

**POMPELIO, FOREMAN &  
GRAY, L.L.C.**

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Attorneys for Plaintiff, Nicholas Dilworth

NICHOLAS DILWORTH,

Plaintiff,

vs.

MURPHY'S THIRD RAIL BAR AND  
GRILL, John Does 1-10, John Does 11-20,  
ABC Corps. 1-10, ABC Corps. 11-20,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MORRIS COUNTY

Docket No.: MRS-L-

Civil Action

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, NICHOLAS DILWORTH, states his complaint against Defendant,

MURPHY'S THIRD RAIL BAR AND GRILL, as follows:

**PRELIMINARY STATEMENT**

1.

This action arises out of an aggravated assault and battery committed upon NICHOLAS DILWORTH on or about August 17, 2007 while he was lawfully on the premises of MURPHY'S THIRD RAIL BAR AND GRILL.

**THE PARTIES**

2.

NICHOLAS DILWORTH was a citizen of the State of New Jersey at all times pertinent and relevant to the incidents described in this Complaint.

3.

MURPHY'S THIRD RAIL BAR AND GRILL is a business located at 3 South Bergen Street, Dover, New Jersey.

4.

John Does 1-10 and ABC Corps. 1-10 are persons and organizations who hired and paid employees responsible for the safety, welfare and care of the patrons of MURPHY'S THIRD RAIL BAR AND GRILL.

5.

John Does 11-20 and ABC Corps. 11-20 are persons employed by MURPHY'S THIRD RAIL BAR AND GRILL for the purposes of making the premises safe.

**FACTS**

6.

On or about August 17, 2007 NICHOLAS DILWORTH was lawfully on the premises of MURPHY'S THIRD RAIL BAR AND GRILL.

7.

MURPHY'S THIRD RAIL BAR AND GRILL had a non-delegable duty to protect their patrons and insure that qualified, mature and conscientious security for NICHOLAS DILWORTH as persons who knowingly accepted responsibility for the well-being and safety of NICHOLAS DILWORTH while he was lawful patron on the premises of MURPHY'S THIRD RAIL BAR AND GRILL.

8.

On or about August 17, 2007 NICHOLAS DILWORTH was caused to sustain permanent injury when he was struck several times with a glass bottle while remaining on the premises located

inside of MURPHY'S THIRD RAIL BAR AND GRILL.

9.

As a direct result of the aggravated assault and battery described herein NICHOLAS DILWORTH has suffered and will continue to suffer severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, and other psychological injuries; was prevented and will be continued to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, and counseling; and incurred and will continue to incur loss of income and loss of earning capacity.

### **CLAIMS FOR RELIEF**

#### **NEGLIGENT SECURITY**

10.

NICHOLAS DILWORTH adopts by reference the foregoing paragraphs.

11.

MURPHY'S THIRD RAIL BAR AND GRILL, individually, jointly, and severally, including its agents, servants and employees owed a duty of ordinary care by providing reasonable security to NICHOLAS DILWORTH and the other patrons of MURPHY'S THIRD RAIL BAR AND GRILL.

12.

MURPHY'S THIRD RAIL BAR AND GRILL breached said duties owed to NICHOLAS DILWORTH and were negligent in failing to provide reasonable security, which a reasonably prudent owner, supervisor, operator or employee would have provided security in order to prevent injury to NICHOLAS DILWORTH.

13.

MURPHY'S THIRD RAIL BAR AND GRILL failed to provide reasonable security for NICHOLAS DILWORTH as persons who knowingly accepted responsibility for the well-being of NICHOLAS DILWORTH as a patron of MURPHY'S THIRD RAIL BAR AND GRILL.

14.

MURPHY'S THIRD RAIL BAR AND GRILL, individually, jointly, and severally, including its agents, servants and employees knew or through the reasonable exercise of reasonable care could have known that the behavior of its guests was such to indicate to one of average prudence that its guest might commit acts which would naturally result in injury to NICHOLAS DILWORTH.

15.

As a direct result of the failure to provide reasonable security described herein NICHOLAS DILWORTH has suffered and will continue to suffer severe and permanent emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, and other psychological injuries; was prevented and will be continued to be prevented from performing his normal daily activities and obtaining the full enjoyment of life; has incurred and will continue to incur expenses for medical and psychological treatment, and counseling; and incurred and will continue to incur loss of income and loss of earning capacity.

**WHEREFORE**, Plaintiff demands:

- (a) A trial by jury;
- (b) That judgment be entered against Defendants for damages in an amount reasonable and just by the evidence;
- (c) That all costs in this action be assessed against Defendants including attorney's fees,

costs and expenses of this action; and

(d) That Plaintiff be awarded all other relief as this Court deems just and proper.

### **DRAM-SHOP LIABILITY**

16.

NICHOLAS DILWORTH repeats the preceding allegations as if more fully stated herein.

17.

MURPHY'S THIRD RAIL BAR AND GRILL is an establishment that is licensed to sell alcoholic beverages.

18.

MURPHY'S THIRD RAIL BAR AND GRILL, individually, jointly, and severally, including its agents, servants and employees are liable for the foreseeable injuries and damages to NICHOLAS DILWORTH proximately caused by the its service of alcoholic beverages to visibly intoxicated persons.

19.

MURPHY'S THIRD RAIL BAR AND GRILL, individually, jointly, and severally, including its agents, servants and employees are liable in damages for the aggravated assault and battery perpetrated upon NICHOLAS DILWORTH due to its negligent service of alcoholic beverages, failure to exercise reasonable care to protect NICHOLAS DILWORTH as a patron of MURPHY'S THIRD RAIL BAR AND GRILL, and failure to take reasonable measures to safeguard patrons when they leave the premises of MURPHY'S THIRD RAIL BAR AND GRILL.

**WHEREFORE**, Plaintiff demands:

- (a) A trial by jury;
- (b) That judgment be entered against Defendants for damages in an amount reasonable and just by the evidence;
- (c) That all costs in this action be assessed against Defendants including attorney's fees, costs and expenses of this action; and
- (d) That Plaintiff be awarded all other relief as this Court deems just and proper.

**GROSS NEGLIGENCE**

20.

NICHOLAS DILWORTH repeats the preceding allegations as if more fully stated herein.

21.

MURPHY'S THIRD RAIL BAR AND GRILL, individually, jointly, and severally, including its agents, servants and employees omissions, conduct, breaches, failures, and negligence were grossly negligent and/or were in conscious willful, wanton and in reckless disregard of the safety of NICHOLAS DILWORTH.

**WHEREFORE**, Plaintiff demands:

- (a) A trial by jury;
- (b) That judgment be entered against Defendants for punitive damages in an amount reasonable and just by the evidence;
- (c) That all costs in this action be assessed against Defendants including attorney's fees, costs and expenses of this action; and
- (d) That Plaintiff be awarded all other relief as this Court deems just and proper.

***POMPELIO, FOREMAN & GRAY, L.L.C.***

Attorneys for Plaintiff  
Nicholas Dilworth

By: \_\_\_\_\_  
**DAVID E. GRAY, ESQ.**  
**Attorneys for Plaintiff**

DATED: August 14, 2009

**DEMAND FOR JURY TRIAL**

**PLEASE TAKE NOTICE** that Plaintiff hereby demands a jury trial.

DATED: August 14, 2009

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**DAVID E. GRAY, ESQ.**  
Attorney for Plaintiff

**DESIGNATION OF TRIAL COUNSEL**

**PLEASE TAKE NOTICE** that Paul S. Foreman, Esq., is hereby designated as trial counsel in the above captioned matter.

DATED: August 14, 2009

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**DAVID E. GRAY, ESQ.**  
Attorney for Plaintiff

**DEMAND FOR INTERROGATORIES**

Plaintiff demands that the defendant produces certified answers to the Form C and Form C(1) Interrogatories within sixty (60) days of service of this Complaint.

**DEMAND FOR DOCUMENTS**

Plaintiff demands that the defendant produce copies of any and all documents in his possession with regard to any of the issues set forth in this Complaint.



**CERTIFICATION**

The undersigned hereby certifies that the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration proceeding and that no other or arbitration proceeding are presently contemplated.

The undersigned further certifies that there are no other parties of which he is presently aware or should be joined in this action.

DATED: August 14, 2009

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**DAVID E. GRAY, ESQ.**  
Attorney for Plaintiff

