

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

**Charlee Cooper, individually and
o/b/o the Estate of Paris Royal**

Plaintiff,

V.

The Kroger Co., et al.

Defendant/Third-Party Plaintiff

V.

Reliable Protection Services LLC
c/o Abdikafi Hagi
5611 Red Carnation Dr.
Galloway, Ohio 43119

and

**20 S. Third St., Suite 210
Columbus, Ohio 43215**

Richard Rush

Third-Party Defendants.

Case No. 23 CV 1972

Judge Michael Holbrook

JURY DEMAND ENDORSED HEREON

**ANSWER OF DEFENDANT THE KROGER CO. TO THE COMPLAINT AND
THIRD-PARTY COMPLAINT AGAINST RELIABLE PROTECTION SERVICES LLC
AND RICHARD RUSH**

For its Answer to Plaintiff's Complaint, The Kroger Co.:

FIRST DEFENSE

1. Denies for want of knowledge the allegations set forth in Paragraphs 1 and 2 of Plaintiff's Complaint.

2. Admit that The Kroger Co. is a corporation doing business in the State of Ohio and operated a retail location at 3600 Soldano Boulevard, Franklin County, Ohio

and otherwise denies for want of knowledge the allegations set forth in Paragraph 3 of Plaintiff's Complaint.

3. In response to Paragraph 4, admits that there was a private security guard on the premises at 3600 Soldano Boulevard on or about January 15, 2023 and otherwise denies for want of knowledge the allegations set forth in Paragraph 4 of Plaintiff's Complaint.

4. Denies for want of knowledge the allegations set forth in Paragraph 5 of Plaintiff's Complaint.

5. Admit that jurisdiction and venue are appropriate in Franklin County in response to Paragraph 6 of Plaintiff's Complaint.

6. Reasserts and realleges the foregoing as appropriate in response to Paragraph 7 of Plaintiff's Complaint.

7. In response to Paragraph 8, state that an individual believed to be Paris Royal physically attacked the security guard at the Kroger store located at 3600 Soldano Boulevard and that that security guard fired his weapon in response and otherwise denies the allegations set forth in Paragraph 8 of Plaintiff's Complaint.

8. Specifically denies the allegations set forth in Paragraphs 9 and 10 of Plaintiff's Complaint.

9. In response to Paragraph 11, state that an individual believed to be Paris Royal physically attacked the security guard at the Kroger store located at 3600 Soldano Boulevard and that that security guard fired his weapon in response and otherwise denies the allegations set forth in Paragraph 11 of Plaintiff's Complaint.

10. In response to Paragraph 12, state that an individual believed to be Paris Royal physically attacked the security guard at the Kroger store located at 3600 Soldano Boulevard and that that security guard fired his weapon in response and otherwise denies the allegations set forth in Paragraph 12 of Plaintiff's Complaint.

11. Reasserts and realleges the foregoing as appropriate in response to Paragraph 13 of Plaintiff's Complaint.

12. Specifically denies the allegations set forth in Paragraphs 14, 15, 16, 17 and 18 of Plaintiff's Complaint.

13. Reasserts and realleges the foregoing as appropriate in response to Paragraph 19 of Plaintiff's Complaint.

14. Denies for want of knowledge the allegations set forth in Paragraphs 20 and 21 of Plaintiff's Complaint.

15. Reasserts and realleges the foregoing as appropriate in response to Paragraph 22 of Plaintiff's Complaint.

16. Denies for want of knowledge the allegations set forth in Paragraphs 23 and 24 of Plaintiff's Complaint.

17. Denies each and every allegation not herein expressly admitted to be true.

SECOND DEFENSE

18. Reasserts and realleges each and every statement and defense contained in the First Defense.

19. Plaintiff has failed to join indispensable persons or parties needed for the just adjudication of this action.

THIRD DEFENSE

20. Reasserts and realleges each and every statement and defense contained in the First and Second Defenses.

21. Plaintiff's claims are barred by the conduct of Plaintiff's decedent, whether such conduct is characterized as contributory negligence, comparative negligence or assumption of risk.

FOURTH DEFENSE

22. Reasserts and realleges each and every statement and defense contained in the First, Second and Third Defenses.

23. Recovery by Plaintiff is barred by the intervening and superseding conduct of others.

FIFTH DEFENSE

24. Reasserts and realleges each and every statement and defense contained in the First, Second, Third and Fourth Defenses.

25. Plaintiff's claims are barred because of failure of service or failure of service of process.

SIXTH DEFENSE

26. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth and Fifth Defenses.

27. Plaintiff has failed to mitigate damages.

SEVENTH DEFENSE

28. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth and Sixth Defenses.

29. Plaintiff fails to state a claim against Defendant upon which relief can be granted.

EIGHTH DEFENSE

30. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth and Seventh Defenses.

31. Pursuant to *Jaques v. Manton*, (2010), 125 Ohio St. 3d 342, *Robinson v. Bates* (2006), 112 Ohio St. 3d 117 and Ohio statutory provisions, this Defendant is entitled to a reduction and/or set off for any and all amounts that were written off or otherwise not collected by medical providers, as a result of payments made by insurance carriers, health care providers, Medicare, Medicaid and/or workers' compensation.

NINTH DEFENSE

32. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Defenses.

33. This Defendant is entitled to a credit or set-off for certain collateral benefits paid to or on behalf of the Plaintiff, pursuant to statutory provisions or the common law of this jurisdiction.

TENTH DEFENSE

34. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Defenses.

35. This Defendant is liable for only that portion of Plaintiff's non-economic damages caused by Defendant's own proportionate share of liability, pursuant to statutory provisions or the common law of this jurisdiction.

ELEVENTH DEFENSE

36. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defenses.

37. The amount of damages recoverable by the Plaintiff in this action is subject to the limitations, restrictions or caps set forth in the Ohio Revised Code.

TWELFTH DEFENSE

38. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Defenses.

39. Plaintiff's injuries and/or damages are the result of the acts, errors or omissions of one other than this answering Defendant.

THIRTEENTH DEFENSE

40. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and Twelfth Defenses.

41. This Defendant reserves the right to assert additional defenses to this Complaint may be revealed through further investigation and discovery.

FOURTEENTH DEFENSE

42. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Defenses.

43. The Plaintiff may have failed to join all parties necessary for a just adjudication of this dispute, namely any health insurer, auto insurer and/or governmental agency who has or may have a subrogation claim or other interest in this lawsuit.

FIFTEENTH DEFENSE

44. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth and Fourteenth Defenses.

45. Plaintiff's claim of injury and/or damages are the responsibility of the acts or failure to act of one other than this answering Defendant.

SIXTEENTH DEFENSE

46. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth and Fifteenth Defenses.

47. Defendant is entitled to a credit and/or setoff of any amounts paid by any other person, party or entity whether or not that person, party or entity was a party to this litigation.

SEVENTEENTH DEFENSE

48. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Defenses.

49. Pursuant to Ohio Shop Keepers Privilege, O.R.C. § 2935.041, the Defendants are entitled to detain a person in a reasonable manner, for a reasonable time.

EIGHTEENTH DEFENSE

50. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth and Seventeenth Defenses.

51. Plaintiff's decedent was the physical aggressor in the altercation with the security guard in that he assaulted the security guard, thus entitling the guard to act in self-defense.

NINETEENTH DEFENSE

52. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth and Eighteenth Defenses.

53. Plaintiff's decedent's claims are barred by Plaintiff's decedent's unclean hands.

TWENTIETH DEFENSE

54. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth and Nineteenth Defenses.

55. Plaintiff's decedent was a trespasser at the Kroger store at the time of the incident.

TWENTY-FIRST DEFENSE

56. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh,

Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth and Twentieth Defenses.

57. The Kroger Co. has a duty and obligation to protect its customers and associates from the violent conduct of trespassers including Plaintiff's decedent.

TWENTY-SECOND DEFENSE

58. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth and Twenty-First Defenses.

59. The claims of Plaintiff are barred by the criminal conduct of Plaintiff's decedent.

TWENTY-THIRD DEFENSE

60. Reasserts and realleges each and every statement and defense contained in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth, Sixteenth, Seventeenth, Eighteenth, Nineteenth, Twentieth, Twenty-First and Twenty-Second Defenses.

61. Plaintiff Charlee Cooper has not been properly appointed as an administrator or administratrix of the estate of Paris Royal. The Complaint therefore fails for Plaintiff's lack of capacity to prosecute this case and/or lack of standing.

WHEREFORE, having fully answered the allegations of the Complaint, Defendant The Kroger Co. demands that Plaintiff's Complaint be dismissed, and that The Kroger Co. recover costs, including attorney fees, herein and hereinafter expended.

**DEFENDANT THE KROGER CO.'S THIRD-PARTY COMPLAINT AGAINST
 RELIABLE PROTECTION SERVICES LLC AND RICHARD RUSH**

Defendant and Third-Party Plaintiff The Kroger Co., by and through counsel, hereby state the following as its Third-Party Complaint against Third-Party Defendants Reliable Protection Services LLC ("Reliable") and Richard Rush ("Rush"):

1. On or about March 23, 2023, Plaintiff Charlee Cooper, claiming on behalf of the estate of Paris Royal, filed a Complaint against The Kroger Co.

2. The Complaint sets forth three separate causes of action as a result of an incident that occurred on or about the premises of The Kroger Co. located at 3600 Soldano Boulevard, Columbus, Ohio.

3. As a result of an incident at the Soldano Boulevard Kroger store, Plaintiff's decedent, Paris Royal, was shot and later died.

4. Plaintiff's first claim for relief sets forth a cause of action against The Kroger Co. for Negligence. Count Two of the Complaint sets forth a Complaint against John Doe Corporation, the security company that employed the guard for Negligence. Count Three sets forth a claim of Negligence against the individual Security Guard.

5. On or about September 2, 2021, The Kroger Co. and Reliable Protection Service LLC entered into a Master Service Agreement whereby Reliable Protection Service agreed to provide security services to The Kroger Co. at one or more of its retail locations including the location at 3600 Soldano Boulevard. The Master Service Agreement is not being attached hereto because it is already in the possession of The Kroger Co. and Reliable Protection Service LLC and because it contains information which is Confidential and Proprietary.

6. Among the provisions of the Master Service Agreement entered into by The Kroger Co. and Reliable is an indemnification provision which states:

- 7.1 Indemnification. Vendor will indemnify and hold Kroger harmless from and against all suits, proceedings at law or in equity, claims, liabilities, costs, payments and expenses (including reasonable attorneys' fees) asserted against Kroger or incurred by Kroger, arising out of or in connection with (i) Vendor's breach of this Agreement, (ii) any claim for damages to property or injuries to persons caused by or resulting from the willful or negligent acts or omissions of Vendor Personnel, or (iii) any claim by any third party regarding or caused by the Services.

Vendor will notify Kroger immediately in the event either injuries to Vendor Personnel, injuries to a third party, or damage to Kroger property arise out of the performance of the Services.

7. The Master Service Agreement between The Kroger Co. and Reliable also contains an insurance requirement that Reliable obtain and maintain insurance coverage for the services it provides and that The Kroger Co. be identified as an additional insured on the policy.

8. In accordance with the Master Service Agreement, Reliable was solely and exclusively responsible for the acts of its security guard while on the Kroger premises.

FIRST CAUSE OF ACTION
INDEMNIFICATION: CONTRACTUAL AND IMPLIED

9. Third-Party Plaintiff incorporates Paragraphs 1 through 8 above as if fully rewritten.

10. Third-Party Plaintiff, The Kroger Co., incorporates herein each and every averment, allegation, defense and denial contained in its Answer to Plaintiff's Complaint.

11. While Third-Party Plaintiff denies the validity of the claims made by Plaintiff against it in this matter, to the extent the claims exist or are proven to be true, Third-Party Defendants Reliable and Rush are responsible to Third-Party Plaintiff to indemnify it,

pursuant to the terms of the Master Service Agreement for any and all damages arising from this case.

12. While Third-Party Plaintiff, The Kroger Co., denies the validity of the claims raised by Plaintiff against it in this matter, to the extent the claims exist or are proven to be true, Third-Party Defendants are liable to Third-Party Plaintiff to impliedly indemnify it pursuant to the doctrine of implied indemnification.

SECOND CAUSE OF ACTION
CONTRIBUTION

13. Third-Party Plaintiff incorporates Paragraphs 1 through 12 above as if fully rewritten herein.

14. To the extent Third-Party Plaintiff, The Kroger Co., become obligated to pay damages of any kind to the Plaintiffs, Third-Party Defendants, Reliable and Rush, have primary liability to the Plaintiff and Third-Party Plaintiff's liability is secondary, thus entitling Third-Party Plaintiff to Contribution by Third-Party Defendants.

WHEREFORE, Third-Party Plaintiff demands judgment against Third-Party Defendants, Reliable and Rush, for indemnification and contribution.

FURTHER, Third-Party Plaintiff demands that Third-Party Defendants, Reliable and Rush, indemnify it against any losses attributable to the allegations of the Plaintiff together with attorneys' fees and costs herein.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

/s/ Mary Barley-McBride

Mary Barley-McBride (0037204)

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Counsel for Defendant/Third-Party Plaintiff

The Kroger Co.

JURY DEMAND

Defendant requests that this cause be heard before a jury of eight (8).

/s/ Mary Barley-McBride

Mary Barley-McBride (0037204)

CERTIFICATE OF SERVICE

This is to certify that a true and exact copy of the foregoing Answer of Defendant The Kroger Co. and Third-Party Complaint Against Reliable Protection Services and Richard Rush has been served upon the following via the Court's electronic filing system and/or electronic mail this 19th day of April, 2023:

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