

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

JONATHAN HEMINGWAY
CHRISTOPHER HEMINGWAY,
and TIFFANY HEMINGWAY

CIVIL ACTION NO.: 09-1031
JUDGE

VERSUS

CHARLIE CALDWELL, Shreveport
City Marshal, DOWNTOWN DOWN
UNDER ENTERTAINMENT LLC,
DAVID EMBERTON, in his individual
and official capacities, SHAWN HARRIS,
JASON WILLIS, TIMOTHY HUCK,
and TIM HUCK MANAGEMENT, LLC

MAGISTRATE JUDGE

COMPLAINT

This is a civil action for declaratory, injunctive and monetary relief, brought pursuant to 42 U.S.C. 1983, under the Fourth and Fourteenth Amendments to the United States Constitution. Claims are also asserted under Art. I, §§ 2 & 5 of the Louisiana Constitution and La. Civil Code article 2315.

1.

JURISDICTION

Jurisdiction is based on 28 U.S.C. §1331, 1343 (a), 2201 and the aforementioned statutory and constitutional provisions. Plaintiffs further invoke the supplemental jurisdiction of this court to hear and decide claims arising under state law pursuant to 28 U.S.C. §1367.

2.

VENUE

Venue is proper in the Shreveport Division of the Western District of Louisiana as the Defendants are domiciled in parishes contained within the Western District and the events of which complaint is made occurred in Shreveport, Caddo Parish, Louisiana.

3.

PARTIES

The plaintiffs are :

Christopher Hemingway (“ C. Hemingway”) an adult citizen of the United States and a resident of the state of Louisiana.

Tiffany Hemingway , wife of Christopher Hemingway, and an adult citizen of the United States and a resident of the state of Louisiana.

Jonathan Hemingway (“J. Hemingway”) an adult citizen of the United States and a resident of the state of Louisiana.

The defendants are :

Charlie Caldwell, Shreveport City Marshal, (“City Marshal”), an elected official in and for the City of Shreveport who was at all times herein the employer of Defendant David Emberton. Marshal Caldwell is sued in his official capacity.

Downtown Down Under Entertainment, LLC, d/b/a Phoenix Underground (“Phoenix Underground” or the “Club”), a Louisiana Limited Liability Company that owns, manages and operates the Phoenix Underground club in Shreveport, Louisiana, on the dates complained of herein and had engaged the services of Defendant Emberton and others to work as security guards at that facility.

David Emberton (“Emberton”) an adult citizen of the state of Louisiana who was at all times pertinent herein employed full time as a Deputy Marshall by the Shreveport City Marshall. On the dates complained of herein Emberton was also employed by the Defendant Downtown Down Under Entertainment, LLC. He is sued in his individual and official capacities.

Shawn Harris (“Harris”) an adult citizen of the state of Louisiana who was at all times pertinent herein employed by the Defendant Phoenix Underground and / or Tim Huck Management, LLC.

Jason Willis (“Willis”) an adult citizen of the state of Louisiana who was at all times pertinent herein employed by the Defendant Phoenix Underground and / or Tim Huck Management, LLC.

Timothy Huck (“Huck”) an adult citizen of the state of Louisiana who was at all times pertinent herein and employee and / or agent of Defendant Phoenix Underground and owner / manager of Tim Huck Management, LLC.

TIM HUCK MANAGEMENT, LLC, a Louisiana limited liability company owned by Timothy Huck and believed, upon information and belief, to be the employer of Willis and Harris.

FACTS COMMON TO ALL CLAIMS

4.

During the late night and early morning hours of June 21 and 22, 2008, Deputy City Marshal David Emberton was engaged to work as a security guard at the nightclub called “Phoenix Underground” in Shreveport, Louisiana. He was clothed with the authority of the City Marshal, but was retained for wages by the club, pursuant to the policies, pattern and practice of the City Marshal.

5.

Defendant David Emberton was equipped with weapons, handcuffs, a badge, and other paraphernalia that identified him as a Deputy City Marshal.

6.

Plaintiffs were patrons at the club. Defendant Huck is the manager of the club. Defendants Willis and Harris are employees of the club and, upon information and belief, jointly employed by Tim Huck Management, LLC, which provided management services to the club.

7.

In the early morning of June 22, 2009, J. Hemingway was falsely imprisoned, handcuffed and arrested by Emberton without probable cause or warrant. J. Hemingway also was physically detained, falsely arrested, and beaten by defendants Huck, Willis and Harris. C. Hemingway was arrested by Emberton and physically detained and falsely imprisoned by Huck, Willis and Harris, without probable cause or warrant.

8.

Emberton beat J. Hemingway and C. Hemingway without provocation or justification.

9.

Emberton shoved, punched and kicked J. Hemingway when J. Hemingway was subdued, handcuffed and defenseless. Emberton shoved, punched, and kicked C. Hemingway.

10.

Emberton allowed Willis to beat, punch, kick and shove J. Hemingway after J. Hemingway was subdued, handcuffed and defenseless.

11.

Willis hit, punched, and kicked C. Hemingway without provocation or justification.

12.

Willis hit, punched and kicked J. Hemingway without provocation or justification.

13.

After J. Hemingway was handcuffed, Willis punched him, grabbed him and shoved him to the ground.

14.

Huck hit, punched, and kicked C. Hemingway without provocation or justification.

15.

Huck hit, punched, and kicked J. Hemingway without provocation or justification.

16.

Harris hit, punched, and kicked J. Hemingway without provocation or justification.

17.

Harris hit, punched and kicked C. Hemingway without provocation or justification.

18.

As a result of the beatings C. Hemingway suffered trauma to his left eye, ribs, back, chin, lip and hand, multiple bruises and contusions, dislocation disorder of left shoulder and trauma to right shoulder. These injuries have not fully resolved and he faces future surgery, physical therapy. The mental and physical injuries impaired his ability to operate his business, causing loss of income.

19.

C. Hemingway's damages include past, present and future medical expenses. Past present and future pain, suffering and mental anguish and distress. Past present and future loss of ability to engage in his normal family, social and recreational activities and loss of enjoyment of life.

20.

As a result of the beatings J. Hemingway suffered left orbital floor blowout, fracture with some entrapped orbital contents (left eye) requiring open reduction and internal fixation and the insertion of KLS-Martin orbital fan plate secured with two 4-mm titanium screws; broken nose, broken cheek bones requiring surgical insertion of a plate; multiple bruises, contusions and overall trauma to his entire body; psychological trauma.

21.

The injuries forced Jonathan Hemingway to withdraw from a college class, delaying his graduation for several months. He also lost income from part-time employment. J. Hemingway's damages include past, present and future medical expenses. Past present and future pain, suffering and mental anguish and distress. Past present and future loss of ability to engage in his normal family, social and recreational activities and loss of enjoyment of life.

22.

Tiffany Hemingway witnessed her husband being brutally beaten by Emberton, Huck and Willis. She seeks loss of consortium and Lejeune damages arising from injuries to her husband Christopher Hemingway. Lejeune v. Rayne Branch Hospital, 556 So.2d 559 (La. 1990); LSA-C.C. Art. 2315.6

CLAIMS AGAINST CITY MARSHAL

23.

Plaintiff incorporates herein by reference as if set out in full the facts alleged in paragraphs 1 through 22, above.

24.

Before the beatings that are the subject of this lawsuit, deputy marshal Emberton had been

named as a defendant in multiple lawsuits in which he was accused of excessive and unnecessary force. The City Marshal had knowledge of the allegations of the prior lawsuits, and of numerous other complaints of excessive and unnecessary force against Emberton.

25.

The City Marshal was aware of numerous complaints that Emberton, clothed with the authority of a deputy marshal, was working as a security officer at Phoenix Underground and that in his capacity as both deputy marshal and security officer he had been involved in numerous incidents in which he used excessive force against bar patrons and unlawfully arrested bar patrons.

26.

The defendant City Marshal is responsible for all policy-making authority regarding his office's operations, policies or practices, or customs that have become tantamount to policies, which have been made, continued, or otherwise carried out by the defendant deputy Emberton in accordance with which his acts and omissions describe herein have caused injury to the plaintiffs.

These policies include:

- a. a deliberate indifference to the legal standards, of which all of his deputy marshals should have been aware, surrounding the making of arrests without warrants;
- b. a history of reckless disregard for probable cause requirements in making arrests;
- c. a history of recklessness in the use of , and a complete disregard for any prohibitions against the use of unnecessary and excessive force.
- d. consistently refusing to take steps to terminate abusive practices, including arrest without cause or warrant, unlawfully punishing persons by means of excessive an unnecessary physical and verbal force and abuse and by defending or providing pretexts for same;

- e. by not disciplining or otherwise properly supervising defendant Emberton, who has engaged in such practices both before and after the instant complaint;
- f. a failure to adequately train his deputy marshal personnel, including defendant Emberton, with regard to proper constitutional and statutory limits and duties of the exercise of their authority, instead sanctioning and encouraging said practices by ignoring them;
- g. failure to promulgate training policies and practices to prevent the occurrences of which plaintiffs complain;
- h. facilitating and thus condoning and approving such conduct as has been show, by deliberately turning a blind eye towards conduct with a deliberate indifference to the effect that said polices and practices have upon the constitutional rights of citizens, including the plaintiffs herein.

27.

The defendant Marshal's policies, carried out by Defendant Emberton, caused damage to the plaintiffs in violation of the Fourth and Fourteenth Amendments to the United States Constitution, through 42 U.S.C. §1983.

28.

The defendant Marshal is liable to plaintiffs for injuries caused by defendant Emberton pursuant to the unconstitutional policies of the Marshal.

29.

The defendant Marshal is liable to plaintiffs for costs and attorney's fees under 42 U.S.C. §1988.

CLAIM AGAINST EMBERTON

42 U.S.C. §1983

30.

Plaintiff incorporates herein by reference as if set out in full the facts alleged in paragraphs 1 through 29, above.

31.

Defendant Emberton's conduct alleged herein violates clearly established law. Further, such conduct, is shown to have been objectively unreasonable. Any defense of qualified immunity is unavailable to Emberton.

32.

Defendant Emberton deliberately abused the plaintiffs for no reason. He detained them, attacked them, falsely arrested them without probable cause or legal basis, used unreasonable, excessive and unnecessary force against them and caused subsequent malicious prosecution. He allowed Huck and Willis to beat both plaintiffs.

33.

One example of Emberton's deliberate abuses against Plaintiffs is that he beat, shoved, kicked, and abused J. Hemingway after Hemingway's hands were handcuffed behind his back and Hemingway was defenseless and he stood by while Defendant Willis did the same to J. Hemingway.

34.

From the moment Emberton detained, arrested and handcuffed J. Hemingway, Emberton had a duty to protect J. Hemingway from injury including further acts of aggression by Huck and Willis, and any other aggressors. He failed to do so and recklessly, or intentionally, allowed Huck and Willis to continue to beat J. Hemingway.

35.

The actions of defendant Emberton described herein were done in bad faith, maliciously and with deliberate indifference to plaintiffs' protected rights, and with a callous and reckless disregard for same. An award of punitive damages against this defendant is thus warranted.

36.

From Defendant Emberton Plaintiffs seek, and are entitled to recover, compensatory damages for all losses, punitive damages, costs and attorney's fees.

La. Civil Code art. 2315

37.

Plaintiffs incorporate herein by reference as if set out in full the facts alleged in paragraphs 1 - 22, above, in support of their state law claims against all Defendants

38.

Plaintiffs ask this Court to exercise supplemental jurisdiction to hear and decide plaintiffs' state law claims.

EMBERTON

39.

Emberton's conduct, comprising battery, excessive and unusual use of force, illegal arrest and other acts as more fully described above, committed in Emberton's personal and official capacities as a Shreveport City Marshal, violate La. Const. Art. I, §§2 & 5.

40.

Emberton's conduct also constitutes negligence and intentional torts, including assault and battery actionable under La. Const. Art. 2315.

41.

Defendant Emberton's conduct was extreme and outrageous and he intended to cause the plaintiffs serious bodily injury and extreme emotional distress. He knew, or reasonably should have known, that serious bodily injury and extreme emotional distress would result from his conduct.

Jason Willis

42.

Defendant Jason Willis committed acts of assault and battery causing injury to both plaintiffs. By way of example he beat, kicked, punched, and dragged and shoved plaintiff J. Hemingway when J. Hemingway had his hands cuffed behind his back and was defenseless.

43.

He beat, kicked, punched and dragged and shoved plaintiff C. Hemingway.

44.

He falsely arrested C. Hemingway by pinning him to the ground and not allowing him to leave the premises.

45.

He knew, or reasonably should have known, that his conduct would cause plaintiffs serious bodily injury and extreme emotional distress.

Timothy Huck

46.

Defendant Huck committed acts of assault and battery causing injury to both plaintiffs. He beat, kicked, punched, dragged and shoved plaintiff J. Hemingway.

47.

He beat, kicked, punched, dragged and shoved plaintiff C. Hemingway.

48.

He falsely detained and arrested C. Hemingway by pinning him to the ground and not allowing him to leave the premises.

49.

He participated in beating J. Hemingway after J. Hemingway had been handcuffed.

50.

He knew, or reasonably should have known, that his conduct would cause plaintiffs serious bodily injury and extreme emotional distress.

Shawn Harris

51.

Defendant Shawn Harris committed acts of assault and battery causing injury to both plaintiffs.

52.

He beat, kicked, punched and dragged and shoved plaintiff C. Hemingway.

53.

He beat, kicked, punched and dragged and shoved plaintiff J. Hemingway.

54.

He knew, or reasonably should have known, that his conduct would cause plaintiffs serious bodily injury and extreme emotional distress.

Phoenix Underground

55.

Phoenix Underground is liable for the damage done to the plaintiffs because of negligent hiring, lack of supervision of its security employees, and lack of proper training of security

employees, including Emberton, Willis, Huck and Harris.

56.

Phoenix Underground negligently hired Emberton , Huck, Harris and Willis and failed to provide adequate security to the public and its bar patrons.

57.

Phoenix Underground either did not conduct an appropriate background check on Emberton and Willis, or hired them knowing that their criminal and / or civil litigation reflected that they had propensities for extreme violence.

58.

Phoenix Underground knew, or should have known of Emberton , Huck and Willis's violent and dangerous propensities as reflected in the public records. It had received numerous complaints about Emberton, Willis and Huck. It had failed to train them in proper security measures. There has been an unusually high volume of calls for police service to the Club and many of these calls for service also included calls for paramedic service to treat the club patrons who had been beaten by Emberton, Willis and Huck.

59.

Phoenix Underground created and maintained a company culture that encouraged its security employees to assault and batter bar patrons.

60.

Phoenix Underground is liable for its own acts of negligence, as described above. It is further liable via respondeat superior, for the negligence of its employees Emberton, Willis, Huck, and Harris.

TIM HUCK MANAGEMENT, LLC

61.

Tim Huck Management, LLC is liable for the acts of its agent / employees who are, upon information and belief, Willis, Huck and Harris.

62.

Tim Huck Management, LLC is liable for negligently hiring and retaining these employees. The company knew, or reasonably should have known of the dangerous propensities of these employees.

63.

The company is also liable because it has created and maintained a company culture that encourages its employees to commit acts of assault and battery on bar patrons.

CLAIMS OF TIFFANY HEMINGWAY

64.

Plaintiff incorporates herein as if set out in full all allegations of fact stated above.

65.

Plaintiff Tiffany Hemingway is the wife of Plaintiff Christopher Hemingway and sister-in-law of Jonathan Hemingway.

66.

Tiffany Hemingway was present at Phoenix Underground on June 22, 2008, and witnessed the arrest and brutal beating of her husband and brother-in-law, as described above.

67.

The injuries that were inflicted upon her husband in her presence were severe, so severe that at the time Tiffany Hemingway feared that he might not recover.

68.

The experience of watching her husband being brutally beaten by Huck, Willis, Harris and Emberton caused Tiffany Hemingway to emotional distress that was severe, debilitating and foreseeable.

69.

Tiffany Hemingway also asserts a claim against all defendants for loss of consortium, including loss of care, affection and companionship, services and society caused by the savage beating of Christopher Hemingway.

70.

Plaintiffs request a jury trial.

WHEREFORE, Plaintiffs pray that this complaint be deemed good and sufficient and upon the conclusion of all due delays there be judgment entered in their favor and against Defendants awarding Plaintiffs all relief sought, including costs, attorney's fees, and pre-judgment interest.

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