

**IN THE CIRCUIT COURT, IN AND FOR THE
SIXTH JUDICIAL CIRCUIT, IN AND FOR
PINELLAS COUNTY, FLORIDA**

CASE NO.: 09-04133-CI-19

**ARIEL MILIAN and LUMEY CAMACHO,
his wife, and BRYAN MILIAN, a minor, by
and through his natural parents and guardians,**

Plaintiffs,

vs.

**DEVELOPERS DIVERSIFIED REALTY
CORPORATION, a foreign corporation,
DDRM BARDMOOR SHOPPING CENTER
LLC, a foreign limited liability company, and
PROPERTY SOLUTIONS, INC., a Florida
corporation,**

Defendants.

SECOND AMENDED COMPLAINT

COME NOW Plaintiffs, ARIEL MILIAN and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents and guardians, by and through their undersigned counsel, and sue Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, a foreign corporation, DDRM BARDMOOR SHOPPING CENTER LLC, a foreign limited liability company, and PROPERTY SOLUTIONS, INC., a Florida corporation, and allege as follows:

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of interest, costs, and attorney's fees.
2. At all times material hereto, Plaintiffs were and are husband and wife and resided in Kissimmee, Osceola County, Florida.

3. At all times material hereto, BRYAN MILIAN, a minor, was born on April 28, 2007 and was and is the natural son of Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO.

4. At all times material hereto, Defendant, DEVELOPERS DIVERSIFIED REALTY CORPORATION, was and has been a foreign corporation with its principal place of business in Beachwood, Ohio. Further, at all times material hereto, said Defendant was and has been managing, leasing, and maintaining that certain shopping center known as Bardmoor Shopping Center located at 10801 Starkey Road, Largo, Pinellas County, Florida.

5. At all times material hereto, Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC was and has been a foreign limited liability company with its principal place of business in Beachwood, Ohio. Further, at all times material hereto, said Defendant was and has been owning, managing, leasing, and maintaining that certain shopping center known as Bardmoor Shopping Center located at 10801 Starkey Road, Largo, Pinellas County, Florida.

6. At all times material hereto, Defendant, PROPERTY SOLUTIONS, INC., was and has been a Florida corporation authorized to conduct and conducting business in Pinellas County, Florida.

7. The actions, inactions, omissions, and other incidents alleged herein occurred in Pinellas County, Florida.

8. At all times material hereto, Plaintiff, ARIEL MILIAN, was employed as a delivery truck driver who made deliveries to various Panera Bread Bakery Cafés in Florida, including the Panera Bread Bakery Café located at the Bardmoor Shopping Center described above.

9. On or about April 24, 2008, Plaintiff, ARIEL MILIAN, was making a delivery at the above described Panera Bread Bakery Café in Pinellas County, Florida, and was therefore lawfully upon said premises as a business invitee.

10. At said time and place, a canopy overhang on the rear side of the shopping center at the delivery dock/entrance for the above described Panera Bread Bakery Café collapsed upon Plaintiff, ARIEL MILIAN, while he was performing his delivery.

COUNT I

NEGLIGENCE CLAIM AGAINST

DEVELOPERS DIVERSIFIED REALTY CORPORATION

Plaintiffs reallege and incorporate by reference paragraphs one through ten above as if fully set forth herein.

11. At all times material hereto, Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, had a non-delegable duty to Plaintiff under Florida common law, as well as pursuant to § 768.0710(1), *Florida Statutes (2004)*, to use reasonable care in maintaining said premises in a reasonably safe condition, to warn Plaintiff of perils which are or should have been known to Defendants, its agents, servants, and employees, and to conduct regular inspections appropriate for said premises and to implement a mode of operating that satisfied those legal duties.

12. At all times material hereto, the aforescribed canopy was in an unreasonably unsafe condition and this unsafe condition was either known to Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, or should have been known to Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, through the exercise or ordinary care in the operation, inspection and maintenance of the business premises.

13. Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, breached their duties to Plaintiffs *inter alia* by failing to use reasonable care in the maintenance and operation of said premises, permitting construction of the said canopy without proper permitting and inspections, failing to use due care in the inspection and maintenance of the canopy following construction, failing to correct the dangerous condition of the canopy when they knew or by the exercise of reasonable care should have known of its dangerous condition, failing to inspect or adequately inspect the premises, including the canopy, for the safety of invitees, such as Plaintiff, failing to conduct regular inspections for the safety of invitees such as Plaintiff, failing to implement a mode of operations that satisfied their legal duties to Plaintiffs, and failing to warn Plaintiff of the dangerous and unsafe condition of the canopy when Defendant, its agents, servants or employees knew or should have known of its dangerous condition.

14. As a direct and proximate result of the negligence of Defendant, DIVERSIFIED REALTY CORPORATION, Plaintiff, ARIEL MILIAN, suffered bodily injury in and about his body and extremities, resulting in great mental and physical pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of previously existing condition(s). Said losses are either permanent or continuing and Plaintiff will suffer said losses in the future. Further, Plaintiff, ARIEL MILIAN, sustained significant permanent injury resulting in permanent total disability.

15. As a direct and proximate result of the negligence of Defendant, DIVERSIFIED REALTY CORPORATION, Plaintiff, LUMEY CAMACHO, has sustained a loss of her husband's services, comfort, society and attentions in the past, and she will so sustain said losses in the future.

16. As a direct and proximate result of the negligence of Defendant, DIVERSIFIED REALTY CORPORATION, Plaintiff, BRYAN MILIAN, a minor, has sustained permanent loss of his father's services, comfort, companionship, and society.

WHEREFORE, the Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents, sue Defendant, DIVERSIFIED REALTY CORPORATION, a foreign corporation, for damages and demand judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus prejudgment interest for liquidated damages, and costs, and demand trial by jury of all issues so triable.

COUNT II

NEGLIGENCE CLAIM AGAINST

DDRM BARDMOOR SHOPPING CENTER LLC

Plaintiffs reallege and incorporate by reference paragraphs one through ten above as if fully set forth herein.

17. At all times material hereto, Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC , had a non-delegable duty to Plaintiff under Florida common law, as well as pursuant to § 768.0710(1), *Florida Statutes (2004)*, to use reasonable care in maintaining said premises in a reasonably safe condition, to warn Plaintiff of perils which are or should have been known to Defendants, its agents, servants, and employees, and to conduct regular inspections appropriate for said premises and to implement a mode of operating that satisfied those legal duties.

18. At all times material hereto, the aforescribed canopy was in an unreasonably unsafe condition and this unsafe condition was either known to Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC, or should have been known to Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC, through the exercise or ordinary care in the operation, inspection and maintenance of the business premises.

19. Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC, breached their duties to Plaintiffs *inter alia* by failing to use reasonable care in the maintenance and operation of said premises, permitting construction of the said canopy without proper permitting and inspections, failing to use due care in the inspection and maintenance of the canopy following construction, failing to correct the dangerous condition of the canopy when they knew or by the exercise of reasonable care should have known of its dangerous condition, failing to inspect or adequately inspect the premises, including the canopy, for the safety of invitees, such as Plaintiff, failing to conduct regular inspections for the safety of invitees such as Plaintiff, failing to implement a mode of operations that satisfied their legal duties to Plaintiffs, and failing to warn Plaintiff of the dangerous and unsafe condition of the canopy when Defendant, its agents, servants or employees knew or should have known of its dangerous condition.

20. As a direct and proximate result of the negligence of Defendant, DDRM BARDMOOR SHOPPING CENTER LLC, Plaintiff, ARIEL MILIAN, suffered bodily injury in and about his body and extremities, resulting in great mental and physical pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of previously existing condition(s). Said losses are either permanent or continuing and Plaintiff will suffer said losses in the future.

Further, Plaintiff, ARIEL MILIAN, sustained significant permanent injury resulting in permanent total disability.

21. As a direct and proximate result of the negligence of Defendant, DDRM BARDMOOR SHOPPING CENTER LLC, Plaintiff, LUMEY CAMACHO, has sustained a loss of her husband's services, comfort, society and attentions in the past, and she will so sustain said losses in the future.

22. As a direct and proximate result of the negligence of Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC, Plaintiff, BRYAN MILIAN, a minor, has sustained permanent loss of his father's services, comfort, companionship, and society.

WHEREFORE, the Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents, sue Defendant, DDRM BARDMOOR SHOPPING CENTER LLC, a foreign limited liability company, for damages and demand judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus prejudgment interest for liquidated damages, and costs, and demand trial by jury of all issues so triable.

COUNT III

NEGLIGENCE CLAIM AGAINST PROPERTY SOLUTIONS, INC.

Plaintiffs reallege and incorporate by reference paragraphs one through ten above as if fully set forth herein.

23. At all times material hereto, Defendant, PROPERTY SOLUTIONS, INC., contracted with Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION and DDRM BARDMOOR SHOPPING CENTER, LLC, to conduct an inspection during the Defendants', DEVELOPERS DIVERSIFIED REALTY CORPORATION and DDRM

BARDMOOR SHOPPING CENTER, LLC, purchase and acquisition of Bardmoor Shopping Center located at 10801 Starkey Road in Largo, Pinellas County, Florida. A copy of the proposal and contract between those parties is attached hereto as Exhibit "A" and delineates that Defendant, PROPERTY SOLUTIONS, INC., contracted with Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION and DDRM BARDMOOR SHOPPING CENTER, LLC, and agreed to conduct a property condition assessment including, *inter alia*, identifying the material elements of the structural frame and building envelop, including the building framing system, roof framing system, facade system, exterior balconies, roof system, rooftop equipment, drainage, roof condition, attachment methods, miscellaneous appurtenances, etc., and to observe for general conditions and note any physical deficiencies identified or any unusual items or conditions observed and for any evidence of material repairs, significant ponding, or evidence of material roof leaks.

24. At all times material hereto, PROPERTY SOLUTIONS, INC., had a duty or assumed a duty to properly and reasonably inspect Bardmoor Shopping Center for dangerous conditions or defects that posed a risk of injury to occupants and invitees upon the property and knew or should have known that its work was being performed for the safety of occupants and invitees upon said property and that the failure to properly inspect the property for dangerous conditions and defects would create a foreseeable zone of risk of injury to such occupants or invitees.

25. At all times material hereto, the aforescribed canopy was in an unreasonably unsafe condition and this unsafe condition was either known to Defendants, PROPERTY SOLUTIONS, INC., or should have been known to Defendants, PROPERTY SOLUTIONS,

INC., through the exercise or ordinary care in the operation, inspection and maintenance of the business premises.

26. Defendant, PROPERTY SOLUTIONS, INC., breached their duties to Plaintiffs *inter alia* by failing to use reasonable care in inspection and assessment of said premises, failing to use due care in the inspection of the canopy system that failed, failing to recommend correction or further inspection of the canopy system that later failed when they knew or by the exercise of reasonable care should have known of its dangerous condition, failing to inspect or adequately inspect the premises, including the canopy, for the safety of invitees, such as Plaintiff, and failing to warn Plaintiff of the dangerous and unsafe condition of the canopy when said Defendant, its agents, servants or employees knew or should have known of its dangerous condition.

27. As a direct and proximate result of the negligence of Defendant, PROPERTY SOLUTIONS, INC., Plaintiff, ARIEL MILIAN, suffered bodily injury in and about his body and extremities, resulting in great mental and physical pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of previously existing condition(s). Said losses are either permanent or continuing and Plaintiff will suffer said losses in the future. Further, Plaintiff, ARIEL MILIAN, sustained significant permanent injury resulting in permanent total disability.

28. As a direct and proximate result of the negligence of Defendant, PROPERTY SOLUTIONS, INC., Plaintiff, LUMEY CAMACHO, has sustained a loss of her husband's services, comfort, society and attentions in the past, and she will so sustain said losses in the future.

29. As a direct and proximate result of the negligence of Defendant, PROPERTY SOLUTIONS, INC., Plaintiff, BRYAN MILIAN, a minor, has sustained permanent loss of his father's services, comfort, companionship, and society.

WHEREFORE, the Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents, sue Defendant, PROPERTY SOLUTIONS, INC., for damages and demand judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus prejudgment interest for liquidated damages, and costs, and demand trial by jury of all issues so triable.

Dated this ____ day of _____, 201__.

MELVIN B. WRIGHT, Esquire
Florida Bar No. 559857
COLLING GILBERT WRIGHT & CARTER
The Florida Firm
801 North Orange Avenue, Suite 830
Orlando, FL 32801
(407) 712-7300
(407) 712-7301
MWright@TheFloridaFirm.com
Counsel for Plaintiffs