customers without providing a receptacle for the peanut shells. More importantly, Defendants breached their duty to Plaintiff and others by actively encouraging patrons and employees to discard peanut shells and debris on the floor of the restaurant. Defendants breached their duty to Plaintiff by employing a dangerous practice of throwing, and encouraging others to throw, peanut shells and debris on the floor when they knew or should have known that such activity was likely to cause people to slip and fall. Defendant breached their duty to Plaintiff by failing to routinely and frequently sweep the floor free of peanut debris.

5.3 Defendants' practice and custom of serving patrons peanuts in the shell without also providing them with a receptacle to properly dispose of the shells, combined with the fact

that Defendants encouraged their employees and patrons to openly discard the shells and debris on the floor, constitutes negligence. Plaintiff's fall, injuries and damages was reasonably foreseeable and Defendants' negligence was a proximate cause of Plaintiff's injuries and damages.

Premises Liability

5.4 As a customer and patron of Texas Roadhouse Restaurant, Plaintiff, Angela Bishoff was an "invitee" as that term is defined under Texas law. Therefore, Defendants owed Plaintiff the legal duty to exercise reasonable care to protect her from unreasonably dangerous conditions on the premises that are known or discoverable. Defendants had actual and/or constructive knowledge of the unreasonably dangerous condition posed by the peanut shells, peanuts and debris that would be and were on the floor of the restaurant. Defendants knowingly served free peanuts in the shell to customers and patrons as part of their business model and failed to provide receptacles for the waste, choosing instead to promote the unique atmosphere and novelty of their business by encouraging patrons and employees to freely scatter the shells and debris on the floor.

5.5 Defendants intentionally breached their duty to Plaintiff by failing to employ reasonably prudent measures to reduce or eliminate the unreasonably dangerous condition posed by the peanut debris scattered on the floor of their restaurant. Moreover, Defendants breached their duty to Plaintiff by failing to adequately warn of the danger posed by the slippery peanut shells and debris which Defendants actively encouraged people to create on the floor of their restaurant. Defendants deliberately chose not to reduce or eliminate the risk of slipping and falling posed by the peanut shells and debris on the floor, choosing instead to maximize profits by perpetuating a marketing gimmick of encouraging the accumulation of peanut shells and

debris on the floor. Defendants had actual and/or constructive knowledge of the dangerous condition posed by the peanut debris, based upon their adopted policy and custom of encouraging employees and patrons to discard peanut shell and debris on the floor.

5.6 Defendants' adopted policy of scattering and encouraging other to scatter peanuts and peanut debris on the floor of the Texas Roadhouse Restaurant constitutes a failure to exercise reasonable care. The policy and custom created an unreasonably dangerous risk to Plaintiff, Angela Bishoff and other patrons of the restaurant, of which Defendants had actual or constructive knowledge, and was a proximate cause of Plaintiff's injuries and damages. By adopting and implementing the custom of encouraging employees and patrons to throw peanut debris on the floor when Defendants knew that patrons would be walking through and over the debris establishes Defendants' actual knowledge of the unreasonably dangerous condition as well as Defendants' breach of the legal duty to reduce, eliminate and/or warn of the risk. Defendants' custom and policy of creating the unreasonably dangerous condition described herein was a proximate cause of Plaintiff's injuries and damages.

Gross Negligence

5.7 Defendants' custom and policy of intentionally and knowingly scattering, and encouraging patrons and employees to scatter peanut shells and debris on the floor of its restaurants as a marketing gimmick constitutes gross negligence as that term is defined under Texas law. Defendants' acts and/or omissions, when viewed objectively from Defendants' standpoint, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Moreover, Defendants had actual subjective awareness of the unreasonably dangerous risk of slipping, falling and injury involved in the practice but

nevertheless proceeded with conscious indifference to the rights, safety and welfare of Plaintiff and others.

6.0 Damages

Plaintiffs seek the following elements of damages which exceed the minimum jurisdictional limits of this Court:

- 1) Physical pain, suffering and mental anguish in the past;
- 2) Physical pain, suffering and mental anguish that, in reasonable probability, Plaintiff, Angela Bishoff will suffer in the future;
- 3) Disfigurement in the past;
- 4) Disfigurement that, in reasonable probability Plaintiff, Angela Bishoff will suffer in the future;
- 5) Physical impairment in the past;
- 6) Physical impairment that, in reasonable probability, Plaintiff, Angela Bishoff will suffer in the future;
- 7) Medical expenses in the past;
- 8) Medical expenses that, in reasonable probability, Plaintiff, Angela Bishoff will incur in the future;
- 9) Loss of earning capacity in the past;
- 10) Loss of earning capacity that, in reasonable probability, Plaintiff, Angela Bishoff will sustain in the future;
- 11) Loss of consortium on behalf of Heath Bishoff;
- 12) Exemplary damages pursuant to Texas Civil Practice and Remedies Code chapter 41; and

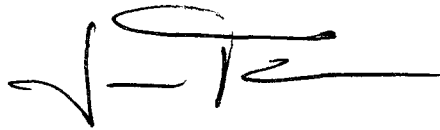
- 13) Other reasonable consequential damages.

7.0 Prayer

7.1 WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully requests that Defendants be served with citation and after a jury trial herein, Plaintiffs have and recover against Defendants the following relief:

- 1) Judgment against Defendants for all of Plaintiffs' actual damages, both general and special, as described above;
- 2) Pre-judgment and post-judgment interest;
- 3) Exemplary damages pursuant to Texas Civil Practice & Remedies Code Chapter 41;
- 4) Costs of court as authorized by Tex. R. Civ. P. 131; and
- 5) Such other relief to which Plaintiffs may be entitled, both general and special.

Respectfully submitted,



By: _____

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