

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

OMAR IVERY,

Plaintiff,

v.

CITY OF ATLANTA, a municipal corporation of the State of Georgia, KEISHA LANCE BOTTOMS, in her individual capacity as Mayor of the City of Atlanta, RODNEY BRYANT, in his individual capacity as former Interim City of Atlanta Police Chief, JOYCE SHEPERD in her individual capacity as Councilmember of the City of Atlanta, UNIVERSITY VENTURE, LLC, and WENDY'S INTERNATIONAL, LLC.

Defendants.

CIVIL ACTION
FILE NO. _____

COMPLAINT FOR DAMAGES

COMES NOW Plaintiff, OMAR IVERY, and hereby files this *Complaint for Damages* and shows the Court as follows:

INTRODUCTION

This action arises from the shooting death of Secoriea Turner on July 4, 2020. On that date, Secoriea and her mother, Charmaine Turner, were passengers in a vehicle being driven by OMAR IVERY down University Avenue. As OMAR IVERY was driving, he encountered a makeshift roadblock on University Avenue, where armed individuals began walking towards the car brandishing guns and signaling toward the OMAR IVERY that he could not drive pass the barricade. As OMAR IVERY approached the roadblock, one or more of the armed individuals

immediately opened fire into the vehicle, with eight of those bullets piercing the car. As a result of this incident, OMAR IVERY suffered physical and emotional trauma.¹

NATURE OF THE ACTION

1.

This is a civil lawsuit seeking damages arising from a series of actions and omissions of Defendants, which resulted in personal injuries to OMAR IVERY.

2.

This *Complaint* asserts claims against Defendant CITY OF ATLANTA, Defendant KEISHA LANCE BOTTOMS, in her individual capacity as Mayor of the City of Atlanta; Defendant RODNEY BRYANT, in his individual capacity as City of Atlanta Police Chief; Defendant JOYCE SHEPERD, in her individual capacity as Councilmember of the City of Atlanta. This Complaint also asserts claims against private entity Defendants UNIVERSITY VENTURE, LLC, and WENDY'S INTERNATIONAL, LLC, as the owners and operators of the Wendy's located at 125 University Avenue, SW, Atlanta 30315.

3.

Under Georgia law, municipal corporations and their officials may be held liable for the negligent performance of their ministerial duties. These Defendants failed to perform various ministerial duties and responsibilities relating to the protection of public health and safety. Through their actions and omissions, Defendants ignored and allowed lawlessness, violence, and

¹ This is a renewed action filed pursuant to O.C.G.A. § 9-2-61, within the original applicable period of limitations. As a result of this incident, two suspected gang members, Julian Conley and Jerrion McKinney, were arrested and charged in a thirty-seven-count indictment. See Indictment, attached as **Exhibit A**. Therefore, pursuant to O.C.G.A. § 9-3-99, the statute of limitations in this matter is tolled “from the date of the commission of the alleged crime or the act giving rise to such action in tort until the prosecution of such crime or act has become final or otherwise terminated, provided that such time does not exceed six years.” The previous action, *Fulton County State Court, Civil Action File No.: 21EV004438*, was voluntarily dismissed without prejudice on November 11, 2021.

vigilantism to disrupt the orderly and peaceful flow of traffic at or near the roadway at 125 University Avenue, SW, Atlanta 30315, which was the direct and proximate cause of the personal injuries suffered by Plaintiff OMAR IVERY.

PARTIES, JURISDICTION, AND VENUE

4.

Plaintiff OMAR IVERY (“MR. IVERY”), at all times relevant to this action, was a resident of the State of Georgia and can bring this action under Georgia law for all general, special, compensatory damages allowed under Georgia law. MR. IVERY is subject to the jurisdiction of this Court.

5.

Defendant CITY OF ATLANTA, at all relevant times relevant to this action, is and was a municipal corporation organized and existing under the laws of the State of Georgia. Defendant CITY OF ATLANTA is responsible for the supervision and operation of the City of Atlanta Police Department (sometimes referred to as “APD”). Defendant CITY OF ATLANTA may be held liable for the acts of its officials and employees acting within the course and scope of their employment. Defendant CITY OF ATLANTA may be served by serving Defendant MAYOR BOTTOMS through the City of Atlanta Department of Law, 55 Trinity Avenue, Suite 5000, Atlanta, Georgia 30303. Venue and jurisdiction are proper as to Defendant CITY OF ATLANTA.

6.

Defendant KEISHA LANCE BOTTOMS, at all times relevant to this action, is and was the Mayor for the City of Atlanta Police Department with supervisory and managerial authority over Defendant CITY OF ATLANTA, including APD and former Interim Chief of Police RODNEY BRYANT. Mayor BOTTOMS is ultimately responsible for the management and operation of Atlanta Police Department, and specifically responsible for ensuring that Atlanta

officials and police officers complied with the color and pretense of federal and state laws, as well as the ordinances, regulations, customs, usages of the State of Georgia and the City of Atlanta. Mayor BOTTOMS may be served through the City of Atlanta Department of Law, 55 Trinity Avenue, Suite 5000, Atlanta, Georgia 30303. Venue and jurisdiction are proper as to Defendant Mayor BOTTOMS.

7.

Defendant RODNEY BRYANT (“Interim Chief BRYANT”), at all relevant times to this action, is and was the former Interim Chief of Police for the City of Atlanta Police Department. Interim Chief BRYANT is and was directly responsible for the management and operation of APD, including the implementation and compliance of APD officers with APD’s Standard Operating Procedures. Interim Chief BRYANT may be served through the Public Safety Headquarters, 226 Peachtree Street, SW, Atlanta, Georgia 30303. Venue and jurisdiction are proper as to Interim Chief BRYANT.

8.

Defendant JOYCE SHEPERD, at all relevant times to this action, is and was a sworn member of the Atlanta City Council. In her capacity as a councilmember, said Councilmember SHEPHERD is and was vested with legislative powers as part of the governing body of the City of Atlanta, which include the power to adopt and provide for the execution of all ordinances, resolutions, and rules as shall be necessary or proper for the purpose of carrying into effect the powers and duties of the Charter of the City of Atlanta. Councilmember SHEPERD may be served through the City of Atlanta Department of Law, 55 Trinity Avenue, Suite 5000, Atlanta, Georgia 30303. Venue and jurisdiction are proper as to Councilmember SHEPERD.

9.

Defendant UNIVERSITY VENTURE, LLC (“UNIVERSITY VENTURE”), at all relevant times to this action, is and was the owner of the lot, property, and its approaches that encompassed the Wendy’s at 125 University Avenue, SW, Atlanta 30315, the location that is the subject of this lawsuit. Upon information and belief, UNIVERSITY VENTURE is a domestic limited liability company with its principal place of business in Sandy Springs, Georgia, and may be served with the Summons and Complaint through its registered agent, Dan Morris, at 6535 Williamson Dr, Suite 250, Sandy Springs, Fulton County, Georgia, 30328. Venue and jurisdiction are proper as to Defendant UNIVERSITY VENTURE.

10.

Defendant WENDY’S INTERNATIONAL, LLC (“WENDY’S INTERNATIONAL”), at all relevant times to this action, is and was the lessee and operator of the Wendy’s Restaurant at 125 University Avenue, SW, Atlanta 30315, the location that is the subject of this lawsuit. Upon information and belief, WENDY’S INTERNATIONAL is an Ohio limited liability company and may be served by second original of the Summons and Complaint through its registered agent, United Agent Group Inc., 2985 Gordy Parkway, 1st Floor, Marietta, Cobb County, Georgia 30066.

11.

Pursuant to O.C.G.A. § 36-33-5, Plaintiffs notified Defendant City of Atlanta of the claims stated herein by letter dated October 19, 2020 via certified mail with returns receipts requested. Copies of the ante litem notice and certified mail receipts are attached to this Complaint as composite **Exhibit A**. Although more than thirty (30) days have passed since Defendants received the ante-litem notice, Plaintiff has received no response from Defendant City of Atlanta acknowledging receipt of the ante-litem notice or expressing any willingness to resolve this matter.

FACTUAL ALLEGATIONS

12.

On June 12, 2020, Rayshard Brooks was shot and killed by an APD officer in the parking lot of the Wendy's restaurant located at 125 University Avenue, SW, Atlanta 30315 ("Wendy's").

13.

Within hours after Brooks' death, demonstrations immediately erupted in and around the Wendy's, including at or near the roadway at 125 University Avenue, SW, Atlanta 30315 (hereinafter "125 University Avenue").

14.

While some of the demonstrations at or near the roadway at 125 University Avenue were lawful and peaceful, there were other individuals who were armed and became violent and lawless.

15.

On June 13, 2020, as the demonstrations continued at or near 125 University Avenue, numerous individuals gathered at the Wendy's site where the shooting took place, while numerous other individuals also overtook the nearby interstate.

16.

The gathering and demonstrations near the Wendy's came to include peaceful, law-abiding protesters, as well as violent demonstrators.

17.

As the gathering and demonstrations grew larger, and the violent demonstrators became more enraged, the Wendy's was set on fire, cars were set on fire right outside of the Wendy's, and buildings were vandalized in the immediate area at or near 125 University Avenue.

18.

On June 17, 2020, Fulton County District Attorney Paul Howard (“District Attorney”) announced the filing of charges against the officers involved in the death of Brooks, including for felony murder and multiple counts of assault with a deadly weapon.

19.

Following this announcement, APD began a protest of its own, in what became known as the “blue flu” where police officers would call in sick and not show up to work because of their disappointment or discontent with the charges brought against their fellow officers by the District Attorney.

20.

Records from APD show that between Wednesday June 17, 2020, and Saturday June 20, 2020, a total of 171 APD police officers called out “sick.”

21.

Although Mayor BOTTOMS and Interim Chief BRYANT informed the public that no 911 calls would go unanswered, a very different message was being disseminated to officers by others, including high-ranking supervisors, within APD’s command.

22.

Following the news of the District Attorney’s charges, Major Kelley Collier sent a memo to APD officers on June 17, 2020 telling officers to refrain from “proactive” policing.

23.

The memo stated as follows: “If not, effective immediately, we will operate as police officers and will respond when violence occurs in an officer’s presence and will respond to victims

of violence. We will not be overly proactive in any shape, form or fashion. We are concerned about keeping our officers safe and healthy.”

24.

In the days and weeks following, some of the protestors began establishing the “Rayshard Brooks Peace Center” at the Wendy’s, where flowers, candles, paintings, signs, and balloons were laid to pay tribute to Rayshard Brooks.

25.

Unfortunately, the roadway surrounding 125 University Avenue, became an epicenter for protests, demonstrations, and violence, with little to no policing to keep the area under control.

26.

On June 19, 2020, a 24-year-old woman was peacefully protesting along the roadway at 125 University Avenue, when she was shot in the leg outside the Wendy’s.

27.

On June 20, 2020, a 35-year-old man was also shot in the leg after a drive-by shooting in the same area outside of the Wendy’s at 125 University Avenue.

28.

Witnesses in the area reportedly stated that police were driving by but did not intervene, and for that reason many people in the community resorted to going home and getting their own weapons to police the area.

29.

A witness to the June 20th shooting reportedly stated, “The police were here when the guy got shot. They saw the guy get shot. They saw the car that was shooting at us, and they didn’t pursue him.”

30.

Some community members began arming themselves to protect their neighborhood, while other individuals formed an armed militia that blocked roads, created a physical barricade on University Avenue near the Wendy’s (“the barricade”), and became violent toward people who tried to pass and to unfamiliar people and media attempting to enter the area.

31.

Unarmed community members pleaded with armed individuals to clear the area and go home, but their pleas were disregarded.

32.

Some members of the armed militia became increasingly violent and began terrorizing the streets, not allowing people to pass their barricade.

33.

When people would attempt to pass, the armed militia would target them by shooting at them, throwing rocks at them, or breaking their windows, and physically assaulting them.

34.

This barricade and violent area became a public nuisance and created a public defect that obstructed the right to passage in the middle of University Avenue.

35.

On July 4, 2020, the Plaintiff, MR. IVERY, MS. CHARMAINE TURNER (“MS. TURNER” and Secoriea Turner’s mother) and SECORIEA TURNER (“SECORIEA” and Ms. Charmaine Turner’s eight-year-old child) were returning home from a family gathering.

36.

At approximately 9:30 p.m., as MR. IVERY, a friend of Ms. Turner’s, was driving MS. TURNER’S green Jeep Cherokee down University Avenue, the jeep approached a “makeshift roadblock at the roadway near 125 University Avenue, that was manned by numerous armed individuals,” as described by Lt. Pete Malecki from APD.

37.

These armed individuals began walking toward MS. TURNER’S car brandishing their guns and signaling toward the car that they could not pass the barricade.

38.

As MR. IVERY approached the roadblock, one or more of the armed individuals immediately opened fire into the vehicle, with eight of those bullets piercing the car.

39.

SECORIEA was shot in her back while sitting in the back seat of the car.

40.

After being rushed to Atlanta Medical Center, SECORIEA succumbed to her injuries and was pronounced dead later that evening.

41.

Starting on June 13, 2020, Mayor BOTTOMS, Councilmember SHEPERD, Chief BRYANT, along with CITY officials allowed armed and violent individuals to encamp on and

take control of a major city street by erecting barriers in the middle of University Avenue and deciding who would be allowed to pass.

42.

Mayor BOTTOMS and CITY officials ignored community leaders' pleas for police assistance and failed to protect the safety of the public.

43.

When asked why the barricade of men was not cleared by police, Chief BRYANT blamed it on a "busy night."

44.

Following SECORIEA'S death, Mayor BOTTOMS and Councilmember SHEPERD admitted that "the city intended to barricade the parking lot [of the Wendy's] but logistics problems necessitated a delay."

45.

Mayor BOTTOMS, Chief BRYANT, Councilmember SHEPERD, and officials acting on behalf of the CITY were aware that there had been multiple shootings and assaults in the University Avenue area and that armed vigilantes staffing the makeshift barricade were responsible for most of those acts of violence.

46.

Mayor BOTTOMS said police had planned on cleaning the area weeks earlier but were encouraged to wait after Councilmember SHEPERD requested more time to "negotiate with activists."

47.

According to Mayor BOTTOMS, Councilmember SHEPERD wanted “to hold more discussions with the protesters on how best to move forward” and was quoted on July 8, 2020 by the AJC as stating that “I’m using the word ‘mediate’ for lack of a better term” in describing the efforts of Councilmember SHEPERD toward the vigilantes.”

48.

Councilmember SHEPERD explained to the AJC in the same July 8th article that “she still considers herself an activist and sees merit in listening to citizens with grievances,” believing that her actions were justified because “[h]ad police immediately tried to run off the large group, some of whom were armed, the situation could easily have spiraled out of control.”

49.

Although Mayor BOTTOMS, Councilmember SHEPERD, former Interim Chief BRYANT, and officials from the CITY were notified of lawlessness by members of the community who penned letters and spoke to them directly expressing ongoing fears of driving in the area, Defendants did nothing to end the lawlessness.

50.

In an interview with 11Alive on July 5, 2020, Councilmember SHEPERD admitted that this barricade had “become a major concern” that was called to her attention by residents.

51.

However, despite Councilmember SHEPERD’s expressed fearful refusal to go to the area at night, and even with knowledge of the dangers and the threat to the community that this heavily armed barricade posed to the area, Councilmember SHEPERD requested that Mayor BOTTOMS

have police stand down until she could “negotiate” with the demonstrators and find a solution that would not involve a large police presence.

52.

As a result, Mayor BOTTOMS ordered the police to stand down and to not respond to violent attacks in the area surrounding 125 University Avenue SW.

53.

Mayor BOTTOMS, as the Chief Executive Officer for the CITY has a legal duty and responsibility to protect the safety of the public, and all executive and administrative powers of the City are vested in her position. (Sec. 1-104. Executive Powers – City Code of Atlanta).

54.

Mayor BOTTOMS is also the Chief Administrator and the Official Representative of the CITY, which makes her responsible for the general management of the CITY, and responsible for ensuring that all laws and ordinances are enforced. (*Id.*).

55.

Mayor BOTTOMS is responsible for the appointment and supervision of all department heads, including the police chief, and has the authority and responsibility to execute and enforce the provisions of the City of Atlanta’s Charter. (*Id.*).

56.

Mayor BOTTOMS, as the Chief Executive Officer of the City, also has “emergency authority to declare an emergency to exist when, in the Mayor’s opinion” there is “civil unrest, commotion or uprising is imminent or exists” which in such case grants the Mayor the authority “to do any and all acts necessary and incidental to the preservation of life, limb and property of the citizenry of the City.” (Section. 2-181. – Emergency power of mayor regarding offenses).

57.

By agreeing to allow Councilmember SHEPERD more time to negotiate with armed civilians who had commandeered the area surrounding 125 University Avenue SW, and by ordering APD officers to stand down and refrain from proactive policing, and by standing by and letting vigilantism disrupt the streets, Mayor BOTTOMS and Interim Chief Bryant failed to carry out their duties in protecting the health and safety of the affected community.

58.

Mayor BOTTOMS, Interim Chief Bryant, and the CITY have a legal duty to promote safety, health, peace, and general welfare of the City and its inhabitants.

59.

The CITY is responsible for the regulation and control of the public streets, and responsible for carrying out all laws deemed necessary to deal with emergencies for the protection of the citizens of the City.

60.

During the height of public unrest, Mayor BOTTOMS, Interim Chief BRYANT, Councilmember SHEPERD, and the City neglected their duty to protect the safety of the public and allowed lawlessness, vigilantism, and violence to erode and disrupt the area surrounding the Wendy's at 125 University Avenue.

61.

The CITY failed to protect the University Avenue community, and it was its blatant disregard for the safety and well-being of the City's inhabitants that directly and proximately led to OMAR IVERY'S injuries and damages, which were foreseeable and avoidable.

62.

Interim Chief BRYANT, as now Chief of Police of APD, was and is the chief executive officer of APD, with the authority and responsibility to manage, direct, and control the operations and administration of APD.

PART I – CLAIMS AGAINST GOVERNMENT ACTORS

COUNT I– BREACH OF MINISTERIAL DUTY

(Against Defendants Mayor BOTTOMS, Interim Chief BRYANT, Councilmember SHEPERD, and CITY OF ATLANTA)

63.

Plaintiff incorporates by reference herein all allegations contained in the foregoing paragraphs of this Complaint.

64.

Pursuant to O.C.G.A. § 36-33-1(b), municipal corporations shall be liable “for neglect to perform or improper or unskillful performance of their ministerial duties.”

65.

Defendants are liable for their “neglect to perform or improper or unskillful performance of their ministerial duties” in violation of O.C.G.A. § 36-33-1(b).

66.

Mayor BOTTOMS, as the Chief Executive Officer and Chief Administrator of the City, is vested with all executive and administrative powers of the City and has a legal duty and the responsibility to protect the safety of the public.

67.

Mayor BOTTOMS has a legal duty and the responsibility to ensure that all laws and ordinances are enforced, and to appoint, manage and supervise all department heads, including Interim Chief BRYANT.

68.

Mayor BOTTOMS, Interim Chief BRYANT, Councilmember SHEPERD, and the CITY have a legal duty and the responsibility to protect the health and safety of the public.

69.

Starting on June 13, 2020, Mayor BOTTOMS, Interim Chief BRYANT, Councilmember SHEPERD, and the CITY, neglected their duties and responsibilities to protect public safety and allowed armed and violent individuals to encamp on and take control of a major city street by erecting barriers in the middle of University Avenue and deciding who would be allowed to pass.

70.

Defendants were all on notice of the dangerous condition and the ongoing need for APD presence and intervention in the area.

71.

Actual notice of a hazardous condition gives rise to a ministerial duty on the part of an individual charged with responsibility to respond to such a condition. *Jobling v. Shelton*, 334 Ga. App. 483, 779 S.E.2d 705 (2015).

72.

Defendants were aware of the danger and their duty to clear that area following the first two reported shootings, and they knew the barricade and armed civilians posed a significant threat to anyone who passed through that area, whether on foot or by car.

73.

Defendants were aware of their duty and responsibility to intervene and protect the area from the lawlessness and acts of violence, but they neglected to uphold their responsibilities and neglected to perform their ministerial duties.

74.

By agreeing to allow Councilmember SHEPERD more time to negotiate with armed civilians who had commandeered the University Avenue area, by ordering the police to stand down and refrain from proactive policing, and by standing by and letting vigilantism disrupt the streets, Mayor BOTTOMS, Interim Chief BRYANT, and the CITY negligently breached their ministerial duties in protecting the health and safety of the community.

75.

Mayor BOTTOMS, Interim Chief BRYANT, Councilmember SHEPERD, and the CITY negligently performed their ministerial duties relating to the protection of the public's health and safety, by omitting to act or failing to act and clear the area of the barricade and the violent armed civilians who surrounded it.

76.

Defendants negligently breached their ministerial duties by failing to act or respond to known hazards to protect public health and safety of citizens, which resulted in injuries and damages to Plaintiff OMAR IVERY.

77.

As a result of Defendants' negligent acts and omissions, and violation of their ministerial duties, MR. IVERY has suffered physical and emotional trauma after being involved in the shooting.

78.

Defendants have no sovereign immunity, official immunity or absolute immunity for their actions and omissions, and are liable to Plaintiff directly, as well as under the theories of respondeat superior, joint enterprise, and agency principles.

COUNT II – NUISANCE

(Against Defendants Mayor BOTTOMS, Interim Chief BRYANT, Councilmember SHEPERD, and CITY OF ATLANTA)

79.

Plaintiff incorporates by reference herein all allegations contained in the foregoing paragraphs of this Complaint.

80.

Mayor BOTTOMS, Chief BRYANT, Councilmember SHEPERD, and the CITY maintained a nuisance by failing to respond to and control a lawless area filled with violent individuals and armed civilians who obstructed the public streets.

81.

Under Georgia law, O.C.G.A. § 41-1-1 defines a nuisance as "anything that causes hurt, inconvenience, or damage to another and the fact that the act done may be otherwise lawful shall not keep it from being a nuisance. The inconvenience complained of shall not be fanciful, or such as would affect only one of fastidious taste, but it shall be as would affect an ordinary, reasonable man."

82.

A municipality like any other individual or private corporation may be liable for damages it causes . . . from the operation or maintenance of a nuisance, irrespective of whether it is

exercising a government or ministerial function." *City of Thomasville v. Shank*, 263 Ga. 624, 624, 437 S.E.2d 306, 307 (1993).

83.

A nuisance exists where "[t]he defect or degree of misfeasance must exceed mere negligence (as distinguished from a single act); the act complained of must be of some duration and the maintenance of the act or defect must be continuous and regularly repetitious; and there must be a failure of municipal action within a reasonable time after knowledge of the defect or dangerous condition." *Hibbs v. City of Riverdale*, 267 Ga. 337, 338, 478 S.E.2d 121, 122 (1996).

84.

The violence and criminal activity that occurred near the Wendy's location and the site of OMAR IVERY'S injuries and SECORIEA'S death was a nuisance, as it was not properly controlled and plagued the streets for weeks leading up to MR. IVERY'S injuries and SECORIEA'S death.

85.

Defendants were on notice about this dangerous nuisance and had an ample opportunity to act and control it, but instead, neglected to do so, allowing this nuisance to persist.

86.

Members of the community begged and pleaded with Defendants to dispatch more police and requested that the CITY clear the area so that law-abiding citizens could feel safe again.

87.

However, after Defendant Mayor BOTTOMS ordered the police to stand down, Interim Chief BRYANT complied and allowed the violence to continue overtaking the streets.

88.

But for Defendants' lack of intervening to control or dismantle the nuisance of an armed barricade that obstructed the roads and the violence that surrounded it, MR. IVERY would not have been injured and SECORIEA would still have her life today.

COUNT III- DEFECT IN A PUBLIC ROAD

(Against Defendants Mayor BOTTOMS, Interim Chief BRYANT, Councilmember SHEPERD, and the CITY OF ATLANTA)

89.

Plaintiff incorporates by reference herein all the allegations contained in the foregoing paragraphs of this Complaint.

90.

Defendants were negligent in failing to keep the roads safe and clear of the armed barricade that created a defect on University Avenue.

91.

Instead of fixing the defect, the Defendants negligently maintained it by allowing it to obstruct traffic after having ample notice of the presence and danger caused by this defect.

92.

Pursuant to O.C.G.A. § 32-4-93(a), a municipality is "relieved of any and all liability resulting from or occasioned by defects in the public roads of its municipal street system when it has not been negligent in constructing or maintaining the same or when it has no actual notice thereof or when such defect has not existed for a sufficient length of time for notice thereof to be inferred."

93.

Municipalities generally have a ministerial duty to keep their streets in repair, and they are liable for injuries resulting from defects after actual notice, or after the defect has existed for a sufficient length of time for notice to be inferred. *Bush v. City of Gainesville*, 105 Ga. App. 381, 383, 124 S.E.2d 667 (1962).

94.

Obstructions or defects in the streets include physical objects adjacent to and suspended over the street, that are brought about by the forces of nature and by persons, which render streets unsafe. *McKinley v. City of Cartersville*, 232 Ga. App. 659, 503 S.E.2d 559 (1998).

95.

The physical barricade that the armed civilians created on University Avenue was used to navigate and control who could and could not pass. The barricade itself created an obstruction and physical defect causing drivers to have to use another route to get to their destinations and causing drivers to be harassed and attacked.

96.

When drivers would get too close to this barricade, they were threatened verbally, assaulted with rocks, physically assaulted, or shot at.

97.

A municipality's function of maintaining its streets and sidewalks in a safe condition, without defects, has been held to be ministerial in nature. For weeks, Defendants did the exact opposite by allowing lawlessness and violent behavior to exist within the roadway and surrounding area at 125 University Avenue, putting the lives and safety of citizens and the general public at risk of harm.

98.

Defendants' failure to respond to the lawlessness and violence on University Avenue was the direct and proximate cause of the injuries MR. IVERY suffered, which injuries were foreseeable and could have been avoided.

PART II: CLAIMS AGAINST PRIVATE ENTITIES

COUNT IV– ORDINARY NEGLIGENCE

(Against Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL)

99.

Plaintiff hereby incorporates by reference herein all the allegations contained in the foregoing paragraphs of this Complaint.

100.

At all times relevant hereto, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL, as the owners, occupiers, tenants, and managers of the lot, building, and approaches that encompassed the Wendy's ("Premises"), had a duty to exercise ordinary care in the management, ownership, and operation of the Premises to include a duty provide safety and security relating to the operations of the Premises, including its parking lots and entry and access points.

101.

At all times relevant hereto, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL, owed a duty of care to OMAR IVERY to keep their Premises and its approaches safe from unlawful acts caused by third parties who entered onto the property.

102.

At all times relevant hereto and prior to this shooting incident, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL knew, or should have known, that there had been several incidents of lawlessness and crime on and around the Premises and its approaches.

103.

Prior to said time when OMAR IVERY was shot at and injured, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL were on actual or constructive notice that the Premises was dangerous and in hazardous condition through the knowledge of their employees and agents and due to the numerous prior criminal activities occurring on and around the property.

104.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL failed to maintain a policy, procedure, or system of investigating, reporting, and warning of criminal activity at and around their premises, and therefore have negligently maintained the premises to ensure that invitees and licensees were adequately protected from the criminal activity occurring on and around the Premises.

105.

Because Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL had knowledge of, or in the exercise of reasonable care, should have had knowledge of the dangerous environment and condition on and around the Premises.

106.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL were negligent in failing to warn, maintain, inspect, secure, patrol, and manage the Premises, thereby creating an unreasonable risk of injury to members of the public, including OMAR IVERY.

107.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL failed to take appropriate action to remedy or reduce the danger to members of the public, including OMAR IVERY, and allowed a dangerous condition on and around the Premises, which was the cause in fact and a proximate cause of the shooting at and into the vehicle OMAR IVERY was operating and of the injuries OMAR IVERY suffered.

108.

The shooting and injuries suffered by OMAR IVERY were the direct and proximate result of Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL's negligence, and but for said negligence, the vehicle Omar Ivery was operating would not have been shot into and OMAR IVERY would not have been injured.

109.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL are liable for Plaintiff's injuries, and all other elements of damage allowed under the laws of the State of Georgia.

COUNT V – PREMISES LIABILITY

(Against Defendant UNIVERSITY VENTURE and WENDY'S INTERNATIONAL)

110.

Plaintiff hereby incorporates by reference herein all the allegations contained in the foregoing paragraphs of this Complaint.

111.

As the owners, occupiers, tenants, and managers of the Premises, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL had a non-delegable duty under Georgia law to exercise reasonable care to protect invitees against a known risk of violent crime.

112.

The barricade where OMAR IVERY was shot at and injured was in the approaches of Defendant UNIVERSITY VENTURE and WENDY'S INTERNATIONAL's Premises.

113.

Approaches consist of “the property directly contiguous, adjacent to, and touching those entryways to premises under the control of an owner or occupier of land, through which the owner or occupier, by express or implied invitation, has induced or led others to come upon his premises for any lawful purpose, and through which such owner or occupier could foresee a reasonable invitee would find it necessary or convenient to traverse while entering or exiting in the course of the business for which the invitation was extended.” *Motel Properties, Inc. v. Miller*, 263 Ga. 484, 486 (3), 436 S.E.2d 196 (1993).

114.

Publicly owned property that falls within the above definition may constitute an approach over which a landowner owes some duty of care “within the confines of [its] right in the public way.” *Todd v. F.W. Woolworth Co.*, 258 Ga. 194, 196 (1), 366 S.E.2d 674 (1988).

115.

The site of the barricade and the shooting is contiguous, adjacent to, and touching Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL's property. The site was frequently used by customers, invitees, licensees, and trespassers as an approach to enter onto Premises where the Wendy's is located.

116.

Following the Rayshard Brooks shooting, rioters burned down the Wendy's Restaurant located on and around Defendants UNIVERSITY VENTURE and WENDY'S

INTERNATIONAL's property. Following the arson incident, crime continued to escalate and Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL failed to take reasonable measures to address and mitigate this dangerous activity.

117.

The foreseeability of this killing was imminent and Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL failed to exercise reasonable care to protect the public, including OMAR IVERY from the known risk of violent crime on the Premises and its surrounding approaches.

118.

The shooting and injuries suffered by the Plaintiff were the direct and proximate result of the negligence of Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL's and but for said negligence, OMAR IVERY would not have been shot at multiple times and MR. IVERY would not have been injured.

119.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL are liable for Plaintiff's injuries and all other elements of damage allowed under the laws of the State of Georgia.

COUNT V- NEGLIGENT UNDERTAKING

(Against Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL)

120.

Plaintiff hereby incorporates by reference herein all the allegations contained in the foregoing paragraphs of this Complaint.

121.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL undertook the Wendy's location at 125 University Ave. for consideration, and as owners, occupiers, tenants, and managers, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL had a duty to exercise reasonable care with any undertakings to protect third parties from being harmed from activities occurring within and around the approaches to its Premises.

122.

Pursuant to Section 324A of the Restatement (Second) of Torts, "one who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if (a) his failure to exercise reasonable care increases the risk of such harm, or (b) he has undertaken to perform a duty owed by the other to the third person, or (c) the harm is suffered because of reliance of the other or the third person upon the undertaking." *Huggins v. Aetna Casualty & Surety Co.*, 245 Ga. 248, 249, 264 S.E.2d 191 (1980).

123.

Following the shooting of Rayshard Brooks, the Wendy's location at 125 University Ave., owned, occupied, managed, and operated by Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL, turned into an epicenter for loitering, lawlessness, and violent crimes.

124.

In response to the loitering, lawlessness, and violent crimes occurring within and around the Wendy's location at 125 University Ave., Defendants UNIVERSITY VENTURE and

WENDY'S INTERNATIONAL undertook to secure the property and protect the public from lawless and dangerous activities occurring within and around the property, but failed to provide security, block entrances, install signage or protective barricades, or employ other reasonable efforts to mitigate and remedy the loitering, lawlessness, and violent behavior occurring within and around the Premises.

125.

The risk to persons like OMAR IVERY was escalated after the Wendy's location at 125 University Avenue was set on fire on June 13, 2020. Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL were fully aware of the dangers and the risks associated with leaving their premises exposed and unguarded.

126.

By failing to exercise reasonable care to decrease such risks of harm, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL willfully allowed the lawlessness to continue to plague their Premises and its surroundings.

127.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL negligently undertook to protect the public from the risks of harm resulting from the loitering, lawlessness and violence occurring within and around their Premises, which allowed violence and criminal activity to continue within and around their Premises for weeks up until the day OMAR IVERY was shot at multiple times and injured.

128.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL's negligent undertaking was a direct and proximate result of their failure to exercise reasonable care to protect their Premises, the Wendy's location at 125 University Avenue.

129.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL are liable to Plaintiff for his injuries and the emotional and physical harm they suffered.

COUNT VI- NUISANCE

(Against Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL)

130.

Plaintiff hereby incorporates by reference herein all the allegations contained in the foregoing paragraphs of this Complaint.

131.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL maintained a nuisance on their property at 125 University Avenue that was manifestly injurious to the health and safety of the public. Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL were aware of the lawlessness occurring on their property for weeks following the killing of Rayshard Brooks and did nothing to abate or remedy the ongoing nuisance.

132.

There were repeated incidents where Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL failed to prevent criminals from entering the Premises and repeated acts of violence.

133.

Given the multitude of criminal acts, including the discharging and brandishing of firearms, arson, vehicle break-ins, and assaults, Defendants UNIVERSTIY VENTURE and WENDY'S INTERNATIONAL maintained a nuisance on and around the Premises.

134.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL's maintenance of a nuisance was a cause in fact and a proximate cause of the shooting and injuries to OMAR IVERY.

135.

The shooting and the injuries suffered by Plaintiff were the direct and proximate result of Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL's negligence, and but for said negligence, SECORIEA TURNER would not have been shot and killed and MS. TURNER would not have been injured.

136.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL are liable for Plaintiff's injuries and all other elements of damage allowed under the laws of the State of Georgia. Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL are liable to Plaintiffs directly, as well as under the theories of respondeat superior, joint enterprise, and agency principles.

137.

The Georgia General Assembly has declared that all persons have a legally protected right to be secure and protected from fear, intimidation, and physical harm caused by the activities of violent groups or individuals. By turning a blind eye towards the violence and criminal activity for

the sake of their own profits, Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL fostered an environment of chronic criminal violence.

138.

Defendants UNIVERSITY VENTURE and WENDY'S INTERNATIONAL are liable to Plaintiff for the emotional and physical injuries Plaintiff suffered resulting from the creation and maintenance of a nuisance.

PART III – CLAIMS AGAINST ALL DEFENDANTS

COUNT VII – PERSONAL INJURY TO OMAR IVERY

(Against All Defendants)

139.

Plaintiff incorporates by reference herein all allegations contained in the foregoing paragraphs of this Complaint.

140.

As a direct and proximate result of the negligent and reckless actions and omissions of Defendants, who allowed vigilantism, lawlessness, and violence to plague the public street and vicinity at 125 University Avenue for weeks following the killing of Mr. Brooks, OMAR IVERY sustained personal injuries.

141.

The Jeep Cherokee Mr. Ivery was operating was shot at 8 times and incurred severe damage.

142.

As a result of being assaulted by armed gunmen who fired multiple times into the Jeep Cherokee vehicle, OMAR IVERY also suffered physical and emotional injuries from this incident.

143.

Based on the facts set forth herein, MR. IVERY suffered physical injuries that included a dangerous and life threatening elevation of his blood pressure as a result of the multiple gunshots fired at the vehicle he was operating. The dangerous and life threatening elevation of MR. IVERY'S blood pressure required emergency medical treatment and care, along with prescribed medication.

144.

As a result of this incident, MR. IVERY has suffered and continues to suffer from emotional injuries from the violent assault by gunfire into the vehicle he was operating, which placed him in reasonable apprehension of immediate violent injury, to include death, and is entitled to damages and compensation in an amount to be determined by the jury.

COUNT IX – ATTORNEY'S FEES AND LITIGATION EXPENSES

(Against All Defendants)

145.

Plaintiff incorporates by reference herein all allegations contained in the foregoing paragraphs of this Complaint.

146.

Prior to and during the pendency of this lawsuit, Plaintiff made a good faith effort to settle with Defendants all claims at issue in this lawsuit, but said effort was rejected by these Defendants.

147.

Defendants have been stubbornly litigious, acted in bad faith, and caused Plaintiff unnecessary trouble and expense. Consequently, Plaintiff is entitled to recover the expenses of

litigation and attorneys' fees incurred in the prosecution of this claim pursuant to O.C.G.A. § 13-6-11.

COUNT X – PUNITIVE DAMAGES

(Against All Defendants)

148.

Plaintiff incorporates by reference herein all allegations contained in the foregoing paragraphs of this Complaint.

149.

Plaintiff is entitled to an award of punitive damages, without limitation or cap, because the actions of Defendants showed willful misconduct, malice, fraud, wantonness, oppression, and an entire want of care, which would raise the presumption of conscious indifference to consequences and/or a specific intent to cause harm.

PRAYER FOR RELIEF

WHEREFORE, Named Plaintiff prays that this Court issue the following relief:

1. That process issue in accordance with the law;
2. That the Court grant a jury trial on all claims so triable;
3. Award Plaintiff compensatory, punitive, and consequential damages in an amount to be determined;
4. Award attorneys' fees and costs of litigation in an amount to be determined;
5. Grant such other relief as the Court deems proper.

Respectfully submitted this 9th day of January, 2023.

THE COCHRAN FIRM – ATLANTA

/s/ Samuel L. Starks

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