

COMMONWEALTH OF MASSACHUSETTS

38

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO. 66424

THOMAS SHAY,)
Plaintiff,)
vs.)
H.W. MARSHALL COMPANY, and)
ROBERT EVANS,)
Defendants.)

STIPULATION OF DISMISSAL

RECEIVED
JUL 29 1987
CLERK OF COURT

The parties to the above-entitled action, pursuant to the provisions of Mass. R. Civ. P. 41(a)(1)(ii), hereby stipulate that said action be dismissed with prejudice and without costs.

Dated; 7/29/87

Theodore Eisenstadt
Attorney for the Plaintiff
Theodore D. Eisenstadt
126 State Street
Boston, MA 02109
(617) 523-2625

Paul Fulton
Attorney for the Defendant
Paul Fulton
Linehan, Gallagher and Mahoney
One Boston Place
Boston, MA 02108
(617) 227-9100

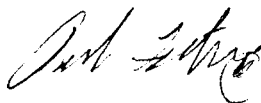
Notice Sent
8/7/87
T.D.E.
L, G+M
P.F.

JUDGMENT ENTERED ON DOCKET Aug. 7 19 87 AS AMENDED
PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P. 58 AND NOTICE SENT TO PARTIES PURSUANT TO THE PROVISIONS OF MASS.R.CIV.P. 77(d) AS FOLLOWS:

CERTIFICATE OF SERVICE

I, Paul Fulton, attorney for the defendant hereby certify that on the 3rd day of August, 1987, I caused a copy of the enclosed Stipulation of Dismissal to be mailed postage prepaid to Theodore D. Eisenstadt, Esquire, 126 State Street, Boston, MA 02109 with notice of the filing of the original in the Suffolk Superior Court.

By,



Paul Fulton
Linehan, Gallagher and Mahoney
One Boston Place, Suite 1450
Boston, MA 02108
(617) 227-9100

COMMONWEALTH OF MASSACHUSETTS

Aug 17, 1987

37

SUFFOLK, ss:

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT FOR
CIVIL BUSINESS
CIVIL ACTION

No. 66424

Thomas Sharz PLAINTIFF(S)

v.

J. W. Marshall Co. DEFENDANT(S)

"C"-5 LIST

ORDER FOR ENTRY OF DISMISSAL NISI-AS TO ALL CLAIMS

*JURY TRIAL LIST - WITHOUT JURY TRIAL LIST

THE ABOVE ENTITLED ACTION WAS *HELD - REACHED FOR TRIAL - HEARING
ON THE JURY LIST - WITHOUT JURY TRIAL LIST - BEFORE THE COURT,
Crotale J., PRESIDING, AND THEREUPON WAS REPORTED
SETTLED TO THE COURT BY COUNSEL OF RECORD.

WHEREFORE, IT IS ORDERED THAT THE AGREEMENT FOR JUDGMENT BE FILED
IN THE CLERK'S OFFICE WITHIN 20 DAYS FROM THE DATE OF THIS ORDER.
IF SAID AGREEMENT IS NOT FILED WITHIN SAID TIME THE CLERK IS HEREBY
DIRECTED TO PREPARE, SIGN AND ENTER JUDGMENT DISMISSING THE COMPLAINT, AS TO ALL
WITHOUT PREJUDICE AND WITHOUT COSTS. CLAIMS

COPIES ISSUED: 7/29/87 (als)

T.D.E. L,G & M
P.F.

956-5167

BY THE COURT, (Crotale J.)

James J. O'Leary
ASSISTANT CLERK

ENTERED: July 27 1982

*Strike Inapplicable Words.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

TRIAL DEPARTMENT OF THE
SUPERIOR COURT
CIVIL ACTION
NO: 66424

18

THOMAS SHAY)
Plaintiff)
V.)
H.W. MARSHALL COMPANY and)
ROBERT EVANS)
Defendants)

PLAINTIFF THOMAS SHAY'S
ANSWERS TO INTERROGATORIES
PROPOUNDED BY THE DEFENDANT
H.W. MARSHALL COMPANY

SEARCHED
SERIALIZED
INDEXED
FILED

1. Please identify yourself by giving full name, age, residence, business address, and occupation.
1. Thomas L. Shay age 40, residence: 11 Royce Road Apt. 16, Allston, MA 02134, business residence 17 Griggs Street rear, Allston, MA 02134 Occupation; auto body worker.
2. Describe in full detail how the accident occurred, giving all the details and events before, and at the time of the accident which had any bearing upon the causes of the same.
2. I was sitting in a parked car when I was struck on the left front of the auto by a truck driven by Robert Evans of Roslindale, MA.
3. If at the time of the accident you were operating your motor vehicle or the motor vehicle in which you were riding; please state whether you were doing so:
 - (a) personally; or,
 - (b) by your agent, identifying him or her by name, business address and home address.
3. (a) I was operating the motor vehicle at the time of the accident. (Parked)
4. In regard to your motor vehicle or the motor vehicle in which you were riding which was involved in the accident, please state:
 - (a) the name of the maker, type and year of model;
 - (b) when said motor vehicle was acquired;
 - (c) from whom it was purchased and the purchase price of said motor vehicle;

- (d) where any old damage on said motor vehicle was located prior to the accident;
4. (a) Chevrolet, Nova 4-door sedan, 1979
- (b) Not available
 - (c) Not available
 - (d) There was no old damage on said vehicle prior to the accident.
5. State in detail the damage allegedly caused to your motor vehicle or the motor vehicle in which you were riding as a result of the accident.
5. Complete left side of vehicle was damaged. \$1,918.51.
6. At what speed was your motor vehicle or the motor vehicle in which you were riding proceeding:
- (a) one-eighth of a mile prior to the collision;
 - (b) 250 feet prior to the collision;
 - (c) 100 feet prior to the collision;
 - (d) 50 feet prior to the collision;
 - (e) at the instant of the collision.
6. No speed, the vehicle was parked.
7. Describe the exact place where (a) the collision took place and (b) where your motor vehicle or the motor vehicle in which you were riding came to rest following the alleged collision, with reference to any lines of intersection, curbs, sidewalks, man-made or natural landmarks, the position of the defendant's motor vehicle and other.
7. (a) On Harvard Avenue near the corner of Brainerd Road in Allston. (b) On Brainerd Road, approximately 30 to 40 feet from the corner of Harvard Avenue. (my car was parked on Harvard Avenue, and was pulled around the corner onto Brainerd Road).
8. From the date of the accident to the present, identifying dates, times, persons present, and subject matter, describe all statements conversations, verbal and written exchanges and other communications between you and
- (a) the defendant;
 - (b) any and all persons at the accident scene, identifying said persons by name and address.

8. (a) April 23, 1982, 11:30 a.m., defendant and I were discussing the accident. He stated that he misjudged turning right around the corner. Papers were exchanged.
(b) Not applicable.
9. State the distance between your motor vehicle or the motor vehicle in which you were riding and the defendant's motor vehicle at the time you first saw the defendant's motor vehicle.
9. The defendant's vehicle was not seen until after the accident. The two vehicles were touching. The vehicle I was in was parked at the time of the impact.
10. Please state everything you or the operator of the motor vehicle in which you were riding did from the time you first saw the defendant's motor vehicle up to and including the time of the accident.
10. The first time I saw the defendant's vehicle was after the accident. I was parked.
11. Please state the points of contact between your vehicle or the motor vehicle in which you were riding and the vehicle of the defendant.
11. Immediate impact was on the left front of the vehicle I was in. The point of contact of the defendant's vehicle was right front.
12. If the accident took place at or near an intersection of ways, please describe:
 - (a) whether the defendant's motor vehicle came from the right or left of your motor vehicle or the motor vehicle in which you were riding;
 - (b) the number of feet from the nearest line of intersection your motor vehicle or the motor vehicle in which you were riding was when you first saw the defendant's motor vehicle;
 - (c) the number of feet from the nearest line of intersection the defendant's motor vehicle was when you first saw it;
 - (d) the presence or absence of traffic controls and the effect of the same on the accident.
12. (a) I was parked and the defendant's vehicle came from the left of the vehicle I was in.

- (b) I was parked on Harvard Avenue about 10 feet from the intersection of Harvard Avenue and Brainerd Road when the accident occurred; however I did not see the defendant's vehicle as I was parked at that time.
 - (c) I did not see the defendant's motor vehicle as I was parked at the time of the accident.
 - (d) There were none.
13. Please identify by name and address all persons who have knowledge of the facts alleged in your complaint.
13. None
14. Please state whether you or anyone acting in your behalf obtained any signed or unsigned statement(s) (specify which) from any alleged witnesses to the events alleged in the complaint. If so, please state:
- (a) the name and present address of the witness;
 - (b) the date said statement was prepared;
 - (c) the identity of the person who has the current custody or control of such written statement.
14. None
15. Please identify each expert consulted, employed or retained by you in anticipation of litigation or preparation for trial who is to be called as a witness at trial, by name, home address, business address, profession, occupation, and substance of facts and content of opinions to which said expert is or would be expected to testify at trial.
15. No such expert has been consulted to date; however, if and when I do consult, retain or employ such an expert I will supplement this answer.
16. Please identify each expert consulted, employed or retained by you in anticipation of litigation or preparation for trial who is not expected to be called as a witness at trial, by his name, home address, business address, profession and occupation.
16. No such expert has been consulted to date; however, if and when I do consult, retain or employ such an expert I will supplement this answer.

17. Describe in detail all the injuries from which you claim to have suffered up to the present time as a result of the alleged accident, including all marks or bruises and stating what part or parts of your body were affected.
17. Acute lower back sprain, shoulder and neck injuries, sprain of left knee. *LEFT KNEE OPERATION*
18. If you have any permanent injuries as a result of the alleged accident, describe them in specific detail.
18. Constant pain in the lower back, shoulder and neck, and left knee-not known at this time whether such pain will be permanent.
19. If you were confined to the house as a result of the alleged accident, state the dates between which you were so confined.
19. Evening of April 23, 1982 to April 27, 1982. (Visited doctor on that date.) Also, I was confined to the house after my knee surgery, October 12, 1982 to October 26, 1982.
20. If you were confined to bed as a result of the alleged accident, state the dates between which you were so confined.
20. Evening of April 23, 1982 to April 27, 1982. Also, I was in bed much of the time between October 12, 1982 and October 26, 1982, following my knee surgery.
21. State the dates between which you were unable to go about your usual activities as a result of the alleged injuries set forth in your complaint.
21. April 23, 1982 to the present.
22. If prior to or subsequent to the alleged accident, you have had any other illness or accidents which you claim, or intend to claim, have been in any way aggravated, increased or caused by any effects from said accident, describe the way and manner in which you have been so affected.
22. None
23. State in itemized detail all the financial loss which you have sustained as a result of the accident described in your complaint.

23. to date:

- (a) Brighton Orthopedic Associates, Inc. (John C. Molloy, M.D.) 733 Cambridge Street Brighton, MA 02135, \$3,150.00
- (b) Hahnemann Hospital 1515 Commonwealth Avenue Brighton, MA 02135, \$3,043.54
- (c) Southeast Anesthesia Associates 2110 Dorchester Avenue Dorchester, MA 02124, \$161.00
- (d) William T. Bates, R.P.T., A.T.C. (physical therapist) 733A Cambridge Street Brighton, MA 02135, \$10,846.61
- (e) Barbara P. Rockett, M.D. (Surgical assistant to Dr. John Molloy on October 6, 1982) 2000 Washington Street Newton, MA 02162, \$300.00.
- (f) Lost business profits to date: See answer to number 25, below.

24. Describe fully and incomplete detail any accidents, hospitalizations, illness, injuries, diseases and defects which you may have had or from which you may have suffered during the period five years prior to the accident up to and including the present.

24. None that I can recall, other than the injuries caused by the accident.

25. Specify your yearly gross earnings on an identified year to year basis from the period three years prior to the accident up to and including the present, identifying each and every source of said income by name, business address and home address.

25. I am in the process of obtaining copies of my income tax returns for these years, and will supplement this answer when I have said returns.

Signed under the penalties of perjury, this 24th day of August, 1984.


THOMAS L. SHAY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

TRIAL DEPARTMENT OF
THE SUPERIOR COURT
CIVIL ACTION
NO: 66424

THOMAS SHAY
Plaintiff

VS

H. W. MARSHALL COMPANY and
ROBERT EVANS
Defendants

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
FILED

SEP 24 1988

MICHAEL JOSEPH DONOVAN
CLERK OF COURT

=====

ANSWER OF THE DEFENDANTS
H. W. MARSHALL COMPANY AND ROBERT EVANS

Answering the Plaintiff's amended complaint, the
Defendants admit, deny and allege as follows:

1. Defendants allege they are without knowledge sufficient to form a belief as to the facts alleged in paragraph one of plaintiff's amended complaint and therefore denies all the allegations of said paragraph.
2. Defendant admits the allegations of paragraph two of plaintiff's amended complaint.
3. Defendant admits the allegations of paragraph three of plaintiff's amended complaint.

COUNT I - H. W. MARSHALL COMPANY

4. The defendant, H. W. Marshall Company, repeats its answers to paragraphs one through three and incorporates them by reference, in its answers to Count I of the plaintiff's amended complaint.
5. Defendants admit the allegations of paragraph five of plaintiff's amended complaint.
6. Defendants deny the allegations of paragraph six of plaintiff's amended complaint.

50

7. Defendants deny the allegations of paragraph seven of plaintiff's amended complaint.

COUNT II - ROBERT EVANS

8. The defendant, Robert Evans, repeats its answers to paragraphs one through three and incorporates them by reference, in its answers to Count II of the plaintiff's amended complaint.

The defendants allege the following affirmative defenses to plaintiff's amended complaint.

FIRST DEFENSE

1. And further answering, the Defendant says that the injuries and damages alleged were caused in whole or in part by the Plaintiff's own negligence.

SECOND DEFENSE

2. And further answering, the Defendant says that the negligence of the Plaintiff was greater than the negligence of the Defendant, wherefore the Plaintiff is not entitled to recover.

THIRD DEFENSE

3. And further answering the Defendant says that the injuries or damage alleged in the Plaintiff's complaint were caused in whole or in part by the violation by the Plaintiff of the various statutes, ordinances and regulations governing the conduct of the parties at the time said injuries or damage were received.

FOURTH DEFENSE

4. The Plaintiff is barred by the provisions of MGLA, Chapter 231, Section 6D, from recovery of damages for pain and suffering.

FIFTH DEFENSE

5. The Complaint fails to state a claim upon which relief can be granted.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

TRIAL DEPARTMENT OF
THE SUPERIOR COURT
CIVIL ACTION
NO: 66424

THOMAS SHAY
Plaintiff

VS

H. W. MARSHALL COMPANY and
ROBERT EVANS
Defendants

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
FILED

JUN 27 1974

ROBERT J. HENRY
CLERK OF COURT

=====

ANSWER OF THE DEFENDANTS

Answering the plaintiff's complaint, the defendants, admit, deny and allege as follows:

1. Defendants alleges they are without knowledge sufficient to form a belief as to the facts alleged in paragraph one of plaintiff's complaint and therefore denies all the allegations of said paragraph.
2. Defendants admit the allegations of paragraph two of plaintiff's complaint.
3. Defendants admit the allegations of paragraph three of plaintiff's complaint.

COUNT I - H. W. MARSHALL COMPANY

4. The defendant H. W. Marshall Company, repeats its answers to paragraphs one through three and incorporates them by reference in its answers to Count 1 of the plaintiff's complaint.
5. Defendants deny the allegations of paragraph five of plaintiff's complaint.
6. Defendants deny the allegations of paragraph six of plaintiff's complaint.
7. Defendants deny the allegations of paragraph seven of plaintiff's complaint.

DL

COUNT II - ROBERT EVANS

8. The defendant, Robert Evans, repeats his answers to paragraphs one through seven and incorporates them by reference in his answer to Count II of the plaintiff's complaint.

The defendants allege the following affirmative defenses to plaintiff's complaint.

FIRST DEFENSE

1. And further answering, the Defendants say that the injuries and damages alleged were caused in whole or in part by the Plaintiff's own negligence.

SECOND DEFENSE

2. And further answering, the Defendants say that the negligence of the Plaintiff was greater than the negligence of the Defendants, wherefore the Plaintiff is not entitled to recover.

THIRD DEFENSE

3. And further answering the Defendants say that the injuries or damage alleged in the Plaintiff's complaint were caused in whole or in part by the violation by the Plaintiff of the various statutes, ordinances and regulations governing the conduct of the parties at the time said injuries or damage were received.

FOURTH DEFENSE

4. The Plaintiff is barred by the provisions of MGLA, Chapter 231, Section 6D, from recovery of damages for pain and suffering.

FIFTH DEFENSE

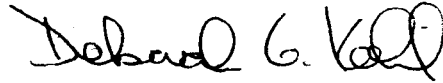
5. The Complaint fails to state a claim upon which relief can be granted.

SIXTH DEFENSE

6. The injuries and damage alleged by the Plaintiff were caused, in part, by the Plaintiff's own negligence. The recovery of the Plaintiff should be diminished accordingly.

Wherefore, defendants demand judgment, that the complaint herein be dismissed and that they have costs and disbursements of this action.

By,

A handwritten signature in cursive script, appearing to read "Deborah G. Kohl".

Deborah G. Kohl
125 High Street
Boston, Ma. 02110
423-6357

✓✓

1

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK:SS

SUPERIOR COURT
CIVIL NO.

THOMAS SHAY,)
Plaintiff)
vs.)
H. W. MARSHALL COMPANY)
and ROBERT EVANS,)
Defendants)

66424

COMPLAINT

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE
FILED

JAN 25 1984

MICHAEL JOSEPH DONOHUE
CLERK OF COURT

1. The plaintiff is a natural person residing at 17 Griggs Street, Allston, Suffolk County Massachusetts.
2. Defendant H. W. Marshall Company is a corporation organized under the laws of Massachusetts, with a principal office at 20 Westwood Street, West Newton, Middlesex County, Massachusetts.
3. Defendant Robert Evans is a natural person residing at 3 Whitford Street, Roslindale, Suffolk County, Massachusetts.

COUNT I - H. W. MARSHALL COMPANY

4. The plaintiff realleges and incorporates herein paragraphs 1 through 3, above.
5. On or about April 23, 1983, the defendant H. W. Marshall Company was the owner of a motor vehicle which was being operated by the defendant Robert Evans, who was its servant, agent or employee and for whose conduct the defendant H. W. Marshall Company was legally responsible.
6. On or about said date, the defendant Robert Evans, carelessly and negligently operated a motor vehicle owned by the defendant H. W. Marshall Company on a public way known as Harvard Street in Allston, Suffolk County, Massachusetts, so as to strike the rear of the parked vehicle in which the plaintiff was sitting.

7. As a result thereof, the plaintiff sustained personal injuries, some of which may be permanent, anguish of mind, medical expenses in excess of \$500.00, and has been unable to carry out his usual employment and personal duties.

Wherefore, in this Count I the plaintiff demands judgment against the defendant H. W. Marshall Company in the amount of \$850,000.00, interest and costs.


COUNT II - ROBERT EVANS

8. The plaintiff realleges and incorporates herein paragraphs 1 through 7, above.

Wherefore, in this Count II the plaintiff demands judgment against the defendant Robert Evans in the amount of \$850,000.00, interest and costs.

THE PLAINTIFF DEMANDS A TRIAL BY JURY ON
BOTH COUNTS

Thomas Shay
By his Attorney,


THEODORE D. EISENSTADT
89 State Street
Boston, MA 02109
Tel. No. 523-2625