

CV-0092119

NO. _____

KELLY GAVIN

Plaintiff,

VS.

MOODY GARDENS, INC.

Defendant.

§ IN THE COUNTY COURT

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§ Galveston County - County Court at Law No. 2

§

§ AT LAW NUMBER _____

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§

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§ GALVESTON COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION, DEMAND FOR JURY TRIAL AND
REQUEST FOR INITIAL DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, KELLY GAVIN, Plaintiff herein, complaining of and about Moody Gardens, Inc. and files this Original Petition, Demand for Jury Trial and Request for Initial Disclosures, and in support of her claims and causes of action, would show the Court the following:

I. Discovery Control Plan Level

Plaintiff intends to conduct discovery under Level 3 as prescribed by TEXAS RULE OF CIVIL PROCEDURE 190.4 and affirmatively plead that this suit is not governed by the expedited actions process in TEXAS RULE OF CIVIL PROCEDURE 169 because Plaintiff seeks monetary relief over \$100,000.00.

II. Parties and Service

Plaintiff, KELLY GAVIN, is an individual who resides in Galveston, Galveston County, Texas.

Defendant, MOODY GARDENS, INC., is a domestic corporation doing business in the State of Texas and may be served with process by serving its registered agent for service, Irwin M. Herz, Jr. at One Moody Plaza, American National Building, 18th Floor,

Galveston, Texas, 77550, or wherever he may be found. Service is requested at this time.

III. Venue

Venue in Galveston County, Texas, is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to the claim described herein occurred in Galveston County, Texas.

IV. Factual Background

On or about May 9, 2023, Plaintiff, **KELLY GAVIN**, slipped and fell on the premises of Defendant, **MOODY GARDENS, INC.**, located at One Hope Boulevard in Galveston, Texas. Said premises was owned and operated by Defendant at the time of the incident. At the time of the incident in Defendant's lobby, no visible warning signs were posted to warn Plaintiff and other invitees that the floor was wet, having been recently mopped.

As a result of her fall, Plaintiff sustained severe physical injuries, including but not limited to a broken left wrist and thumb and other injuries and damages.

Defendant's acts and omissions were the proximate cause of Plaintiff's injuries. As a result of Defendant's negligence, Plaintiff sustained serious and permanent injuries requiring extensive medical treatment. At the time of the filing of this petition, Plaintiff is still receiving treatment for her injuries.

V. LIABILITIES OF THE DEFENDANT TO PLAINTIFF KELLY GAVIN AS AN INVITEE

Plaintiff was a business-invitee to premises controlled by Defendant. Plaintiff, **KELLY GAVIN**, entered Moody Gardens with said Defendant's knowledge and for their mutual benefit. Moody Gardens was open to the general consuming public, and Plaintiff entered to receive services offered by Defendant. As the owner/operator of Moody Gardens, Defendant was in control of the premises. Defendant owed a duty to the

Plaintiff, an invitee, to make the premises safe or warn against any concealed, unreasonably dangerous condition of which Defendant knew or should have known existed and of which the Plaintiff was not aware.

In this connection, Plaintiff would show that Defendant, **MOODY GARDENS, INC.**, was negligent in the following particulars:

- a. Defendant failed to provide a reasonably safe environment for Plaintiff and other invitees on Defendant's premises;
- b. Defendant failed to keep walkways on its premises clear of hazardous materials, including but not limited to liquids, debris and other materials which would hinder Plaintiff and other invitees from walking safely through the premises;
- c. Defendant failed to warn Plaintiff and other invitees of hazards preventing safe transit through the premises;
- d. Defendant failed to warn Plaintiff and other invitees of unsafe conditions preventing safe transit through the premises;
- e. Defendant failed to place signs or hazard cones to warn Plaintiff and other invitees of the unsafe condition of the floor;
- f. Defendant and/or Defendant's employee failed to properly warn Plaintiff and other invitees of the unsafe condition of the floor although Defendant's employee observed the unsafe condition on the floor before Plaintiff fell sustaining severe injury;
- g. Defendant failed to follow its own protocol regarding responding to a known hazard on its premises;
- h. In creating and/or maintaining a dangerous condition or defect upon their premises;
- i. In failing to inspect the premises in order to discover the dangerous condition or defect; and
- j. In failing to correct the dangerous condition or defect which was created or maintained by Defendants on their premises.

Each and all of the above and foregoing acts of negligence, both of omission and commission, were proximate causes of the incident made the basis of this suit.

VI. Damages for Plaintiff Kelly Gavin

As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, **KELLY GAVIN**, was made to suffer disabling personal injuries, which resulted in the following damages:

- A. Reasonable medical care and expenses in the past;
- B. Reasonable and necessary medical care and expenses in the future;
- C. Physical pain and suffering in the past;
- D. Physical pain and suffering in the future;
- E. Mental anguish in the past;
- F. Mental anguish in the future;
- G. Physical impairment in the past;
- H. Physical impairment in the future;
- I. Lost wages; and
- J. Loss earning capacity.

VII. Rule 47 Claims for Relief Statement

The amount of Plaintiff's damages is substantial and well in excess of the jurisdictional minimum of this Court. Many of the elements of Plaintiff's damages, including pain and suffering, past and future mental anguish, past and future physical impairment, and future lost earning capacity, cannot be determined with mathematical precision. Furthermore, the determination of many of these elements of damages are particularly within the province of the jury. Accordingly, Plaintiff does not, at this time, seek any certain amount of damages for any of these particular elements of damages, but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly and reasonably compensate her.

Solely to comply with Texas Rule of Civil Procedure 47, Plaintiff provides that she seeks monetary relief of at least \$250,000.00 but not over \$1,000,000. However, Plaintiff reserves the right to file an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low.

VIII. Notice that Documents will be Used

Pursuant to Tex. R. Civ. P. 193.7, Plaintiffs hereby give notice to all parties that Plaintiffs intend to use as evidence at the time of trial any and all documents produced in response to written discovery served by this Plaintiffs, and any documents exchanged and provided between the parties including, but not limited to, correspondence, pleadings, records, and discovery responses.

IX. Initial Disclosures

Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendant is required to disclose the information and material required under TRCP 194.2(b). Pursuant to TRCP 194.2(a), each Defendant is required to make the initial disclosures within 30 days after the filing of Defendant's answer.

X. Demand for Jury Trial

Plaintiff hereby demands a jury trial and tenders the appropriate jury fee concurrently with the filing of Plaintiff's Original Petition, Demand for Jury Trial and Request for Initial Disclosures.

XI. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff, **KELLY GAVIN** respectfully requests that notice and citation issue as required by law, and prays that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendant, **MOODY GARDENS, INC.**, for damages in an amount within the jurisdictional limits of the Court, post-judgment interest at the legal rate, and such other and further relief to which Plaintiff may be entitled by law or in equity.

Respectfully submitted,

APFFEL LEGAL, PLLC



By: _____

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Terri French on behalf of D. Blake Apffel

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Filing Description: Demand for Jury Trial, and Request for Initial Disclosures

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Associated Case Party: Kelly Gavin

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