



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

NOV 23 2021

RICK WARREN
COURT CLERK

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DANA GARBER, O.D.)
 an Oklahoma Resident,)
)
 Plaintiff,)
)
 vs.)
)
 THE ENDANGERED ARK FOUNDATION,)
 an Oklahoma Non-Profit Corporation;)
 MILLER EQUIPMENT COMPANY, INC., a)
 Delaware Corporation;)
 OKLAHOMA AWESOME ADVENTURES, an)
 Oklahoma Business Entity;)
 CARSON & BARNES CIRCUS COMPANY,)
 An Oklahoma for Profit Corporation;)
 GEARY BYRD, an Oklahoma Resident;)
 BARBARA BYRD, an Oklahoma Resident;)
 TRACI BYRD, an Oklahoma Resident;)
 KRISTIN PARRA, an Oklahoma Resident;)
 and CHRISTIAN LOYAL, an Oklahoma)
 Resident,)
)
 Defendants.)

Case No. CJ-2021-2705
 Judge Aletia Haynes Timmons
 Leave Granted: 11/19/2021

AMENDED PETITION

Plaintiff states as follows:

1. Plaintiff is a resident of Oklahoma County, Oklahoma; Defendant, The Endangered Ark Foundation (“Endangered Ark”) is an Oklahoma non-profit corporation; Defendant Miller Equipment Company, Inc. (“Miller”), is a Delaware corporation with its registered service agent in Oklahoma County, Oklahoma; Oklahoma Awesome Adventures (“Oklahoma Awesome Adventures”) is an unregistered commercial entity doing business in Choctaw County, Oklahoma; Carson & Barnes Circus Company (“Carson & Barnes”) is an Oklahoma for profit corporation formerly under suspension by the Oklahoma Tax

Commission; Defendant Geary Byrd (“Geary Byrd”) is a resident of Choctaw County, Oklahoma; Defendant Barbara Byrd (“Barbara Byrd”) is a resident of Choctaw County, Oklahoma; Defendant Traci Byrd (“Traci Byrd”) is a resident of Choctaw County, Oklahoma; Defendant Kristin Parra (“Parra”) is a resident of Choctaw County, Oklahoma; and Defendant Christian Loyal (“Loyal”) is a resident of Choctaw County, Oklahoma. All acts and omissions giving rise to this action occurred in Choctaw County, Oklahoma; and the amount in controversy exceeds \$10,000.00, exclusive of interest, costs and attorney fees.

2. Beginning on or about March 27, 2021, Plaintiff’s family rented cabins from Defendant Oklahoma Awesome Adventures in Hugo, Oklahoma. The cabins were located on property owned by Defendant Miller. At all times pertinent, Plaintiff was an invitee on the property and had a lawful right to be on the property.

3. On March 28, 2021, Plaintiff was attacked without provocation by an adult elephant while participating in an activity sponsored by Defendants Endangered Ark, Carson & Barnes and Oklahoma Awesome Adventures.

4. The elephant experience and interaction of human beings and elephants is an ultra-hazardous activity. By engaging in an ultra-hazardous activity for financial profit Defendants are responsible for all injuries to Plaintiff directly caused by the activity.

5. The elephant attack upon the Plaintiff was the direct result of the negligence of all Defendants.

6. The elephant attack upon the Plaintiff was the direct result of the negligence of the animal owners and caretakers who kept an animal they knew or reasonably should

have known was abnormally dangerous and failed to keep the animal confined or under control so that it caused no injury. In failing to keep such an animal confined or under control, the owners and caretakers are responsible for all damages and injuries to persons that are caused by the animal.

7. By definition, an elephant is a wild and exotic animal. As such, the elephant attack upon the Plaintiff was the direct result of the strict liability of the owners and caretakers who kept a wild animal at their own risk and are responsible for all damages and injuries to persons that are caused by the animal, even though they may have exercised utmost care to keep the wild animal from causing harm.

8. At all times pertinent, Plaintiff was an invitee of Defendants. An invitee is one who is on the premises at the express or implied invitation of the owner or occupant thereof for some purpose in which the owner or occupant has some interest of business or commercial significance or in conjunction with the owner or occupant's business.

9. At all times pertinent, the Defendants were the owners or occupants of the premises and had a duty to maintain the premises in a reasonably safe condition for the use of its invitee. It was the duty of the Defendants, as owners or occupants of the premises, to either remove or warn the invitee of any hidden danger on the premises that the Defendants either actually knew about or should have known about in the exercise of reasonable care or that was created by them or any of their employees acting within the scope of their employment.

10. Plaintiff's injuries were directly caused by an elephant which was under the exclusive control and management of the Defendants and the event causing the injury to

Plaintiff was of a kind which does not occur in the absence of negligence on their part.

11. At all times relevant, Defendant Endangered Ark purportedly provided a private sanctuary for elephants in Hugo, Oklahoma.

12. At all times relevant, Defendant Oklahoma Awesome Adventures publicly advertised and held themselves out to the public as an adventure camp providing guests up-close and personal elephant experiences, cabin and facility rentals. The rental cabins are all located on property owned by Defendant Miller and the elephants are all leased by Defendant Miller to Defendant Endangered Ark.

13. At all times relevant, Defendant Miller was the owner of the subject elephants. The elephants were either retired circus elephants of Carson & Barnes or their off-spring and leased by Defendant Miller to Defendant Endangered Ark.

14. At all times relevant, Defendant Carson & Barnes held the only Class-C license issued by the United States Department of Agriculture (Certificate No. 73-C-0001) which permitted any exhibition of the subject elephants.

15. At all times relevant, Defendants Oklahoma Awesome Adventures, Miller, Endangered Ark and Carson & Barnes were acting as a joint venture and in partnership to provide the "elephant experience" during which Plaintiff was injured.

16. At all times relevant, Defendants Oklahoma Awesome Adventures, Miller, Endangered Ark, and Carson & Barnes were engaged in a joint enterprise designed to financially profit from the abnormally dangerous interaction of wild exotic animals and human beings.

17. At all times relevant, Defendant Loyal worked as an independent contractor

providing care-taking services for the subject elephants being utilized for the financial benefit of Defendants Oklahoma Awesome Adventures, Miller, Endangered Ark and/or Carson & Barnes.

18. At all times relevant, Defendant Carson & Barnes was under suspension by the Oklahoma Tax Commission, and as such its officers and directors are personally liable for all acts and omissions of Carson & Barnes. The officers and directors of Carson & Barnes are the following individuals: Geary Byrd (President), Barbara Byrd (Vice President), Traci Byrd (Secretary), and Kristin Parra (Treasurer).

19. As a result of the Defendants' negligence, gross negligence, negligence *per se*, strict liability and/or premises liability, Plaintiff has sustained serious and life-threatening injuries; has and will incur expenses for medical care, treatment, and services; has and will suffer pain of mind and body; has and will be prevented from transacting her business; has been temporarily and permanently disabled; and has been permanently disfigured.

20. Defendants' acts and omissions were willful, wanton and in reckless disregard for the well-being of Plaintiff and others similarly situated. Moreover, Defendants' acts and omissions were intentional and life-threatening to humans, all for which exemplary and punitive damages are appropriate and demanded.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory and punitive damages in excess of the amount required for federal diversity jurisdiction pursuant to 28 U.S.C. § 1332, together with interest, costs, attorney fees, and any further relief the court deems equitable, just and available to Plaintiff by law.

Respectfully Submitted,

HORNBECK VITALI & BRAUN, P.L.L.C.

A handwritten signature in black ink, appearing to read 'John E. Vitali', written over a horizontal line.

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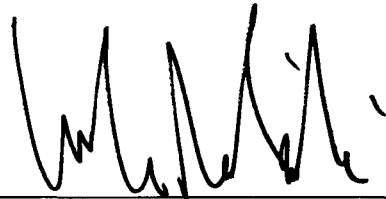
**ATTORNEY LIEN CLAIMED
JURY TRIAL DEMANDED**

CERTIFICATE OF MAILING

This is to certify that on the 22nd day of November, 2021, a true and correct copy of the above and foregoing Amended Petition was mailed via U.S. Mail, postage prepaid to:

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John E. Vitali