

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

FRANKLIN DURHAM, SR.,

Plaintiff,

v.

BELK, INC., and JANE DOE Store
Managers/Employees
1-5

Defendant.

IN THE COURT COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Civil Action No. 2023-CP-_____

**SUMMONS
(JURY TRIAL DEMANDED)**

To: DEFENDANTS BELK AND JANE DOE STORE MANAGERS/EMPLOYEES 1-5

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the above-captioned action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the Complaint on Plaintiff, by and through her undersigned counsel, at 3814 N. Main Street, Columbia, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of service. In the event that you fail to answer said Complaint within this time, Plaintiff will apply to the Court for the relief demanded in the Complaint, and judgment by default will be rendered against you for the relief demanded in the Complaint.

s/Christopher R. Hart

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September 19, 2023

Columbia, South Carolina.

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**COMPLAINT
(JURY TRIAL DEMANDED)**

TO: THE ABOVE-NAMED DEFENDANTS:

Franklin Durham, Sr., sues Defendant, Belk, Inc., a corporation registered to conduct business in South Carolina and Jane Doe Store Managers and Employees and alleges as follows:

GENERAL ALLEGATIONS

1. This is a personal injury action for damages in excess of \$7,500.00, exclusive of costs and interest, and any applicable attorneys' fees.
2. At all times material to this action, Franklin Durham, Sr was a resident of Richland County, South Carolina.
3. At all times material to this action, Franklin Durham, Sr. was the legal and lawful spouse to Bessie Durham.
4. At all times material, Defendant, Belk, Inc. was in Richland County, South Carolina.

5. At all times material, Defendants Jane Doe store managers/employees 1-5 were residents of Richland County.

6. At all times material, Defendant, Belk Inc, maintained, owned, and controlled the store located at 100 Columbiana Circle, Columbia, South Carolina.

7. At all times relevant, Belk, Inc hired independent contractors to clean and inspect their restrooms.

8. On or about September 15, 2022, Decedent Bessie Durham was employed as an independent contract worker to provide cleaning services for Belk's Department Store.

9. At all times material, Decedent Bessie Durham was lawfully on the premises of Belk's premises to provide cleaning services.

10. On or about September 15, 2022, Decedent Bessie Durham was granted access to Belk's Store and began her normal cleaning duties.

11. On or about September 15, 2022, at shortly after 7:00am while starting her normal cleaning duties, Decedent Bessie Durham entered the restroom located in Belk's store.

12. At all times material, Decedent Bessie Durham died while inside Belk's restroom.

13. At all times material, as result of her death, Decedent Bessie Durham's body lay slumped over on Belk's restroom for (4) days which caused her body to rapidly decompose for (4) days inside Belk's restroom.

14. Upon information and belief, Decedent Bessie Durham's yellow cleaning cart remained openly and obviously parked in the middle of Belk's hallway for (4) days.

15. Upon information and belief, Belk's employees walked back and forth past Bessie Durham's yellow cleaning cart that was parked in the middle of their hallway for (4) days.

16. Upon information and belief, none of Belk's employees ever inquired why Decedent's cleaning cart had not moved in (4) days.

17. At all times material, Belk maintained a non-delegable duty to inspect their restrooms.

18. At all times material, Belk maintained a duty to provide immediate shelter and care for Decedent's body upon her death.

19. Upon information and belief, for (4) days Belk's employees failed to inspect their restrooms.

20. Upon information and belief, for (4) days the independent contractors hired by Belk failed to inspect the restrooms.

21. Upon information and belief for (4) days Belk's store manager called Decedent's employer to ask why the restrooms were not being cleaned but never asked anything about Decedent well-being or whereabouts.

22. At all times relevant, Belk is responsible for the actions of its store managers and employees through respondeat superior.

23. At all times material, Belk wrongfully possessed Decedent's body for (4) days.

24. At all times material, immediately upon Bessie Durham's death, Belk had a duty to contact law enforcement and emergency medical personnel.

25. Upon information and belief, after decomposing for (4) days on Belk's restroom floor, it was law enforcement that contacted Belk to inquire about Decedent's whereabouts.

26. Upon information and belief, while Decedent's body decomposed in Belk's restroom for (4) days, Belk continued to ring up sales and generate revenue at their cash registers.

27. Upon information and belief, after decomposing for (4) days on Belk's restroom floor, Belk employees reviewed their security cameras which showed the Decedent entering the restroom the previous week but never exiting the restroom.

28. Upon information and belief, after decomposing for (4) days on Belk's restroom floor, law enforcement and emergency medical personnel responded to Belk's store.

29. Upon information and belief, upon entering Belk's restroom, law enforcement and emergency medical personnel immediately smelled the stench of Decedent's decomposing body

30. Upon information and belief, when Decedent's body was discovered, it had experienced severe skin slippage, blisters, leathering of her fingertips and severe facial swelling.

31. Upon information and belief, when Decedent's body was discovered, a large amount of purge and body fluids had pooled from her body onto Belk's restroom floor.

32. Upon information and belief, Decedent's family was not permitted to identify her body when she was removed from Belk's Department Store.

33. Upon information and belief, when Decedent's body was removed from Belk's store the Plaintiff and Decedent's family could smell the stench of her decomposing body.

34. Upon information and belief, the Plaintiff and Decedent's family could not prepare a proper funeral and burial for Decedent.

35. Upon information and belief, the Plaintiff and Decedent's family could smell the stench of Decedent's body inside the casket at her funeral and could not open Decedent's casket at her funeral.

36. At all times material, the Plaintiff and Decedent's family maintained a lawful right to control her remains.

37. At all times material, the Plaintiff and Decedent's family maintained a right to take immediate custody and control of her remains upon her death.

38. At all times material, the Plaintiff and Decedent's family had a right to provide shelter and care of her body to prepare for a funeral and burial.

FIRST CAUSE OF ACTION

Negligence and Negligence through Respondeat Superior

Plaintiff re-alleges all allegations contained in paragraphs 1 through 38 above and incorporates them by reference into this cause of action.

39. At all times of the incident described herein, Decedent was lawfully upon the premises of Belk's store.

40. Defendants owed a duty to Plaintiff and Decedent's family to take reasonable measures to prevent her body from decomposing in their restroom.

41. Defendants Belk and Jane Doe managers/employees 1-5 by and through their agents, servants, and employees, breached their duty and acted negligently, willfully, wantonly, and grossly negligent in one or more of the following particulars:

- a. In failing to inspect their restrooms on a daily basis to discover Decedent's body;
- b. In failing to notify Decedent's family that she had died in Belk's restroom;
- c. In failing to implement proper procedural safeguards for inspection of their restrooms;
- d. In failing to immediately call 911 to ensure Decedent's body was properly cared for;

- e. In failing to keep properly preserve Decedent's body while it was in Defendant's possession;
- f. In failing to keep Decedent's body in good condition;
- g. In failing to keep themselves and the Plaintiff apprised of the condition and location of Decedent's body;
- h. In negligently storing Decedent's body in a manner which any person would know would lead to the decomposition of Decedent's body;
- i. In failing to treat Decedent's body with care reasonably expected under the circumstances.
- j. In failing to notify Decedent's family of Defendant's failure to properly preserve the body of Decedent;
- k. In failing to exercise that degree of care which a reasonable prudent company would have exercised under the same circumstances;
- l. In failing to maintain the premises pursuant to applicable regulations, codes, and standards;
- m. In failing to follow proper store procedures, policies, and protocols for inspection and documentation of said inspections of the restrooms; and
- n. In failing to properly select and supervise independent contractors;
- o. Any such other particulars the evidence may show.

42. Defendant Belk and Jane Doe store managers/employees 1-5 maliciously, wantonly, and negligently mistreated Decedent's body that malice can be implied.

43. Defendant Belk Jane Doe store managers/employees 1-5 acted in a manner exhibiting a total lack of care sufficient to create a presumption of conscious indifference to consequences and effects upon the Plaintiff.

44. Defendant Belk and Jane Doe store managers/employees 1-5 acted in a wanton, outrageous and careless manner that was indifferent to the rights of the Decedent and the rights of the Plaintiff to have the Decedent's remains of his loved one properly and respectfully treated.

45. Defendants Belk and Jane Doe managers/employees 1-5 actions are so grossly negligent, wanton, and reckless as to be equivalent to an intentional violation of the rights of the Plaintiff.

46. As a result of Defendant Belk and Jane Doe managers/employees 1-5 conduct and great indifference to the effect of their conduct on the Plaintiff, Plaintiff was shocked and overwhelmed when he learned the tenable state of his loved one's body and as a result has been shocked emotionally and scarred for the rest of his life.

All of which were the direct and proximate cause of the Plaintiff's injuries to include severe emotional trauma, mental anguish, loss of enjoyment of life, and deprivation of Plaintiff's legal rights to properly funeralize and bury Decedent.

WHEREFORE, Plaintiff demands a jury trial and requests that judgment be entered against the Defendant on all causes of actions.

SECOND CAUSE OF ACTION

Premises Liability (Dangerous Conditions)

Plaintiff re-alleges all allegations contained in paragraphs 1 through 46 above and incorporates them by reference into this cause of action.

47. At all times relevant, Defendant Belk had a duty of care to the Decedent and Decedent's family.

48. At all times relevant, after a firearm shooting occurred at Columbiana Mall, Defendant Belk implemented a new policy and procedure to keep the restroom doors locked and only accessible with a key.

49. At all times relevant, this newly created policy created an inherent dangerous condition that entrapped Decedent inside the restroom.

50. At all times relevant, Defendant Belk's newly created policy directly contributed to the rapid decomposition of Decedent's body because no one could access the restroom.

51. Defendant Belk's breach of its duty of reasonable care directly and proximately caused the injuries suffered by the Plaintiff.

52. The Plaintiff's injuries include severe emotional trauma, mental anguish, loss of enjoyment of life, and deprivation of Plaintiff's legal rights to properly funeralize and bury Decedent.

53. Defendant Belk negligence in implementing the lock door policy was reckless, willful, and wanton, which all rise to the level of gross negligence.

54. As a result, Defendant Belk is liable to the Plaintiff for actual and punitive damages for creating a dangerous condition that proximately caused Decedent's body to decompose.

WHEREFORE, Plaintiff demands a trial by jury on all issues triable; and demands judgment against Defendant, including pre-judgment interest and costs, and all such other relief which may be deemed by this Court as applicable under South Carolina law.

THIRD CAUSE OF ACTION

Negligent Selection of Independent Contractors

Plaintiff re-alleges all allegations contained in paragraphs 1 through 54 above and incorporates them by reference into this cause of action.

55. At all times relevant, Defendants Belk hired independent contractors to clean and inspect their restrooms.

56. At all times relevant, Defendants Belk maintained a non-delegable duty to inspect their restrooms and if this duty was delegated, Belk had a duty to ensure the inspections were being done properly.

57. At all times relevant, Defendants Belk had a duty to the public and the Plaintiff in selecting its independent contractor to perform the inspections skillfully and competently.

58. Defendants Belk and Jane Doe breached this duty of reasonable care by selecting independent contractors that were neither competent nor careful in their inspections.

59. Defendants Belk and Jane Doe possessed actual and constructive knowledge that the independent contractors failed to demonstrate competence and carefulness in their prior work inspections.

60. Defendants Belk breach of their duty of reasonable care directly and proximately caused the injuries suffered by the Plaintiff.

61. The Plaintiff's injuries include severe emotional trauma, mental anguish, loss of enjoyment of life, and deprivation of Plaintiff's legal rights to properly funeralize and bury Decedent.

62. Defendants Belk and negligence in selecting independent contractors to inspect their premises was reckless, willful, and wanton, which all rise to the level of gross negligence.

63. As a result, Defendants Belk is liable to the Plaintiff for actual and punitive damages.

WHEREFORE, Plaintiff demands a trial by jury on all issues triable; and demands judgment against Defendant, including pre-judgment interest and costs, and all such other relief which may be deemed by this Court as applicable under South Carolina law.

FOURTH CAUSE OF ACTION

Claim for Punitive Damages Belk, Inc.

Plaintiff re-alleges all allegations contained in paragraphs 1 through 63 above and incorporates them by reference into this cause of action.

64. Defendant Belk, Inc actions demonstrate a conscious disregard for the rights and dignity of the family of Decedent Bessie Durham and the rest of the community.

WHEREFORE, Plaintiff demands punitive damages against Defendant Belk, Inc. demands a trial by jury on punitive damages.

WHEREFORE, Plaintiff prays for judgment against Defendant Belk, Inc. under all stated causes of actions, on claims of negligence, gross negligence, carelessness, recklessness, negligence per se, and willfulness in such sum of actual and punitive damages in such amount as necessary and appropriate to punish the Defendant and to deter them and anyone else from ever committing similar indecencies upon human remains and with such other relief this Court may deem just and proper, including pre-judgment interest, costs, applicable attorneys' fees and other relief as deemed reasonable by the trier of fact.

Further, Plaintiffs demand a trial by jury on all actions.

Respectfully submitted,

s/Christopher R. Hart

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September 19, 2023