

IN THE CIRCUIT COURT OF SHELBY COUNTY, TENNESSEE
FOR THE THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

JEROME WALSH,

Plaintiff,

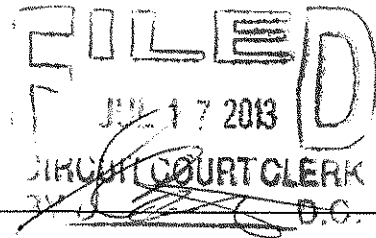
v.

24 HOUR FITNESS USA, INC.; and
KELLY A. KOENIG, individually and
as an employee and/or agent of 24Hour
Fitness USA, Inc.,

Defendants.

NO. CT - 003036-13
JURY DEMANDED

Div. VI



COMPLAINT

COMES NOW the Plaintiff, by and through the undersigned attorney, and for cause of action against the Defendants would respectfully show and state as follows:

PARTIES

1. Plaintiff Jerome Walsh ("Plaintiff") is an adult resident citizen of Shelby County, Tennessee.
2. Defendant 24 Hour Fitness USA, Inc. ("24 Hour Fitness") is a California corporation with its principal place of business located at 12647 Alcosta Blvd, 5th Floor, San Ramon, CA 94583-4439. Defendant 24 Hour Fitness is licensed to do business in Tennessee, and its registered agent for service of process is Corporation Service Company, 2908 Poston Ave., Nashville, TN 37929-9710. Defendant 24 Hour Fitness operates fitness centers through the use of employees, agents, servants and/or contractors who perform services within the scope of their employment,

apparent authority, agency, or contract to act for the corporation. Defendant 24 Hour Fitness is liable for its own negligence and the acts and omissions of its employees, agents, servants and contractors, including Defendant Kelly A. Koenig ("Koenig"), by virtue of the doctrines of agency, apparent agency, implied agency, employer/employee relations, master-servant relations, joint-venture, joint and several liability, respondeat superior, vicarious liability, contract and as a result of its non-delegable duty to comply with both state and federal regulatory schemes. Upon information and belief, Defendant 24 Hour Fitness owns and operates a fitness center at 1285 Ridgeway Road, Memphis, TN 38119.

3. Defendant Koenig is an adult resident citizen of Shelby County, Tennessee, residing therein at 8070 Sag Harbor Circle, Apt. 4, Cordova, TN 38016. Upon information and belief, Defendant Koenig was employed by Defendant 24 Hour Fitness at all times pertinent hereto. Accordingly, Defendant 24 Hour Fitness is liable for the actions of Defendant Koenig under the doctrines of agency, apparent agency, implied agency, employer/employee relations, master-servant relations, joint-venture, joint and several liability, respondeat superior, vicarious liability, contract and as a result of its non-delegable duty to comply with both state and federal regulatory schemes.

JURISDICTION AND VENUE

4. Venue is proper in Shelby County.
5. This Complaint is filed within the applicable statute of limitations.
6. Defendants were properly served with process.

DEFINITIONS

7. Whenever the term "Defendants" is utilized within this suit, such term collectively

refers to and includes all named Defendants in this lawsuit

8. Whenever in this suit it is alleged that Defendants did any act or thing or failed to do any act or thing, it is meant that the Defendants themselves, as well as officers, agents, or employees of said Defendants respectively performed, participated in, or failed to perform such acts or things while in the course and scope of the their employment and/or agency relationship with said Defendants.

NATURE OF DEFENDANTS' LIABILITY

9. AGENCY: At all times material to this suit, Defendant Koenig acted as an agent of Defendant 24 Hour Fitness thereby making Defendant 24 Hour Fitness vicariously liable for the conduct of Defendant Koenig.

FACTUAL ALLEGATIONS

Plaintiff incorporates by reference as if fully set forth each and every allegation in the Complaint

10. Upon information and belief, on or about June 7, 2013, Defendant 24 Hour Fitness owned and operated a fitness center located at 1285 Ridgeway Road, Memphis, TN 38119 (hereinafter "Fitness Center").

11. On or about July 2, 2013, the Shelby County Health Department confirmed that the spa and steam room at the Fitness Center was contaminated with Legionella bacteria, thereby creating a dangerous condition.

12. Upon information and belief, on or about July 2, 2013, Defendant 24 Hour Fitness notified all Fitness Center members that had visited the facility between May 21, 2013 and June 21, 2013 that they could have been exposed to this dangerous condition.

13. Plaintiff sat in the hot tub at the Fitness Center on or about June 7, 2013 and inhaled dangerous aerosolized water vapor or mist contaminated with Legionella bacteria.

14. As a direct and proximate result of the aforementioned dangerous condition, Plaintiff was diagnosed with Legionnaires' disease on or about June 12, 2013 and required medical treatment.

15. At all times relevant hereto, Plaintiff acted in a prudent and cautious manner and was in no way negligent.

LIABILITY

Plaintiff incorporates by reference as if fully set forth verbatim each and every allegation in the Complaint.

Count 1 - Common Law Negligence

16. Defendants owed a duty to Plaintiff to use ordinary and reasonable care under the circumstances.

17. Defendants breached their duty to Plaintiff including, but not limited to, the following ways::

- a. Failure to maintain the premises with the degree of care and caution required of a reasonable and prudent person under similar circumstances;
- b. Failure to properly maintain the premises in a reasonable and safe condition;
- c. Failure to inspect the premises for a dangerous condition in a timely manner; and
- d. Failure to remove and/or repair a dangerous condition from the premises.

18. The wrongs complained of in paragraph 17 were a direct and proximate cause of Plaintiff's injuries and damages.

Count 2 - Defendant 24 Hour Fitness' Direct Liability

19. In addition to the acts and omission of Defendant 24 Hour Fitness' servants, employees, agents, and contractors, Defendant 24 Hour Fitness directly breached its duties to Plaintiff including, but not limited to, the following ways, each and every one constitutes a direct and proximate cause of Plaintiff's injuries:

- a. Failure to enact and enforce policies and procedures to keep the premises in a reasonable and safe condition;
- b. Failure to properly hire, train, supervise, and discipline employees in order to keep the premises in a reasonable and safe condition; and
- c. Failure to timely warn members, including Plaintiff, of the unsafe condition.

COMPENSATORY DAMAGES

Plaintiff incorporates by reference as if fully set forth verbatim each and every allegation in the Complaint.

20. As a direct and proximate result of the negligent acts and omissions of Defendants, Plaintiff was injured and damaged. The injuries and damages for which Plaintiff seeks compensation from Defendant include, but are not limited to:

- a. Physical pain and suffering of a past, present and future nature;
- b. Emotional pain and suffering of a past, present, and future nature;
- c. Medical bills and expenses of a past, present, and future nature;
- d. Loss of enjoyment of life;
- e. Post-judgment interest;
- f. Statutory and discretionary costs; and
- g. All such further relief, both general and specific, to which he may be entitled

under the premises.

PRAYERS FOR RELIEF

21. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that this Honorable Court enter a judgment against Defendants for the following:

- a. As Tennessee law requires a plaintiff to set forth a specific amount prayed for in the Complaint, Plaintiff prays that he be awarded compensatory damages in an amount that appears fair and reasonable to a jury not to exceed two million dollars (\$2,000,000.00);
- b. That Plaintiff be awarded post-judgment interest as equity requires;
- c. That all costs of this action be taxed to Defendants; and
- d. All such further relief, both general and specific, to which Plaintiff may be entitled.

22. **A JURY IS RESPECTFULLY DEMANDED.**

Respectfully submitted,

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