

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MARY CUMMINS
Plaintiff,

vs.

AMANDA LOLLAR, DENISE
TOMLINSON, DOROTHY HYATT,
MICHELLE MCCAULLEY, KATE
RUGRODEN, LESLIE STURGES, BAT
WORLD SANCTUARY, JOHN DOES 1-10
Defendants.

) **Civil Action No.: 4:12-CV-00560-Y**
)
)
)
) **PLAINTIFF’S REPLY TO DEFENDANT**
) **HYATT’S RESPONSE ON 12(b)(6)**
) **MOTION TO DISMISS**
)
)
)

PLAINTIFF’S REPLY TO DEFENDANT HYATT’S RESPONSE ON 12(b)(6) MOTION TO DISMISS

COMES NOW Plaintiff Mary Cummins (“Cummins”) and files this Response to Defendant Dorothy Hyatt’s (“Hyatt”) Renewed Motion to Dismiss the Second Amended Complaint for Failure to State a Claim (Document 104), and respectfully shows the Court as follows:

1. SUMMARY OF RESPONSE

Defendant Hyatt is a member of the board of directors of Bat World Sanctuary as proven in Plaintiff’s previous reply. Bat World Sanctuary owns the property at 115/117 NE 1st St, Mineral Wells, Texas where Plaintiff was injured (Exhibit 1). Legally Hyatt was therefore the owner, occupier and possessor of the premises in question. When Cummins was injured in June 2010 Bat World Sanctuary was an unincorporated association of board members (Exhibit 2). The individual members of the unincorporated association are thereby legally, personally liable for the premises as they are the owners individually and as a group. Hyatt is also a board member of Bat World Sanctuary and is in charge of overseeing the organization, electing the President,

appointing the manager, making sure the organization is properly insured and the properties are properly maintained. Hyatt in essence is Defendant Bat World Sanctuary. Hyatt has been in the building many times and knew of its condition. As such, Plaintiff's Second Amended Complaint against Hyatt should not be dismissed under Rule 12(b)(6). Plaintiff has stated a claim for which relief may be granted against Defendant Hyatt.

2. PLAINTIFF HAS STATED A CLAIM

Plaintiff has stated a claim for premises liability. May 14, 2013 this Court ruled that Cummins has stated a claim for premise liability (Document 61). From the order "Cummins alleges that Lollar and Bat World acted negligently in failing to tell her "that the building did not have an occupancy permit [and] was not up to code." (Pl.'s Second Am. Compl. ¶ 21.) Cummins further alleges that Lollar and Bat World should be held liable under a theory of negligence because "the premises [was] dangerous and the step stool was unstable." (Id.) Given these allegations, it is evident that Cummins's negligent claim is based on a theory of premises liability, rather than a negligent-activity theory. See *Keetch v. Kroger Co.*, 845 S.W.2d 262, 264 (Tex. 1992) (stating that to recover on a negligent-activity claim, the plaintiff must show that he was harmed by, or as a contemporaneous result of, the activity itself); *Wyckoff v. George C. Guller Contracting Co.*, 357 S.W.3d 157, 163 (Tex. App.--Dallas 2011, no pet.) ("When the alleged injury is the result of the condition of the premises, the injured party can recover only under a premises liability theory.").

To state a claim for premises liability, a plaintiff must plead facts showing:

(1) the defendant knew or should have known of some condition on the premises; (2) the condition posed an unreasonable risk of harm, was defective or not working properly; (3) the

defendant did not exercise reasonable care to reduce or eliminate the risk; and (4) the defendant's failure to use such care proximately caused the plaintiff's injuries.

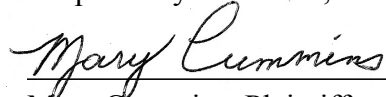
Weech v. Baptist Health Sys., 392 S.W. 3d 821, 826 (Tex. App.--San Antonio 2012) (citing Corbin v. Safeway Stores, Inc., 648 S.W.2d 292, 296 (Tex. 1983)).”

Defendant Hyatt as Board of Director of Bat World Sanctuary meets all four of the elements of premises liability. In Texas, it is an owner, occupier or possessor of premises that are potentially subject to a premises liability claim. CMH Homes Inc. v. Daenen, 15 S.W.3d 97, 99 (Tex. 2000); City of Cameron v. Brown, 80 S.W.3d 549, 554-56 (Tex. 2001). Hyatt is a board member of Bat World Sanctuary. Bat World Sanctuary owns, occupies and possesses the premises. Hyatt is legally a part of, actually the owner, occupier and possessor of the premises in question. Therefore, Hyatt is subject to Plaintiff's premises liability claim. Dismissal is not Appropriate

PRAYER

WHEREFORE, PLAINTIFF MARY CUMMINS respectfully requests that the court deny Defendant Dorothy Hyatt's request for dismissal per FED R CIV P 12(b)(6).

Respectfully submitted,



Mary Cummins, Plaintiff
645 W. 9th St. #110-140
Los Angeles, CA 90015-1640
April 3, 2014
In Pro Per

CERTIFICATE OF SERVICE


I, Mary Cummins, hereby certify that a copy of **PLAINTIFF'S REPLY TO DEFENDANT HYATT'S RESPONSE ON 12(b)(6) MOTION TO DISMISS** was served on the Defendants' Attorneys of record by CM/ECF, FAX and EMAIL at,

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By: 
Mary Cummins, Plaintiff Pro Se
April 3, 2014

DECLARATION OF MARY CUMMINS

I, MARY CUMMINS, declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct, and that I could and would testify thereto as herein if called upon to do so, based upon my personal knowledge of the facts set forth herein.

1. Exhibit 1 attached to Plaintiff's Reply to Defendant's Response on 12(b)(6) Motion to Dismiss is a true and correct copy of the official deposition transcript of Amanda Lollar's November 8, 2011 deposition.
2. Exhibit 2 attached to Plaintiff's Reply to Defendant's Response on 12(b)(6) is a true and correct copy of the incorporation status of Bat World Sanctuary which I downloaded from the website of the Texas Attorney General. The document shows they incorporated December 9, 2012.

Executed on August 27, 2013 in Los Angeles, California.

By: 
Mary Cummins

1 A. I'm not -- I don't recall that either.

2 Q. So you personally own the 217 North Oak
3 building?

4 A. Yes.

→ 5 Q. Who owns the building at 115 First Avenue?

6 A. Bat World Sanctuary.

7 Q. I'd like to show you Exhibit No. 1.

8 (Exhibit 1 marked.)

9 Q. (BY MS. CUMMINS) What does that document say,
10 who owns the building?

11 A. The document says the Beneficial Animal
12 Teaching Society.

13 Q. Is that correct?

14 A. It was correct at the time.

15 Q. I just pulled that up recently.

16 A. Well, then these records are wrong, because
17 Beneficial -- the organization started off as being
18 called the Beneficial Animal Teaching Society. We
19 officially changed the name.

20 Q. What year did you change the name?

21 A. It was in the early 2000s, maybe the year 2000.
22 And the bank records never got updated, but they have
23 been updated recently.

→ 24 Q. What was the Beneficial Animal Teaching
25 Society, was it a corporation?

Exhibit 1

1 2000.

→ 2 Q. And it was -- Bat World Sanctuary, at that
3 time, was a nonprofit association?

4 A. Yes. The Beneficial Animal Teaching Society
5 and the Bat World Sanctuary are one in the same. The
6 name changed, the tax identification number remained the
7 same. It's the same exact organization.

8 Q. What is Bat World Sanctuary, Incorporated?

9 A. I'm sorry?

10 Q. Bat World Sanctuary, Incorporated.

11 A. What was the first of your question?

12 Q. What is it?

13 A. What is it? It's our organization.

14 Q. When was that formed?

→ 15 A. We incorporated in the state of Texas in --
16 last year, I believe.

17 Q. What or who is Bat World Sanctuary that's suing
18 me?

19 A. That is the same as Bat World Sanctuary,
20 Incorporated. It's all one in the same.

21 Q. Who's on the board of directors of Bat World
22 Sanctuary, Incorporated?

23 A. That's common knowledge on our website.

24 Q. Tell me.

25 A. I'm the president, Dottie Hyatt is the vice

1 A. No, it was an association, nonprofit
2 association.

3 Q. Did it have a board of directors?

4 A. Yes.

5 Q. Who was on that board of directors?

6 A. I don't recall in the early years.

7 Q. Did you have an advisory board for that?

8 A. Yes.

9 Q. Who was on that advisory board?

10 A. I don't recall.

11 Q. So that organization is no longer active?

12 A. The organization became -- the organization has
13 always been there. The name was changed. That is the
14 only thing that changed about the organization.

15 Beneficial Animal Teaching Society and Bat World
16 Sanctuary are one in the same. The name has been
17 changed. It's like when you get married and you change
18 your name, you're still the same person.

19 Q. So what year did Bat World Sanctuary legally
20 exist, initially?

21 A. The facility Bat World Sanctuary existed in
22 1994.

23 Q. I meant the corporation, or the nonprofit
24 association.

25 A. The nonprofit name was changed in the year

1 president, Michelle McCaulley is the secretary, and
2 Denise Tomlinson is the treasurer.

3 Q. Did you --

4 A. It's on our website on the "about us" page.

5 Q. Do you have director's and officer's insurance?

6 A. Yes, we do.

7 Q. How much do you pay for that a year?

8 A. I don't recall.

9 Q. What are the limits on that policy?

10 A. I don't recall.

11 Q. How many members does Bat World Sanctuary
12 currently have?

13 A. About a thousand.

14 Q. Does Bat World Sanctuary have any employees?

15 A. No.

16 Q. Was Janet Villareal ever an employee?

17 A. No. The organization does not pay salaries.

18 Q. Did you ever give her any money?

19 A. I gave her money out of my personal pocket, but
20 the organization never paid salary.

21 Q. So you personally gave money to Janet?

22 A. Yes.

23 Q. How much?

24 A. I don't recall.

25 Q. How much did you give her per hour?



Franchise Tax Account Status

As of: 08/27/2013 02:41:16 PM

This Page is Not Sufficient for Filings with the Secretary of State

BAT WORLD SANCTUARY	
Texas Taxpayer Number	32043172348
Mailing Address	217 N OAK AVE MINERAL WELLS, TX 76067-4946
Right to Transact Business in Texas	ACTIVE
State of Formation	TX
Effective SOS Registration Date	12/09/2010
Texas SOS File Number	0801353343
Registered Agent Name	AMANDA LOLLAR
Registered Office Street Address	217 N. OAK AVENUE MINERAL WELLS, TX 76067

Exhibit 2