

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT, IN AND FOR, PALM
BEACH COUNTY, FLORIDA

CIVIL DIVISION
CASE NO.:

HERBERT MERRITT,

Plaintiff,

vs.

KINGS POINT RECREATION INC.,
UNIVERSAL PROTECTION SERVICE,
LLC D/B/A ALLIED UNIVERSAL
SECURITY SERVICES, LLC.,
VESTA PROPERTY SERVICES INC.,
and ROBERT LEVINE,

Defendants.

COMPLAINT

COMES NOW Plaintiff, HERBERT MERRITT, by and through undersigned counsel, and
sues Defendant, KINGS POINT RECREATION INC., UNIVERSAL PROTECTION SERVICE
LLC., D/B/A ALLIED UNIVERSAL SECURITY SERVICES, LLC., VESTA PROPERTY
SERVICES INC. and ROBERT LEVINE and alleges:

1. This is an action for damages that exceeds Fifty Thousand Dollars (\$50,000.00), exclusive of interest, costs, and attorney's fees.
2. The Plaintiff, HERBERT MERRITT, resides in Palm Beach County, Florida.
3. The negligence complained of occurred in Palm Beach County, Florida.
4. The Defendant, ROBERT LEVINE, [hereinafter "LEVINE"], resides in Palm Beach County.

5. At all material times, the Defendant, KINGS POINT RECREATION INC., [hereinafter "KINGS POINT"], is and was an active Florida limited corporation, licensed, authorized and doing business at 7000 West Atlantic Avenue, Delray Beach, Florida (Hereinafter the "Premises").

6. At all material times, the Defendant, KINGS POINT, was doing business as an owner/operator/manager for the recreational facilities located at the Premises.

7. At all material times, the Defendant, VESTA PROPERTY SERVICES INC., [hereinafter "VESTA"] was and is doing business in Palm Beach County.

8. At all material times, the Defendant, VESTA, was doing business as an owner/operator/manager for the recreational facilities located at the Premises.

9. At all material times, Defendant, KINGS POINT, owned, managed, maintained, secured, inspected, and/or controlled the day to day activities and operation of the premises and/or did so through its employees, contractors and agents who, at all material times and with regard to the operation, maintenance, and management of the premises, were subject to Defendant KINGS POINT's right of control.

10. At all material times, Defendant, VESTA, owned, managed, maintained, secured, inspected, and/or controlled the day to day activities and operation of the premises and/or did so through its employees, contractors and agents who, at all material times and with regard to the operation, maintenance, and management of the premises, were subject to Defendant VESTA's right of control.

11. At all material times, the Defendant, UNIVERSAL PROTECTION SERVICE LLC., D/B/A ALLIED UNIVERSAL SECURITY SERVICES, LLC., [hereinafter "SECURITY"], was and is a foreign limited liability company authorized to and conducting

business in Palm Beach County, Florida, with its principal place address at 161 Washington Street, Suite 600, Conshohocken, Pennsylvania, 19428.

12. At all material times, the Defendant, SECURITY, was controlling, operating, managing, maintaining, and securing the Premises.

13. At all material times to this action, the Defendants, had and/or assumed the duty to provide reasonably safe premises to invitees and residents, including HERBERT MERRITT.

14. At all material times, the Defendants were responsible for the acts and omissions of their agents, employees, representatives, and/or servants. Specifically, KINGS POINT is vicariously liable for the negligent acts and omissions of VESTA, SECURITY and any other agent.

15. At all material times action, the Defendants, their agents, employees, and/or servants, had actual or constructive knowledge of a history of criminal activity on and in the vicinity of the premises and knew or should have known that there was a propensity for criminal conduct by third persons which unreasonably exposed invitees, including the Plaintiff, to an unreasonable dangerous condition on the premises which was likely to cause harm to invitees.

16. On or about April 24, 2022, HERBERT MERRITT, a resident and/or invitee, was beaten and sustained gunshot wounds upon the Premises and suffered severe and permanent injuries as a result.

17. Venue is proper in Palm Beach County as the Plaintiff resided in Palm Beach County and the incident occurred on property located in Palm Beach County, Florida.

COUNT I
NEGLIGENCE CLAIM AGAINST DEFENDANT
KING POINT RECREATION INC.

18. Plaintiff readopts and realleges paragraph 1-17 including subsections as though fully set forth herein.

19. At all material times, Defendant, KINGS POINT, through its officers, agents, servants and employees, including VESTA, owed a non-delegable duty to its residents, invitees, and the general public to exercise reasonable care to keep and maintain its premises in a condition reasonably safe use by residents, invitees, and the public, including the area within the Premises. In particular, KINGS POINT, had a duty to take such precautions as were reasonably necessary to protect its residents and invitees from criminal attacks which were and/or should have been reasonably foreseeable.

20. At all material times, Defendant, KINGS POINT, through its officers, agents, servants, and employees knew or in the exercise of reasonable care should have known, that there had been violent criminal acts and attacks perpetrated on the residents and public on the premises, and that criminal acts and attacks were reasonably likely to be perpetrated on residents and the general public on the premises unless the Defendant took reasonable and proper steps to provide adequate security at the premises.

21. At all material times, Defendant, KINGS POINT, knew or in the exercise of reasonable care should have known, on account of the nature and frequency of crime at the subject property, that said premises constituted a dangerous and hazardous area for its tenants and Defendant was in a superior position to appreciate such hazards and take necessary steps to prevent harm to the residents, tenants, tenant's guests, invitees including HERBERT MERRITT

22. The Defendant and its officers, agents, servants and employees knew, or in the exercise of reasonable care should have known, that no individual had it within their power to take the measures necessary to provide for their own safety and security inside the premises.

23. At all material times, the Defendant and its officers, agents, servants and/or employees was in a superior position to appreciate such danger and to take the steps necessary to deter and prevent such criminal attacks on the premises.

24. As a result of the allegations set forth above, at all material times the criminal attack upon HERBERT MERRITT was reasonably foreseeable to the Defendant, and the Defendant was in a superior position to appreciate such hazards and take necessary steps to prevent harm to residents, tenants, tenant's guests, invitees and the general public including the Plaintiff, HERBERT MERRITT.

25. At the above mentioned time and place, Defendant, KINGS POINT, did itself and or by and through its agents, servants and employees breach its non-delegable duty to the Plaintiff to exercise reasonable care for the safety and protection of the residents and its invitees, including HERBERT MERRITT and acted in a negligent manner in various respects including, but not limited to the following acts of omission or commission:

- a. Failing to have security guards/officers on the premises during relevant hours;
- b. Failing to take reasonable measures that would guard against and otherwise deter the conduct of criminal activity on its premises and in failing to be proactive in the prevention of crimes on its property and against its residents;
- c. Failing to implement reasonable monitoring devices such as surveillance cameras on and around the exterior of the premises;
- d. Failing to create, implement, distribute, and/or enforce reasonable security policies, security measures and security procedures necessary to protect the residents and invitees of KINGS POINT;

- e. Failing to create and/or implement a reasonable security plan which would meet the known industry standards and customs for safety in the community; and
- f. Failing to take reasonable precautionary measures to deter and prevent violent crime upon the premises, in light of the history of violent crime, at the premises;
- g. Failing to police, patrol, guard, deter, and otherwise provide adequate protection for its residents and invitees at the subject premises, when Defendant knew or should have known of foreseeable criminal acts;
- h. Failing to have an adequate number of security guards at the subject premises to protect its residents and invitees, including HERBERT MERRITT;
- i. Failing to hire and/or retain competent security guards to protect its residents and invitees, including HERBERT MERRITT;
- j. Failing to properly train security guards to be reasonably skillful, competent and/or qualified to exercise appropriate and proper security measures so that they could protect its resident and invitees, including HERBERT MERRITT;
- k. Failing to implement or operate adequate access control to the community.

26. At all material times, KINGS POINT was on notice or should have been on notice of violent criminal activity as is evidenced by prior crimes on and about the premises.

27. At all material times, KINGS POINT did foresee or should have foreseen the likelihood of criminal activity on the premises as is evidenced by prior crime on its premises.

28. The Defendant, KINGS POINT, through its agents and employees negligently failed to have any procedures governing the inspection supervision, and/or security of the area where the subject incident occurred; or in the alternative

a. The Defendant, KINGS POINT, through its agents and employees, did have procedures governing the inspection, supervision, and security of the area where the subject incident occurred; however, the Defendant negligently failed to implement said procedures; or in the alternative;

b. The Defendant, KINGS POINT, through their agents and employees, did have procedures governing the inspection, supervision, and security of the area where the subject incident occurred, but implemented same in a negligent manner.

29. At all material times, the Defendant, KINGS POINT, through its agents and employees, created and/or allowed to be created said dangerous conditions as stated above on the subject premises.

30. The negligence of the Defendant proximately caused the assault and injuries of HERBERT MERRITT, and directly led to the criminal attack of HERBERT MERRITT in that:

a. There was inadequate and/or nonexistent visible deterrence to prevent said criminal assault and/or battery.

b. There was inadequate and/or nonexistent physical deterrence to prevent said criminal assault and/or battery.

c. An atmosphere was created at the Defendant's premises which facilitated the commission of crimes against persons.

31. As a direct and proximate result of the negligence of Defendant KINGS POINT, the Plaintiff, HERBERT MERRITT, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, and loss of ability to earn money. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE Plaintiff, HERBERT MERRITT, sues the Defendant, Defendant KINGS POINT RECREATION INC., and demands judgment against it for damages exclusive of attorney fees, costs, and interest, in an amount in excess of the jurisdictional limits of this Court, and further demands trial by jury and such other relief as this Court deems proper.

COUNT II
NEGLIGENCE CLAIM AGAINST DEFENDANT
VESTA PROPERTY SERVICES INC.

32. Plaintiff readopts and realleges paragraph 1-17 including subsections as though fully set forth herein.

33. At all material times, Defendant, VESTA, through its officers, agents, servants and employees, owed a duty to its residents, invitees, and the general public to exercise reasonable care to keep and maintain its premises in a condition reasonably safe use by residents, invitees, and the public, including the area within the Premises. In particular, VESTA, had a duty to take such precautions as were reasonably necessary to protect its residents and invitees from criminal attacks which were and/or should have been reasonable foreseeable.

34. At all material times, Defendant, VESTA, through its officers, agents, servants, and employees knew or in the exercise of reasonable care should have known, that there had been violent criminal acts and attacks perpetrated on the residents and public in said areas, and that criminal acts and attacks were reasonably likely to be perpetrated on residents and the general public on the premises unless the Defendant took reasonable and proper steps to provide adequate security at the premises.

35. At all material times, Defendant, VESTA, knew or in the exercise of reasonable care should have known, on account of the nature and frequency of crime at the subject property, that said premises constituted a dangerous and hazardous area for its tenants and Defendant was

in a superior position to appreciate such hazards and take necessary steps to prevent harm to the residents, tenants, tenant's guests and invitees including the Plaintiff, HERBERT MERRITT.

36. The Defendant and its officers, agents, servants and employees knew, or in the exercise of reasonable care should have known, that no individual had it within their power to take the measures necessary to provide for their own safety and security inside the premises.

37. At all material times, the Defendant and its officers, agents, servants and/or employees was in a superior position to appreciate such danger and to take the steps necessary to deter and prevent such criminal attacks on the premises.

38. As a result of the allegations set forth above, at all material times the criminal attack upon HERBERT MERRITT was reasonably foreseeable to the Defendant, and the Defendant was in a superior position to appreciate such hazards and take necessary steps to prevent harm to residents, tenants, tenant's guests, invitees and the general public including the Plaintiff, HERBERT MERRITT.

39. At the above mentioned time and place, Defendant, VESTA, did itself and or by and through its agents, servants and employees breach its duty to the Plaintiff to exercise reasonable care for the safety and protection of the residents and its invitees, including HERBERT MERRITT and acted in a negligent manner in various respects including, but not limited to the following acts of omission or commission:

- a. Failing to have security guards/officers on the premises during relevant hours;
- b. Failing to take reasonable measures that would guard against and otherwise deter the conduct of criminal activity on its premises and in failing to be proactive in the prevention of crimes on its property and against its residents;

- c. Failing to inspect and evaluate its property for dangerous conditions and security deficiencies;
- d. Failing to implement reasonable monitoring devices such as surveillance cameras on and around the exterior of the premises;
- e. Failing to create, implement, distribute, and/or enforce reasonable security policies, security measures and security procedures necessary to protect the residents and invitees of KINGS POINT;
- f. Failing to create and/or implement a reasonable security plan which would meet the known industry standards and customs for safety in the community;
- g. Failing to take reasonable precautionary measures to deter and prevent violent crime upon the premises, in light of the history of violent crime, at the premises;
- h. Failing to police, patrol, guard, deter, and otherwise provide adequate protection for its residents and invitees at the subject premises, when Defendant knew or should have known of foreseeable criminal acts;
- i. Failing to have an adequate number of security guards at the subject premises to protect its residents and invitees, including HERBERT MERRITT;
- j. Failing to hire and/or retain competent security guards to protect its residents and invitees, including HERBERT MERRITT;
- k. Failing to properly train security guards to be reasonably skillful, competent and/or qualified to exercise appropriate and proper security measures so that they could protect its resident and invitees, including HERBERT MERRITT;
- l. Failing to implement or operate adequate access control to the community.

40. At all material times, VESTA was on notice or should have been on notice of violent criminal activity as is evidenced by prior crimes on the premises.

41. At all material times, VESTA did foresee or should have foreseen the likelihood of criminal activity on the premises as is evidenced by prior crime on the premises.

42. The Defendant, VESTA, through its agents and employees negligently failed to have any procedures governing the inspection supervision, and/or security of the area where the subject incident occurred; or in the alternative

a. The Defendant, VESTA, through its agents and employees, did have procedures governing the inspection, supervision, and security of the area where the subject incident occurred; however, the Defendant negligently failed to implement said procedures; or in the alternative;

b. The Defendant, VESTA, through their agents and employees, did have procedures governing the inspection, supervision, and security of the area where the subject incident occurred, but implemented same in a negligent manner.

43. At all material times, the Defendant, VESTA, through its agents and employees, created and/or allowed to be created said dangerous conditions as state above on the subject premises. The Defendants failed to warn its residents, tenants, tenant's guests and invitees, including HERBERT MERRITT, of the existence of said dangerous condition; or in the alternative did allow said dangerous condition to exist for a length of time sufficient in which a reasonable inspection would have disclose the same.

44. The negligence of the Defendants proximately caused the assault upon HERBERT MERRITT, and directly led to the criminal attack of HERBERT MERRITT in that:

a. There was inadequate and/or nonexistent visible deterrence to prevent said criminal assault and/ or battery.

b. There was inadequate and/or nonexistent physical deterrence to prevent said criminal assault and/or battery.

45. As a direct and proximate result of the negligence of Defendant HERBERT MERRITT, the Plaintiff, HERBERT MERRITT, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of ability to earn money, and aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE Plaintiff, HERBERT MERRITT, sues the Defendant, VESTA PROPERTY SERVICES INC., and demands judgment against it for damages exclusive of attorney fees, costs, and interest, in an amount in excess of the jurisdictional limits of this Court, and further demands trial by jury and such other relief as this Court deems proper.

COUNT III
NEGLIGENCE CLAIM AGAINST DEFENDANT
UNIVERSAL PROTECTION SERVICE LLC., D/B/A ALLIED UNIVERSAL
SECURITY SERVICES, LLC.

46. Plaintiff readopts and realleges paragraph 1-17 including subsections as though fully set forth herein.

47. At all material times, the Defendant SECURITY, through its agents and employees, owed a duty to residents and invitees at the subject premises to exercise reasonable and ordinary care in providing its security guard services, including but not limited to providing security recommendations, developing and implementing a proper security plan, performing security services in conformity with practices current in the security industry, and hiring, retaining and

training personnel suited and capable of maintaining secure and safe conditions at the subject premises. Moreover, Defendant SECURITY, through its agents and employees, owed a duty to exercise reasonable and ordinary care after it undertook the responsibility/duty to provide security services at the subject premises.

48. At all material times, the Defendant SECURITY, through its agents and employees, knew or in the exercise of reasonable care should have known, that there had been numerous criminal acts and attacks perpetrated on the public in said areas, and that criminal acts and attacks were reasonably likely to be perpetrated on residents and invitees and the public unless the Defendant SECURITY took steps to provide proper security for such individuals. Further, the Defendant SECURITY, through its agents and employees, knew or in the exercise of reasonable care should have known that prior to the instant shooting, numerous violent criminal acts had occurred on the subject premises and areas adjacent thereto.

49. The Defendant SECURITY, through its agents and employees, knew or in the exercise of reasonable care should have known that no resident or invitee, including Plaintiff HERBERT MERRITT, had it within their power to take necessary measures to provide for their own security on the premises.

50. In light of the foregoing, at all material times the criminal attack and shooting of HERBERT MERRITT, was reasonably foreseeable, and the Defendant SECURITY was in a superior position to appreciate such hazards and take necessary steps to prevent harm to its residents and invitees.

51. At the above-referenced time and place, the Defendant SECURITY, by and through its agents and employees, breached its duty to exercise reasonable care for the safety and

protection of its residents and invitees, including HERBERT MERRITT, and acted in a negligent manner through the following acts of omission or commission:

- a. Failing to provide adequate security for invitees and the public;
- b. Failing to police, patrol, guard, deter, and otherwise provide adequate protection for its invitees and the public;
- c. Failing to properly hire and train security guards to be reasonably skillful, competent, and/or qualified to exercise appropriate and proper security measures so that they could protect its residents, tenants, invitees, and the public;
- d. Failing to implement adequate security policies, security measures, and security procedures necessary to protect invitees and the public;
- e. Failing to take additional security measures after being put on notice that the security measures in force were inadequate;
- f. Failing to adequately provide an overall security plan that would meet industry standards and needs for safety on the subject premises;
- g. The preceding paragraphs "A" through "F", individually and/or as a whole, represent strict deviations from the existing standard of care with regard to security as recognized by similar businesses and properties in the local community.

52. The Defendant SECURITY, through its agents and employees, negligently failed to have any procedures governing the inspection, supervision, and/or security of the area where the subject incident occurred; or in the alternative, the Defendant SECURITY, did in fact have procedures governing the inspection, supervision, and security of the area where the subject incident occurred, but implemented said procedures in a careless and negligent manner.

53. At all material times, the Defendant SECURITY, through its agents and employees, negligently failed to hire persons, employees, and/or agents reasonably suited for providing, implementing, and maintaining proper security measures to ensure the safety of its invitees and the public.

54. The Defendant SECURITY, through its agents, servants, and employees, created and/or allowed to be created said dangerous conditions on the subject premises. Further, the Defendant SECURITY failed to warn its invitees and the public, including but not limited to HERBERT MERRITT, of the existence of said dangerous conditions; or in the alternative, did allow said dangerous conditions to exist for a length of time in which a reasonable inspection would have disclosed same.

55. As a direct and proximate result of the above negligence of SECURITY and breaches of duty, the Defendant SECURITY failed to prevent or deter the attack against HERBERT MERRITT.

56. As a direct and proximate result of the negligence of Defendant SECURITY, the Plaintiff, HERBERT MERRITT, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of ability to earn money, and aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE Plaintiff, HERBERT MERRITT sues the Defendant, UNIVERSAL PROTECTION SERVICE LLC., D/B/A ALLIED UNIVERSAL SECURITY SERVICES, LLC., and demands judgment against it for damages exclusive of attorney fees, costs, and interest, in an

amount in excess of the jurisdictional limits of this Court, and further demands trial by jury and such other relief as this Court deems proper.

COUNT IV
ASSAULT AND BATTERY CLAIM
AGAINST DEFENDANT ROBERT LEVINE

57. Plaintiff readopts and realleges paragraph 1-17 including subsections as though fully set forth herein.

58. At all times material hereto, the Defendant, LEVINE was present at the subject premises.

59. LEVINE created an imminent apprehension of physical contact when he pointed his firearm at Plaintiff, causing him to fear for his life.

60. LEVINE committed battery upon the Plaintiff by intentionally shooting and beating Plaintiff with his fists and golf clubs.

61. As a direct and proximate result of the assault and/or battery of Defendant LEVINE, the Plaintiff, HERBERT MERRITT, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of ability to earn money, and aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE Plaintiff, HERBERT MERRITT sues the Defendant, ROBERT LEVINE, and demands judgment against him for damages exclusive of attorney fees, costs, and interest, in an amount in excess of the jurisdictional limits of this Court, and further demands trial by jury and such other relief as this Court deems proper.

COUNT V
NEGLIGENCE CLAIM AGAINST
DEFENDANT ROBERT LEVINE
(Pled in the Alternative)

62. Plaintiff readopts and realleges paragraph 1-17 including subsections as though fully set forth herein.

63. On or about April 24, 2022, LEVINE was in possession of a firearm and owed a duty of reasonable care to HERBERT MERRITT.

64. On said date, LEVINE breached his duty of reasonable care by negligently discharging his firearm, striking HERBERT MERRITT's body.

65. As a direct and proximate result of the negligence of LEVINE, Plaintiff, HERBERT MERRITT, has suffered bodily injury, including a permanent injury to the body as a whole, pain and suffering of both a physical and mental nature, disability, physical impairment, disfigurement, mental anguish, inconvenience, loss of capacity for the enjoyment of life, aggravation of an existing condition or activation of latent conditions, expense of hospitalization, medical and nursing care and treatment, and loss of ability to lead and enjoy a normal life. The losses are either permanent or continuing and the Plaintiff will suffer losses in the future.

WHEREFORE Plaintiff, HERBERT MERRITT sues the Defendant, ROBERT LEVINE, and demands judgment against him for damages exclusive of attorney fees, costs, and interest, in an amount in excess of the jurisdictional limits of this Court, and further demands trial by jury and such other relief as this Court deems proper.

COUNT VI
VICARIOUS LIABILITY CLAIM AGAINST
DEFENDANTS KINGS POINT RECREATION INC.

66. Plaintiff readopts and realleges paragraph 1-17 including subsections as though fully set forth herein.

67. The Defendant KINGS POINT is vicariously liable for the negligent acts or omissions of its agents, employees or independent contractors doing business or operating upon the Premises, including without limitation Defendants VESTA and SECURITY.

WHEREFORE, Plaintiff, HERBERT MERRITT demands judgement for damages against all Defendants on all counts and a trial by jury.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Dated: September 25, 2023

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