

Velva L. Price
District Clerk
Travis County
D-1-GN-18-002298
Carrisa Escalante

CAUSE NO. **D-1-GN-18-002298**

STEPHEN A. BABA	§	IN THE DISTRICT COURT
	§	
VS.	§	459TH JUDICIAL DISTRICT
	§	
AIR BNB PAYMENTS, INC. and	§	
ROCKY RIDGE MANAGEMENT, LLC	§	TRAVIS COUNTY, TEXAS

PLAINTIFF’S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

STEPHEN A. BABA files his Original Petition, of **AIR BNB PAYMENTS, INC.** and **ROCKY RIDGE MANAGEMENT, LLC.** and in support shows the following:

I. DISCOVERY CONTROL PLAN

Plaintiff intends for discovery to be conducted under a Discovery Control Plan by Order (Level 3) pursuant to Rule 190 of the Texas Rules of Civil Procedure.

II. PARTIES

Plaintiff is **STEPHEN A. BABA**. In compliance with Section 30.014 of the Texas Civil Practice and Remedies Code, the last three (3) numbers of his driver’s license are 509 and the last three (3) numbers of his social security number are 844.

Defendant **AIR BNB PAYMENTS, INC.** is a corporation organized under the laws of the State of Texas and fully authorized to do business in the State of Texas. Defendant may be served with process by and through its registered agent: **Corporation Service Company, 211 E. 7th St., Suite 620, Austin, Texas 78701** or wherever they may be found.

Defendant **ROCKY RIDGE MANAGEMENT, LLC** is a corporation organized under the laws of the State of Texas and fully authorized to do business in the State of Texas.

Defendant may be served with process by and through its registered agent: **Registered Agents, Inc., 700 Lavaca St., Suite 1401, Austin, Texas 78701** or wherever they may be found.

III. VENUE AND JURISDICTION

Venue is proper in Travis County, Texas, pursuant to Section 15.002(a)(3) and 15.005 of the Texas Civil Practice and Remedies Code. The Court has personal jurisdiction over the Defendants because the Defendants are citizens of Texas and/or have sufficient contacts with Texas, both in general and with respect to this specific incident, that it is proper for the Court to exercise jurisdiction over the Defendants. The Court has subject matter jurisdiction in this case because the amount in controversy, exclusive of interest and costs, is within the jurisdictional limits of this Court as Plaintiff, in compliance with Tex. R. Civ. P. 47, seeks monetary relief over \$1,000,000.00.

IV. FACTS

The lawsuit arises out of a preventable explosion which occurred late on the evening of August 18, 2016 or in the early morning hours of August 19, 2016. Mr. Baba was visiting the property at 17237 Rocky Ridge Road, Austin, Texas 78734. The premises was owned, controlled, maintained by Defendants. The BBQ Pit was also owned, controlled, maintained and warranted by Defendants. Mr. Baba smelled a strong odor of gas coming from the BBQ Pit, and when he approached the BBQ Pit to investigate, the BBQ Pit exploded without warning causing serious injuries requiring hospitalization and continuing treatment. The danger was not open or obvious, and Baba had no knowledge of the dangerous condition.

V. INJURIES

Mr. Baba received extensive medical treatment for burns to his legs and feet and is currently receiving additional treatment for an eye injury caused by shrapnel from the explosion.

1. Negligence

Defendants owed Plaintiff a duty to exercise ordinary care to keep the premises in a reasonably safe condition so as to prevent injury to Plaintiff. Defendants also owed a duty to Plaintiff, who was a business invitee of Defendants, to use ordinary care in maintaining and inspecting the premises and making repairs and modifications in such a manner that the serious risk of harm posed on the premises would be reduced or eliminated. Defendants are liable for (1) their failure to use ordinary care in keeping the premises in a reasonably safe condition; (2) failure to inspect the premises and failure to warn; (3) the unreasonably dangerous condition; and (4) the significant physical harm caused by the negligent maintenance of the property. Defendants were negligent, which was a proximate cause of the incident, injuries and damages.

2. Premises Liability

Defendants had a right to control and a duty to maintain and repair the premises in question. Defendants had a duty to inspect the premises for any and all hidden and concealed defects and conditions that were observable by reasonable inspection so as to prevent injury to Plaintiff. This duty specifically included any concealed or unreasonably dangerous, hidden conditions. Defendants, or their agents, servants, contractors, or employees, in the course and scope of employment, created, maintained, and failed to fix or warn about the unreasonably dangerous conditions. As a result, Defendants actually knew or should have known that the dangerous conditions existed, as the conditions existed long enough to give Defendants a reasonable opportunity to discover them. The dangerous condition was concealed from Plaintiff. Defendants failed to use ordinary care in keeping the premises in a reasonably safe condition, and such failure proximately caused the occurrence made the basis of this lawsuit and the

resulting injury and damage to Plaintiff. Plaintiff was unaware of the dangers on the day of the accident.

Additionally, Defendants were aware of the latent danger associated with the dangerous gas grill. Defendants had a duty to make the premises safe and/or warn Plaintiff, who was an invitee of Defendants that the hidden dangerous condition posed by the defective and unreasonably dangerous gas grill presented an unreasonable risk of harm. Defendants failure to use ordinary care in preventing, fixing or warning of this dangerous condition proximately caused the occurrence made the basis of this lawsuit and the resulting serious injury and damage to Plaintiff.

Furthermore, Defendants had actual or constructive knowledge of the unsafe premises conditions as they related to the defective and unreasonably gas grill and lack of adequate warnings, and such unsafe conditions posed an unreasonable risk of harm to Plaintiff who was a business invitee. Defendants failed to exercise reasonable care to reduce or eliminate the risks, and such failure proximately caused the occurrence made the basis of this lawsuit and the resulting severe injuries and damage to Plaintiff.

3. Negligent Maintenance and Failure to War or Repair

Defendants by ownership, lease, contract, agreement, operation and control, had a duty to maintain the premises, which included maintaining the property in a safe and proper manner. To that end, Defendants owed a duty to Plaintiff to use ordinary care in the maintenance and inspection of the property. Defendants were individually and/or jointly responsible due to their negligent acts or omissions for the injuries and damages as alleged below. These additional negligent acts or omissions include, but are not limited to, not performing a proper inspection or the property generally, and the grill in particular; not properly managing or maintaining the gas

grill; not properly warning Plaintiff of the hidden or latent dangers; not properly training their employees and/or agents in the proper manner and method of performing the repairs and/or maintenance; not supervising the work performed and analyzing the work in a reasonable way such that the improper repairs and oversight should have been discovered; and any acts or omissions regarding the failure to properly inspect, repair or warn about the defective and unreasonably dangerous gas grill. Defendants failed to use ordinary care and or were deliberately indifferent to the health, safety, and welfare of the Plaintiff in making or failing to make the adjustments /repairs / maintenance / supervision / training as set out above and such failure(s), as well as the other negligent acts or omissions set out above, proximately caused the occurrence made the basis of this lawsuit and the resulting severe and permanent injuries and damages to Plaintiff set out above and below.

4. Negligence Per Se

Defendant failed to either maintain the premises in a safe condition or make it safe. Defendants were responsible for the many safety law and building code violations on the premises. The applicable codes require that Defendants shall be responsible for the maintenance of the property generally, and the gas grill in particular. The lack of maintenance and repair were clear violations of the applicable codes. These violations constitute negligence per se and were the proximate cause of the explosion, and the Plaintiff's resulting injuries and damages.

VI. DAMAGES

Plaintiff STEPHEN BABA is entitled to monetary compensation for damages in an amount within the jurisdictional limits of this Court, as set out further below, and which the jury deems just and fair, to include, but not limited to, the following elements of damages which have occurred in the past and, in all reasonable probability, will be sustained in the future:

- a. Reasonable medical care and expenses sustained by Plaintiff **STEPHEN BABA** in the past. These expenses were incurred by Plaintiff **STEPHEN BABA** for the necessary care and treatment of the injuries resulting from the collision complained of herein and such charges are reasonable and are usual and customary for such services;
- b. Reasonable and necessary medical care and expenses sustained by Plaintiff **STEPHEN BABA**, which, in all reasonable probability, will be incurred in the future;
- c. Physical pain and suffering sustained by Plaintiff **STEPHEN BABA** in the past;
- d. Physical pain and suffering, which, in all reasonable probability, will be sustained by Plaintiff **STEPHEN BABA** in the future;
- e. Mental anguish sustained by Plaintiff **STEPHEN BABA** in the past;
- f. Mental anguish, which, in all reasonable probability, will be sustained by Plaintiff **STEPHEN BABA** in the future;
- g. Physical impairment, other than the ability to earn money, sustained by Plaintiff **STEPHEN BABA** in the past;
- h. Physical impairment, other than the ability to earn money that, in reasonable probability, will be sustained by Plaintiff **STEPHEN BABA** in the future;
- i. Loss of earning and/or the capacity to earn sustained by Plaintiff **STEPHEN BABA** in the past; and
- j. Loss of earning and/or the capacity to earn that, in reasonable probability, will be sustained by Plaintiff **STEPHEN BABA** in the future.

All the damages sought herein are within the jurisdictional limits of this Court, and Plaintiff would ask that the amount of actual damages awarded be subject to the evaluation of the evidence by a fair, reasonable, and impartial jury. Plaintiff would further ask that a fair, reasonable, and impartial jury assess the amount of exemplary damages in this case for those

found to be grossly negligent or guilty of malice, as such terms are defined under the law. The amount awarded against each Defendant the jury believes was grossly negligent, malicious, and/or consciously indifferent to the rights, safety, or welfare of the Plaintiff and/or the general public should be separately assessed.

Plaintiff would further show that they are entitled to recover interest for all elements of damages recovered for which the law provides for prejudgment interest, beginning (1) on either the 180th day after the Defendants receive written notice of claim from the Plaintiff, or (2) the day that suit is filed, whichever is earlier, and ending on the day preceding the date judgment is rendered, at the prejudgment interest rate governed by V.T.C.A. Finance Code §304.102, et. seq. Plaintiff is also entitled to post-judgment interest at the lawful rate.

VII. CONDITIONS PRECEDENT

Pursuant to Rule 54 of the Texas Rules of Civil Procedure, Plaintiff avers that all conditions precedent have been performed or have occurred and that every notice required by law to be given has been properly and timely given to all Defendants.

VIII. RULE 193.7 NOTICE

Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Plaintiff hereby give notice to Defendants of Plaintiff's intent to use, at trial and/or hearing, any and all documents produced by Defendants in this litigation.

IX. JURY DEMAND

Plaintiff demands a trial by jury and will tender the appropriate jury fee.

X. LEAD COUNSEL DESIGNATION

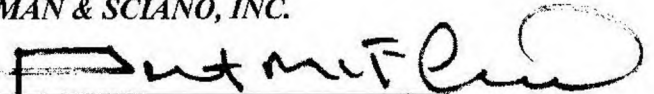
Grant McFarland is designated as lead counsel for Plaintiff.

XI. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully pray that Defendants, AIR BNB PAYMENTS, INC. and ROCKY RIDGE MANAGEMENT, LLC be cited to appear and answer herein and that, upon trial of this cause, Plaintiff has judgment of, from, and against Defendants for their actual damages in an amount within the jurisdictional limits of the Court, together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law, post-judgment interest at the maximum legal rate, costs of court, and for such other and further relief to which Plaintiff may be entitled at law or in equity.

Respectfully submitted,

TINSMAN & SCIANO, INC.

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