

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

SAMANTA COLCLOUGH and CHRIS
COLCLOUGH,

Plaintiffs,

v.

JOHN MUSHNICK, WENDY BERRIOS GREEN,
CONJUGAL PARTNERSHIP MUSHNICK
BERRIOS; ABC INSURANCE COMPANIES; and
DOES I-X.

CIVIL NO. 13- 1126 ()

RE: TORT ACTION FOR
NEGLIGENCE PURSUANT TO
ARTICLES 1802 & 1803,
31 L.P.R.A. §§ 5141 & 5142.

JURY TRIAL DEMANDED

COMPLAINT

TO THE HONORABLE COURT:

APPEAR NOW the Plaintiffs, SAMANTHA COLCLOUGH and CHRIS COLCLOUGH (hereinafter referred to as "Plaintiffs"), through the undersigned counsel, and hereby state, allege, and request as follows:

JURISDICTIONAL BASIS

1. This case is based upon diversity jurisdiction under 28 U.S.C. §1332.
2. Plaintiffs are citizens and residents of the state of Pennsylvania.
3. All Defendants are individuals, corporations, business entities, or partnerships who are citizens of Puerto Rico or a state other than Pennsylvania.
4. The matter in controversy exceeds the sum of SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00), exclusive of interest and costs, thus vesting jurisdiction on this Honorable Court pursuant to 28 U.S.C. § 1332.
5. Venue is proper in the District of Puerto Rico pursuant to 28 U.S.C. §1391, since

the events and acts or omissions giving rise to this claim occurred in this district.

THE PARTIES

6. Plaintiff **SAMANTHA COLCOUGH** (hereinafter “Samantha”) is of legal age, a citizen and resident of the state of Pennsylvania, and married to Chris Colclough.
7. Plaintiff **CHRIS COLCLOUGH** (hereinafter “Chris”) is of legal age, a citizen and resident of the state of Pennsylvania, and married to Samantha.
8. Defendant **JOHN MUSHNICK** (hereinafter “Mr. Mushnick”) is a an individual of legal age, a citizen and resident of the Commonwealth of Puerto Rico, married to Wendy Berrios Green, and the owner, operator, manager, supervisor, landlord and/or maintenance provider for the rental property located at Bo. Playa Gordo Ward Calle C in Dorado, Puerto Rico (hereinafter “rental house”) which was rented to Plaintiffs on or about February 16, 2012.
9. Defendant **WENDY BERRIOS GREEN** (herein after “Ms. Berrios”) is an individual of legal age, a citizen and resident of the Commonwealth of Puerto Rico, married to John Mushnick, and the owner, operator, manager, supervisor, landlord and/or maintenance provider for the rental house which was rented to Plaintiffs on or about February 16, 2012.
10. Defendant **CONJUGAL PARTNERSHIP MUSHNICK BERRIOS** is a partnership comprised of John Mushnick and Wendy Berrios Green which benefited from the ownership and operation of the rental house which was rented to Plaintiffs on or about February 16, 2012.

11. Defendant **ABC INSURANCE COMPANY** is a corporation organized or operating under the laws of the Commonwealth of Puerto Rico, which insures one or more co-defendants for the acts and/or omissions described herein or that insures the rental house and/or is liable for the injuries and damages sustained by Plaintiffs.
12. Defendant **DOES I-X** are individuals, corporations, or entities that are citizens of Puerto Rico or a state other than Pennsylvania, are presently unknown, are an owner, operator, manager, supervisor, and/or maintenance provider for the rental house which was rented to Plaintiffs on or about February 16, 2012 or are otherwise jointly and/or severally liable to Plaintiffs for Plaintiffs' damages.

GENERAL ALLEGATIONS

13. In January of 2012, Plaintiffs communicated via telephone with Defendants regarding the rental of a house in Dorado, Puerto Rico.
14. During the conversation, Mr. Mushnick made material representation to Chris regarding the great condition of the rental house and how it had been totally renovated.
15. Based on those representations, Plaintiffs decided to rent the rental house from February 16, 2012 to February 23, 2012.
16. Plaintiffs paid Defendants the requested deposit (\$310.00) to reserve the rental house.
17. Plaintiffs arrived with their children in Puerto Rico on February 14, 2012 and stayed at the Verdanza Hotel in Isla Verde, Puerto Rico.
18. On February 16, 2012, Plaintiffs arrived at the rental house in Dorado at approximately 9:30pm.

19. Upon information and belief, the rental house was located at Bo. Playa Gordo Ward Calle C in Dorado, Puerto Rico.
20. The rental house was owned, operated, and managed by Mr. Mushnick and Ms. Berrios at the time of Plaintiffs' arrival.
21. Upon Plaintiffs' arrival, Mr. Mushnick provided a quick tour of a portion of the rental house.
22. Mr. Mushnick did not provide a tour of the bathroom connected to the bedroom inside the rental house.
23. At no point in time did Mr. Mushnick identify any dangerous conditions on the property.
24. At the time of arrival, Plaintiffs paid Mr. Mushnick an additional \$450.00 in cash as a partial payment for the rental, since Mr. Mushnick did not accept credit card payments.
25. In the morning of February 17, 2012, Chris and his children left for the beach as Samantha stayed at the rental house to unpack and shower.
26. Samantha used the shower connected to the bedroom inside the rental house.
27. When Samantha was in the shower, she felt a sharp pain in her ankle.
28. Samantha noticed blood running in the water and tried to open the shower door to get a towel and determine what had cut her.
29. As she tried to open the shower door, the shower door jammed and caused her to slip and fall backwards.
30. Samantha fell and fractured her coccyx, injured her neck and lower back, suffered severe bruising, and was in a great deal of pain.

31. After the fall, Plaintiffs examined the shower and found that the shower had sharp screws sticking out and the track for the door was broken.
32. The shower was in disrepair and constituted a dangerous condition on the property.
33. The shower was not suitable for its intended use.
34. Following Samantha's fall, Plaintiffs attempted to contact Mr. Mushnick to address the dangerous conditions on the property, including but not limited to the shower.
35. In addition to the shower, Plaintiffs witnessed exposed electrical wiring, an air conditioning breakdown, clogged sewer lines, broken windows, hot/cold water inconsistencies, and other problems with the rental house which were inconsistent with the representations made by Mr. Mushnick that the rental house was in great condition and fully renovated.
36. Plaintiffs left the rental property prior to the end of their scheduled stay due to Samantha's injuries and the dangerous condition of the property.
37. As Plaintiffs were leaving the rental property, Mr. Mushnick arrived and refused to go into the rental house.
38. Mr. Mushnick then stated that he would return shortly to settle everything with Plaintiffs and do a walkthrough.
39. Plaintiffs waited then they eventually learned that Mr. Mushnick had left the property in his vehicle.
40. Defendants have not repaid Plaintiffs for the rental payments or other the damages Plaintiffs have suffered as a result of Mr. Mushnick's misrepresentations or the dangerous conditions at the rental house.

41. Samantha sought medical care in the emergency room at Hospital Pavia Santurce in Santurce, Puerto Rico.
42. Samantha was told at Hospital Pavia Santurce to return home for an MRI and follow up care.
43. Upon Plaintiffs' return home to Pittsburgh, Pennsylvania, Samantha has sought medical care and has been engaged in ongoing physical therapy.
44. Despite the therapy, Samantha continues to experience pain.
45. The pain Samantha is experiencing is severe and debilitating, requiring many hours per day in bed.
46. Samantha's injuries have adversely affected the entire Colclough family and imposed additional burdens on Chris.
47. Samantha is no longer able to serve as a homemaker or otherwise perform gainful employment.
48. Samantha is no longer able to engage in social activities.
49. Samantha is no longer able to share an intimate and physical relationship with Chris.
50. Samantha is no longer able to engage in physical activities with Chris or her children.
51. Plaintiffs have suffered physical, emotional, mental, and economic damages as a result of this incident.

FIRST CAUSE OF ACTION - NEGLIGENCE

52. The allegations contained above are incorporated by reference as if again fully set forth herein.

53. Defendants, through their acts or omissions caused damage to Plaintiffs through fault or negligence in violation of 31 PR. Laws Ann. 5141.
54. On or about February 16, 2012, Defendants owned and operated the rental house located at Bo. Playa Gordo Ward Calle C in Dorado, Puerto Rico.
55. Defendants rented the rental house to Plaintiffs for use from February 16, 2012 to February 23, 2012.
56. Defendants received a monetary deposit and payment from Plaintiffs for the rental of the rental house.
57. Defendants, as the owners and operators of the rental house had a duty to Plaintiffs to keep the rental house in a safe condition, free from dangerous conditions, so that Plaintiffs would not suffer harm or damage.
58. Defendants breached their duty of care to Plaintiffs by failing to keep the rental house in safe condition, free from dangerous conditions, so that Plaintiffs would not suffer harm or damage.
59. Defendants failed to properly inspect or maintain the rental property to keep it free from dangerous conditions.
60. Defendants knew or should have known of the dangerous conditions present, including in the shower area, in their rental house during Plaintiffs' stay.
61. Defendants failed to adequately install or maintain the shower area so that individuals using the shower would not become injured.
62. Defendants failed to adequately install or maintain the screws and door track in the shower so that individuals using the shower would not become injured.

63. Defendants permitted their rental house to be rented and used by Plaintiffs with exposed and dangerous screws.
64. Defendants permitted their rental house to be rented and used by Plaintiffs with a defective, broken, or mis-installed shower door and track.
65. The dangerous conditions in the shower proximately caused Samantha to be cut and to fall in the shower.
66. The dangerous conditions in the shower proximately caused Samantha's physical injuries and Plaintiffs' damages.
67. Defendants failed to take all possible safety measures to ensure that Plaintiffs were not injured in the rental house.
68. As direct and proximate result of Defendants' negligence and carelessness, Plaintiffs sustained physical, emotional, mental, and economic damages.

SECOND CAUSE OF ACTION - MISREPRESENTATION

69. The allegations contained above are incorporated by reference as if again fully set forth herein.
70. Defendant Mr. Mushnick verbally represented to Chris that his rental property in Dorado, Puerto Rico was in great condition and totally renovated.
71. Based on Mr. Mushnick's representation, Plaintiffs paid for and rented the rental property.
72. Mr. Muchnick materially misrepresented the condition of the rental house.
73. The rental house was not in great condition.
74. The rental house had not been totally renovated.
75. The condition of the rental house was in fact dangerous.

76. The rental house had hardly been renovated at all.
77. As of February 16, 2012, the rental house had exposed electrical wiring, broken windows, old and malfunctioning appliances and equipment, and dangerous conditions in the shower, amongst other problems.
78. During Plaintiffs' stay, the air conditioning broke, the sewer lines became clogged, and the water temperature fluctuated, amongst other problems.
79. Mr. Mushnick's misrepresentations caused Plaintiffs to rent the property where Samantha would be become injured.
80. Mr. Mushnick's representations regarding the condition of the rental house were made to benefit himself, his wife, and his conjugal partnership.
81. Defendant Mr. Mushnick, through his material misrepresentations, caused damage to Plaintiffs through fault or negligence in violation of 31 PR. Laws Ann. 5141.
82. As a direct and proximate result of Mr. Mushnick's material misrepresentations, Plaintiffs sustained physical, emotional, mental, and economic damages.

THIRD CAUSE OF ACTION AGAINST CONJUGAL PARTNERSHIP MUSHNICK BERRIOS

83. The allegations contained above are incorporated by reference as if again fully set forth herein.
84. As of February 16, 2012, Defendant Mr. Mushnick and Ms. Berrios were married and had a conjugal partnership between them.
85. The activities by with Defendant Mr. Mushnick and Ms. Berrios caused Plaintiffs' damages were activities which benefitted their respective conjugal partnership, referred to herein as the Conjugal Partnership Mushnick Berrios.

86. The rental property containing the dangerous conditions which were the proximate cause of Plaintiffs' damages was owned as of February 16, 2012 by Defendant Mr. Mushnick and/or Ms. Berrios and was utilized to benefit the Conjugal Partnership Mushnick Berrios.
87. The Conjugal Partnership Mushnick Berrios is jointly and severally liable to all Plaintiffs for the damages caused by the rental house and/or Mr. Mushnick and/or Ms. Berrios.

FOURTH CAUSE OF ACTION AGAINST ABC INSURANCE COMPANIES

88. The allegations contained above are incorporated by reference as if again fully set forth herein.
89. Defendants ABC Insurance Companies were, at the time herein pertinent, authorized to do business as such in Puerto Rico, and issued an insurance policy on behalf of Defendants or another tortfeasor.
90. Pursuant to 26 P.R. Laws Ann. § 2001, an insurance company is directly liable for the negligence or fault of its insured.
91. Pursuant to 26 P.R. Laws Ann. § 2003, an action against an insurer may be brought separately or may be joined together with an action against its insured.
92. As a result, Defendants ABC INSURANCE COMPANIES are liable to all Plaintiffs for the damages caused to them by Defendants or another tortfeasor.

FIFTH CAUSE OF ACTION AGAINST DOES I-X

93. The allegations contained above are incorporated by reference as if again fully set forth herein.
94. Defendant DOES I-X caused damages to Plaintiffs through fault or negligence in

violation of 31 L.P.R.A. §5141 or 31 L.P.R.A. §5142 via their employees, agents, or assignees.

95. Defendant DOES I-X are jointly and severally liable for the damages caused to Plaintiffs.

DAMAGES

96. The allegations contained above are incorporated by reference as if again fully set forth herein.

97. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Samantha has suffered physical, emotional, mental, and economic damages.

98. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Plaintiffs have suffered economic damages including but not limited to medical expenses, medical liens, the lost rental deposit and payment, and lost future earnings.

99. Plaintiff Samantha Colclough's physical, emotional, mental, and economic damages as a result of the injuries sustained in the incident have a reasonable value of no less than Four Million Dollars (\$4,000,000).

100. As a result of the negligent acts, omissions, or misrepresentations of Defendants, Chris has suffered emotional, mental, and economic damages.

101. Plaintiff Chris Colclough's emotional, mental, and economic damages as a result of the incident and injuries suffered to his wife Samantha have a reasonable value of no less than Two Million Dollars (\$2,000,000).

TRIAL BY JURY DEMANDED

102. Plaintiffs hereby demand trial by jury.

WHEREFORE, Plaintiffs demand judgment against Defendants, jointly and severally, in the amount of no less than SIX MILLION DOLLARS (\$6,000,000.00), plus costs incurred, reasonable attorneys' fees, and such other and further relief as to this Honorable Court may seem just and proper under the law.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of February 2013.

Plaintiffs' Counsel:

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