

This case has been designated as an eFiling case. To review a copy of the Notice of Mandatory eFiling visit www.oakgov.com/clerkrod/Pages/efiling.

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RENEE SWAIN,

Plaintiff,

v

MICHAEL MORSE, MARK ZARKIN
and STEVEN LELLI'S INN ON THE GREEN, L.L.C.,
STEVEN LELLI'S ON THE GREEN, INC. and
STEVEN LELLIS ON THE GREEN, LLC.
a Michigan Corporation,

Defendants.

2017-158765-CZ

JUDGE PHYLLIS MCMILLEN

Case No.:

Hon.

GEOFFREY N. FIEGER (P304410)
DONALD H. DAWSON, JR. (P29692)
Attorneys for Plaintiff
FIEGER, FIEGER, KENNEY & HARRINGTON, P.C.
19390 W. Ten Mile Road
Southfield, Michigan 48075
(248) 355-5555, Fax 355-5148
g.fieger@fiegerlaw.com
d.dawson@fiegerlaw.com

PLAINTIFF'S VERIFIED COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint, pending in this court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge, nor do I know of any other civil action not between these parties arising out of the same transaction or occurrence as alleged in this Complaint that is either pending, or was previously filed and dismissed, transferred, or otherwise disposed of after having been assigned to a judge in this court.

NOW COMES the Plaintiff, RENEE SWAIN, by and through her attorneys, Fieger, Fieger, Kenney & Harrington, P.C., and for her complaint against Defendants, states as follows:

COMMON ALLEGATIONS

1. At all relevant times, Plaintiff RENEE SWAIN (herein after SWAIN), resided in the City of Novi, County of Oakland, State of Michigan.
2. At all relevant times, Defendant MICHAEL MORSE, resided in the city of Huntington Woods, County of Oakland, State of Michigan.
3. At all relevant times, Defendant MARK ZARKIN (hereinafter ZARKIN), resided in the County of Oakland, State of Michigan.
4. At all relevant times, Defendant STEVEN LELLI'S INN ON THE GREEN, L.L.C., STEVEN LELLIS ON THE GREEN, LLC., and STEVEN LELLI'S ON THE GREEN, INC., (hereinafter LELLI'S), a Michigan Corporation, was located in the city of Farmington Hills, County of Oakland, State of Michigan. Lelli's Inn on the Green conducts systematic business in Oakland County, State of Michigan.
5. At all relevant times, Defendants LELLI'S and ZARKIN owned, possessed, and/or controlled the premises whereon the acts described below were committed, in the city of Farmington Hills, County of Oakland, State of Michigan.
6. The events which are the subject matter of this Complaint occurred in Oakland County, Michigan.
7. Venue and jurisdiction are properly vested in this court.

8. The amount in controversy exceeds Ten Million (\$10,000,000.00) Dollars, exclusive of interest, costs and attorney's fees.

FACTUAL ALLEGATIONS

9. On April 6, 2017 at approximately 10:00 p.m. Plaintiff SWAIN was enjoying a meal with her friends at Defendant LELLI'S.

10. Defendants MICHAEL MORSE and ZARKIN were also at Defendant LELLI'S, on April 6, 2017 at approximately 10:00 p.m.

11. Defendant MICHAEL MORSE without invitation approached Plaintiff SWAIN at her dinner table and engaged Plaintiff RENEE SWAIN and her friends in conversation. Defendant MICHAEL MORSE asked to have his picture taken with Plaintiff SWAIN and her friends.

12. Defendant MICHAEL MORSE then lured Plaintiff SWAIN to the entrance of a private room within Defendant LELLI'S, out of the sight of anyone else, for the express purpose of committing an unwanted and illegal sexual assault upon Plaintiff RENEE SWAIN. Defendant MICHAEL MORSE asked Plaintiff SWAIN to take a photo ("selfie") of her and him and as Plaintiff SWAIN held her phone out to take their picture, he suddenly and without any permission, inducement or any other whatsoever invitation, and within only minutes of meeting her, sexually assaulted Plaintiff SWAIN by grabbing her breasts and asking her if this made the photo better.

13. Plaintiff SWAIN immediately went over to her friends and told them about Morse's assault upon her. One of her friends, upon hearing what Defendant

MICHAEL MORSE had done, told her that Defendant MICHAEL MORSE was an attorney and good friends with the owner of Defendant LELLI'S, MARK ZARKIN.

14. At approximately 10:15 p.m., Plaintiff SWAIN left Defendant LELLI'S and subsequently reported Defendant MICHAEL MORSE unwanted sexual assault to the Farmington Hills Police Department, specifically, Detective Joseph Mertes.

15. After reporting Defendant MICHAEL MORSE'S sexual assault to the Farmington Hills Police Department, Plaintiff SWAIN was contacted by her friend, who advised her he had spoken with Defendants MICHAEL MORSE and ZARKIN, and Defendant ZARKIN had requested she meet with Defendants MICHAEL MORSE and ZARKIN for the express purpose of trying to pressure and/or coerce Plaintiff SWAIN to withdraw her complaint of sexual assault against Defendant MICHAEL MORSE.

16. After receiving the request to meet with Defendants MICHAEL MORSE and ZARKIN, Plaintiff SWAIN went to the Farmington Hills Police Department to report Defendants MICHAEL MORSE'S and ZARKIN'S additional activity. A Farmington Hills Police Department Officer recommended surveillance taping of her upcoming meeting to support her criminal assault complaint. The Farmington Hills Police provided surveillance tools to the Plaintiff for recording the conversations which were to take place at the aforementioned meeting.

17. On May 7, 2017, Plaintiff SWAIN attended a meeting with Defendants MICHAEL MORSE and ZARKIN, who were suspicious that they could possibly be taped, so they requested that she leave her purse and her phone outside the room where the meeting occurred. Plaintiff SWAIN wore a surveillance wire on her person and the

entire conversation at the meeting was captured by the surveillance wire, and is currently in the custody of the Farmington Hills Police Department.

18. At all relevant times Defendants MICHAEL MORSE and ZARKIN conspired to coerce Plaintiff SWAIN to withdraw her criminal complaint with the Farmington Hills Police Department, and to not pursue litigation about Defendant MICHAEL MORSE'S sexual assault.

19. During the course of the meeting Defendant MICHAEL MORSE he acknowledged that his actions were inappropriate and unwanted and promised that if Plaintiff SWAIN would not pursue claims against him he would be a "changed man." Defendants, MICHAEL MORSE and ZARKIN together tried to coerce Plaintiff SWAIN into withdrawing her police complaint by telling Plaintiff that Defendant MICHAEL MORSE would not be able to continue in his charitable endeavors and explained that such exposure of his conduct would hurt him professionally and personally in the community.

20. During the above-described meeting Defendant MICHAEL MORSE admitted that if someone had sexually assaulted one of his three daughters in the same manner as he had assaulted Plaintiff SWAIN, he would "want to kill them" for such conduct.

21. Following the meeting Plaintiff SWAIN went to meet a Farmington Hills Detective, for the purpose of giving the Farmington Hills Detective the taped conversation of the meeting. The Farmington Hills Police took the recording and are

now investigating the sexual assault by Defendant MICHAEL MORSE for possible referral to the prosecutor.

22. Defendants MICHAEL MORSE, ZARKIN and LELLI'S committed various acts of negligence, intentional infliction of emotional distress, sexual assault and conspiracy to deprive Plaintiff SWAIN of her legal rights, all of which acts were committed within the County of Oakland, State of Michigan.

COUNT I
SEXUAL ASSAULT AND BATTERY
AGAINST DEFENDANT MICHAEL MORSE

23. Plaintiff SWAIN incorporates by reference the previous allegations, as if restated word for word and paragraph by paragraph.

24. At all times relevant, Defendant MICHAEL MORSE unlawfully and without consent touched Plaintiff SWAIN'S body, specifically her breasts, in a sexual manner.

25. At all relevant times Defendant MICHAEL MORSE negligently and/or willfully or maliciously sexually assaulted Plaintiff SWAIN on April 6, 2017.

26. Defendant ZARKIN knew of the sexual assault and tried to hide the occurrence of said assault in concert with Defendant MICHAEL MORSE.

27. Defendants MICHAEL MORSE and ZARKIN knew, or should have known, that their conduct was illegal and malicious and was a violation of the statutes and common laws of the State of Michigan.

28. As a result of Defendant MICHAEL MORSE'S illegal, grossly negligent and/or malicious conduct he breached the duties owed to Plaintiff SWAIN of not sexually assaulting a person, or touching, without consent, contrary to the laws and the rights of citizens in the State of Michigan.

29. Defendant ZARKIN, knowing of Defendant MICHAEL MORSE'S illegal, negligent and immoral conduct, intentionally, willfully and/or negligently tried to conceal the conduct, in violation of Plaintiff SWAIN'S rights under the common laws of the State of Michigan.

30. As a direct and proximate result of Defendants' conduct, Plaintiff SWAIN suffered a sexual assault inflicted by Defendant MICHAEL MORSE.

31. As a direct and proximate result of Defendants' negligent and grossly negligent actions and/or omissions, Plaintiff SWAIN has suffered and continues to suffer the following injuries and damages:

- a. Severe emotional and mental distress;
- b. Economic losses;
- c. Humiliation, grief, embarrassment;
- d. Fright and shock;
- e. Inability to experience social pleasures and enjoyment;
- f. Physical manifestations including shaking of hands, nausea, sleeplessness and other physical manifestations;
- g. Loss of earning capacity;
- h. All additional injuries and damages discovered throughout the course of this litigation;

32. As a direct and proximate result of the sexual assault and battery inflicted upon Plaintiff SWAIN, she has sustained injuries and damages as set forth herein. Moreover, such assault and battery were committed with the knowledge and consent of Defendants ZARKIN and LELLI'S.

WHEREFORE, Plaintiff SWAIN demands judgment in excess of Ten Million (\$10,000,000.00) Dollars, or whatever amount the trier of fact finds the plaintiff to be entitled, along with an award of exemplary damages, including costs, interest and attorney's fees.

COUNT II
NEGLIGENT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
AGAINST DEFENDANTS, MICHAEL MORSE, MARK ZARKIN and STEVEN
LELLI'S INN ON THE GREEN, L.L.C., STEVEN LELLI'S ON THE GREEN,
INC., AND STEVEN LELLIS ON THE GREEN, LLC.

33. Plaintiff SWAIN incorporates by reference the previous allegations, as if restated word for word and paragraph by paragraph.

34. Defendant LELLI'S, by and through its agent, MARK ZARKIN, inflicted great emotional distress upon Plaintiff SWAIN by way his negligent facilitation of the aforementioned illegal and improper acts.

35. The aforementioned illegal and improper acts constitute extreme and outrageous conduct, which caused Plaintiff SWAIN to suffer severe injuries, including humiliation, indignity and injury to her psyche including, but not limited to the following, all of which shock the conscience of the community:

- a. Failing to properly supervise Defendant MICHAEL MORSE and provide protection to Plaintiff SWAIN, as is the duty of a business to its business invitees.

36. Defendant MICHAEL MORSE, by and through his acts and/or omissions, inflicted emotional distress upon Plaintiff SWAIN, by his unconsented sexual assault and battery, and by his subsequent coercion of the Plaintiff in an attempt to hide his illegal conduct.

37. As a direct and proximate result of the Defendants' actions, all of which constitute either negligence or intentional infliction of emotional distress, Plaintiff SWAIN has suffered the following injuries and damages:

- a. Severe emotional and mental distress;
- b. Economic losses;
- c. Humiliation, grief, embarrassment;
- d. Fright and shock;
- e. Inability to experience social pleasures and enjoyment;
- f. Physical manifestations including shaking of hands, nausea, sleeplessness and other physical manifestations.;
- g. Loss of earning capacity;
- h. All additional injuries and damages discovered throughout the course of this litigation;

WHEREFORE, Plaintiff SWAIN demands judgment in excess of Ten Million (\$10,000,000.00) Dollars, or whatever amount the trier of fact finds the plaintiff to be entitled, along with an award of exemplary damages, including costs, interest and attorney's fees.

COUNT III
CIVIL CONSPIRACY AGAINST
AGAINST DEFENDANTS, MICHAEL MORSE, MARK ZARKIN and STEVEN
LELLI'S INN ON THE GREEN, L.L.C., STEVEN LELLI'S ON THE GREEN,
INC., AND STEVEN LELLIS ON THE GREEN, LLC.

38. Plaintiff SWAIN incorporates by reference the previous allegations, as if restated word for word and paragraph by paragraph.

39. Defendants MICHAEL MORSE and ZARKIN conspired to subvert the rights of Plaintiff SWAIN by trying to coerce Plaintiff SWAIN to not bring civil or criminal charges against Defendant MICHAEL MORSE.

40. Defendant ZARKIN, at the time of conspiring with Defendant MICHAEL MORSE, was the owner and agent of Defendant LELLI'S and acted with the express and/or implied permission of Defendant LELLI'S.

41. Defendants MICHAEL MORSE and ZARKIN knew about the assault and battery described herein, but failed to report the incident, call the police or do anything to protect Plaintiff SWAIN. Such conduct resulted in Defendants, MICHAEL MORSE, ZARKIN and LELLI'S, by the conduct of its agent ZARKIN, to jointly conspire to damage Plaintiff SWAIN as previously described in this Complaint.

42. As a direct and proximate result of Defendants' actions and conduct, Plaintiff SWAIN has suffered numerous injuries and damages, as more particularly enumerated above.

WHEREFORE, Plaintiff SWAIN demands judgment in excess of Ten Million (\$10,000,000.00) Dollars, or whatever amount the trier of fact finds the plaintiff to be

entitled, along with an award of exemplary damages, including costs, interest and attorney's fees.

COUNT IV
NEGLIGENCE, GROSS NEGLIGENCE, WANTON AND
WILLFUL MISCONDUCT OF ALL DEFENDANTS, MICHAEL MORSE, MARK
ZARKIN and STEVEN LELLI'S INN ON THE GREEN, L.L.C., STEVEN
LELLI'S ON THE GREEN, INC., AND STEVEN LELLIS ON THE GREEN, LLC.

43. Plaintiff SWAIN incorporates by reference the previous allegations, as if restated word for word and paragraph by paragraph.

44. Defendant ZARKIN, while employed by Defendant LELLI'S, committed, within the scope and course of his employment, acts of negligence, gross negligence, willful and wanton misconduct, as described previously. Defendants ZARKIN and Defendant LELLI's committed acts of negligence which include the following:

- a. Failing to monitor the conduct of patrons, so as to provide a safe premise for business invitees;
- b. Failing to intervene on behalf of the Plaintiff SWAIN so as to prevent the egregious acts of Defendant MICHAEL MORSE;
- c. Failing to have safeguards in place to prevent sexual assault of business invitee's;
- d. Assisting the perpetrator of a sexual assault in an attempt to cover up same.

As a result of breaching each and every duty owed by Defendants ZARKIN and LELLI'S as described above, Plaintiff SWAIN suffered damages and injuries as described herein.

45. At all time relevant all Defendants conduct as identified herein amounted to conduct so reckless as to have a substantial disregard whether injury should occur.

46. Defendant MICHAEL MORSE committed acts of negligence, gross negligence, willful and wanton misconduct against Plaintiff SWAIN, as described previously. Such acts constituted conduct so reckless and egregious as to amount to gross negligence.

47. As a direct and proximate result of the acts and conduct referenced above, by Defendants MICHAEL MORSE and ZARKIN, Plaintiff SWAIN suffered the numerous injuries and damages, as more particularly described herein.

WHEREFORE, Plaintiff SWAIN demands judgment in excess of Ten Million (\$10,000,000.00) Dollars, or whatever amount the trier of fact finds the plaintiff to be entitled, along with an award of exemplary damages, including costs, interest and attorney's fees.

COUNT V
PREMISE LIABILITY AGAINST STEVEN LELLI'S INN ON THE GREEN,
L.L.C., STEVEN LELLI'S ON THE GREEN, INC., AND STEVEN LELLIS ON
THE GREEN, LLC.

48. Plaintiff SWAIN incorporates by reference the previous allegations, as if restated word for word and paragraph by paragraph.

49. At all times relevant hereto Defendant LELLI'S, a Michigan corporation, was and is a business which invites the general public and specifically Plaintiff SWAIN to enjoy its restaurant and bar. As such Defendant LELLI'S owes duties to its business invitees to keep a safe premise, free of assault and battery upon its patrons, especially such conduct as Defendant has knowledge of.

50. Defendant LELLI'S agent and owner, Defendant ZARKIN, allowed Defendant MICHAEL MORSE to perpetrate a sexual assault and battery on Plaintiff SWAIN, and later assisted in a cover-up attempt.

51. Such acts were a breach of duties owed to Plaintiff SWAIN by Defendants MICHAEL MORSE, ZARKIN and LELLI'S and specifically a breach of duty by Defendant LELLI'S by failing to provide a premise which is free of sexual predators and sexual assault.


52. As a result of the breach of the above-described duties by Defendants, Plaintiff SWAIN has suffered the numerous injuries and damages, as more particularly described above.

WHEREFORE, Plaintiff SWAIN demands judgment in excess of Ten Million (\$10,000,000.00) Dollars, or whatever amount the trier of fact finds the plaintiff to be entitled, along with an award of exemplary damages, including costs, interest and attorney's fees.

DATED: May 15, 2017

Respectfully submitted,

BY:


GEOFFREY N. FIEGER (P30441)
DONALD H. DAWSON, JR. (P29692)
Fieger, Fieger, Kenney & Harrington, P.C
19390 W. Ten Mile Road
Southfield, Michigan 48075
PHONE: (248) 355-5555
FAX: (248) 355-5148
g.fieger@fiiegerlaw.com
d.dawson@fiiegerlaw.com


RENEE SWAIN

I declare that the statements above are
true to the best of my information,
knowledge and belief.

5-15-17
DATED

STATE OF MICHIGAN
CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RENEE SWAIN,

Plaintiff,

v

Case No.:
Hon.

MICHAEL MORSE, MARK ZARKIN
and STEVEN LELLI'S INN ON THE GREEN, L.L.C.,
STEVEN LELLI'S INN ON THE GREEN, INC.,
a Michigan Corporation,

Defendants.

GEOFFREY N. FIEGER (P304410
DONALD H. DAWSON, JR. (P29692)
Attorneys for Plaintiff
FIEGER, FIEGER, KENNEY & HARRINGTON
19390 W. Ten Mile Road
Southfield, Michigan 48075
(248) 355-5555, Fax 355-5148
g.fieger@iegerlaw.com
d.dawson@iegerlaw.com

DEMAND FOR JURY TRIAL

NOW COMES the Plaintiff, RENEE SWAIN, by and through her attorneys
FIEGER, FIEGER, KENNEY, & HARRINGTON, P.C., and hereby demands a trial by
jury in the above captioned matter.

DATED: May 15, 2017

Respectfully submitted,

BY:


GEOFFREY N. FIEGER (P30441)
DONALD H. DAWSON, JR. (P29692)
Fieger, Fieger, Kenney & Harrington, P.C
19390 W. Ten Mile Road
Southfield, Michigan 48075
PHONE: (248) 355-5555
FAX: (248) 355-5148
g.fieger@fiegerlaw.com
d.dawson@fiegerlaw.com



RENEE SWAIN

*I declare that the statements above are
true to the best of my information,
knowledge and belief.*

5-15-17
DATED