

FILED

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

2005 JUN -3 AM 8:55

CLERK U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT MYERS DIVISION

ALEX ZIVOJINOVICH,
JUSTIN ZIVOJINOVICH and
MICHELLE ZIVOJINOVICH,

Plaintiffs,

vs

Case No.

HMC BN LTD PARTNERSHIP,
d/b/a THE RITZ CARLTON NAPLES,
FRANK BARNER, CHRISTOPHER KNOTT,
SCOTT RUSSELL and AMY STANFORD,

2:05 -c v - 263 -FtM-295PC

Defendants.

COMPLAINT

Plaintiffs ALEX ZIVOJINOVICH, JUSTIN ZIVOJINOVICH and
MICHELLE ZIVOJINOVICH, sue Defendants and allege:

1. This is an action brought pursuant to Title 42 U.S.C., Section 1983 and Title 28 U.S.C., Section 1343, seeking damages, including costs of litigation and reasonable attorney's fees, against the Defendants for committing acts, under color of state law, which deprived Plaintiff of rights secured by the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States. This Court has original jurisdiction pursuant to Title 28 U.S.C., Sections 1331 and 1343.

2. Plaintiff seeks Supplemental Jurisdiction of the Court against various Defendants for negligence pursuant to 28 U.S.C. 1367 in that such claims derive from a common nucleus of operative facts and are so related to the claims in the action within this Court's original jurisdiction that they form part of the same case or controversy.

3. The violation of Plaintiff's rights alleged herein was committed within Collier County, Florida, and venue is proper in this district pursuant to 28 U.S.C. Section 1391(b).

4. Defendants KNOTT, RUSSELL and STANFORD were, at all times material hereto, employed by the Office of the Sheriff of Collier County and were acting individually, and in concert and conspiracy, under the color of authority of the laws of the State of Florida.

5. Defendants HMC BN LTD PARTNERSHIP, d/b/a RITZ CARLTON NAPLES (Hereafter "RITZ,") through its agents, servants and employees, and BARNER were, at times material to certain of the allegations herein, willful participants and acting in concert with and under the direction of the Office of the Sheriff of Collier County and were therefore acting under the color of authority of the laws of the State of Florida as well as individually.

6. On or about December 31, 2003, Plaintiffs, individuals within the jurisdiction of the United States at all time material hereto, were attending a New Year's Eve function sponsored and conducted by Defendant RITZ which consisted of dinner, music, dancing, alcoholic beverages and party favors at a significant cost per person.

7. During the evening's festivities and celebration, Plaintiff JUSTIN and others twice went on the stage where the musicians were performing.

8. After the second time on stage, Plaintiff JUSTIN was first asked by Defendants RITZ and BARNER not to get back on the stage or he would be required to leave the premises.

9. Plaintiff JUSTIN strictly complied with that request and never set foot on the stage again, and, in fact, began peacefully eating his dinner.

10. Defendant BARNER then directed that the Collier County Sheriff's office be called to come to the premises and evict Plaintiff JUSTIN.

11. Employees of Defendant RITZ falsely advised the Collier County Sheriff's office that Plaintiff JUSTIN was engaged in dangerous and destructive behavior, when in truth and in fact that was not true.

12. Defendants KNOTT and STANFORD were the first to respond to the call and proceeded to Defendant BARNER's location.

13. Defendant BARNER advised Defendants KNOTT and STANFORD that he wanted Plaintiff JUSTIN removed from the premises, although Plaintiff JUSTIN had never been asked to leave.

14. While one witness asserts that Defendant BARNER did tell the deputies that Plaintiff JUSTIN had refused to leave after being asked to do so, Defendant BARNER says he did not ask Plaintiff JUSTIN to leave.

15. Defendant KNOTT advised Plaintiff JUSTIN to gather his belongings because Plaintiff JUSTIN was to be escorted off the premises.

16. Neither Defendant KNOTT nor any other person asked Plaintiff JUSTIN to leave or gave him the opportunity to leave through a nearby and easily accessible hotel exit or anywhere else.

17. Instead, Defendants KNOTT and STANFORD physically restrained Plaintiff JUSTIN without any legal justification and forced him to walk through a back hallway and enter a stairwell leading to the service entrance.

18. During that time Defendants KNOTT and STANFORD applied illegal and unjustified force and such force was excessive causing Plaintiff JUSTIN severe discomfort and pain.

19. Defendants KNOTT and STANFORD, while continuing to illegally restrain Plaintiff JUSTIN and to cause him severe discomfort and pain, entered the

aforesaid stairwell and began to descend the stairs, at which point Plaintiff JUSTIN pulled his right arm from Defendant STANFORD'S grasp to alleviate his discomfort.

20. At that point, Defendants KNOTT and STANFORD, without legal authority or justification took Plaintiff JUSTIN to the floor with excessive force causing him further discomfort and pain.

21. Defendant KNOTT then, again without legal authority or justification, applied the effects of a Taser gun consisting of some 50,000 volts of electricity on Plaintiff JUSTIN'S body with excessive force causing further discomfort and pain.

22. Plaintiff JUSTIN was then again tasered multiple times by Defendants KNOTT and RUSSELL without legal authority or justification with excessive force causing him further discomfort and pain.

23. Plaintiff JUSTIN was then arrested and handcuffed by Defendant BARNER who was acting in concert with, and with the consent of Defendants KNOTT, STANFORD and RUSSELL, in his capacity as an employee of Defendant RITZ, and thus under color of state law.

24. Plaintiff JUSTIN was deprived of his liberty and required to be taken to the Collier County Jail, booked, detained, and then released.

25. Plaintiff MICHELLE, in fear for the safety of her husband Plaintiff JUSTIN, verbally complained about the illegal and excessive force used against her husband and was arrested by Defendant RUSSELL without probable cause or any legal authority.

26. Plaintiff MICHELLE was deprived of her liberty and required to be taken to the Collier County Jail, booked, detained, and then released.

27. Plaintiff ALEX, in fear for the safety of his son Plaintiff JUSTIN, went to his son's assistance and was battered by Defendants STANFORD, KNOTT and/or RUSSELL and tased multiple times by one or more of the Defendants.

28. The force used against Plaintiff ALEX was excessive and without legal justification, and caused him severe bodily and emotional injury.

29. Plaintiff ALEX was illegally arrested, was deprived of his liberty without probable cause or legal justification, handcuffed, taken to the Collier County Jail, booked, detained, and then released on bond.

CIVIL CONSPIRACY

30. Defendants RITZ, BARNER, KNOTT, STANFORD AND RUSSELL, acted in unlawful conspiracy with each other to injure Plaintiffs through the underlying torts as alleged below.

FEDERAL CLAIMS

COUNT I

(Violation of Civil Rights- Justin/Knott)

31. Defendant KNOTT illegally detained and restricted the freedom of Plaintiff JUSTIN and therefore Defendant KNOTT intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

32. Defendant KNOTT used unnecessary and excessive force in escorting Plaintiff JUSTIN and therefore Defendant KNOTT intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

33. As a direct and proximate result of the wrongful conduct of Defendant KNOTT as alleged above, Plaintiff JUSTIN suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life.

34. The acts of Defendant KNOTT deprived Plaintiff JUSTIN of his right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

35. Plaintiff JUSTIN has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendants pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff, JUSTIN ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with interest against Defendant KNOTT;

B. that the Plaintiff be awarded punitive damages against the Defendant KNOTT;

C. that the Plaintiff be awarded costs of this litigation to be paid by Defendant KNOTT; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant KNOTT.

COUNT II
(Violation of Civil Rights- Justin/Stanford)

36. Defendant STANFORD illegally detained and restricted the freedom of Plaintiff JUSTIN and therefore Defendant STANFORD intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

37. Defendant STANFORD used unnecessary and excessive force in

escorting Plaintiff JUSTIN and therefore Defendant STANFORD intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

38. As a direct and proximate result of the wrongful conduct of Defendant STANFORD as alleged above, Plaintiff JUSTIN suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life, as well as loss of the costs and related charges of his defense of criminal charges.

39. The acts of Defendant STANFORD deprived Plaintiff JUSTIN of his right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

40. Plaintiff JUSTIN has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendant STANFORD pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff, JUSTIN ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with

interest against Defendant STANFORD;

B. that the Plaintiff be awarded punitive damages against the Defendant STANFORD;

C. that the Plaintiff be awarded costs of this litigation to be paid by Defendant STANFORD; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant STANFORD.

COUNT III
(Violation of Civil Rights- Justin/Russell)

41. Defendant RUSSELL illegally detained and restricted the freedom of Plaintiff JUSTIN and therefore Defendant RUSSELL intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

42. Defendant RUSSELL used unnecessary and excessive force in escorting Plaintiff JUSTIN and therefore Defendant RUSSELL intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

43. As a direct and proximate result of the wrongful conduct of Defendant

RUSSELL as alleged above, Plaintiff JUSTIN suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life, as well as loss of the costs and related charges of his defense of criminal charges.

44. The acts of Defendant RUSSELL deprived Plaintiff JUSTIN of his right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

45. Plaintiff JUSTIN has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendant RUSSELL pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff, JUSTIN ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with interest against Defendant RUSSELL;

B. that the Plaintiff be awarded punitive damages against the Defendant RUSSELL;

C. that the Plaintiff be awarded costs of this litigation to be paid by

Defendant RUSSELL; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant RUSSELL.

COUNT IV
(Violation of Civil Rights- Michelle/Russell)

46. Defendant RUSSELL illegally detained and restricted the freedom of Plaintiff MICHELLE and therefore Defendant RUSSELL intentionally or recklessly disregarded the constitutional rights of Plaintiff MICHELLE secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

47. Defendant RUSSELL used unnecessary and excessive force in arresting Plaintiff MICHELLE and therefore Defendant RUSSELL intentionally or recklessly disregarded the constitutional rights of Plaintiff MICHELLE secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

48. As a direct and proximate result of the wrongful conduct of Defendant RUSSELL as alleged above, Plaintiff MICHELLE suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life, as well as loss of the costs and related charges of

her defense to criminal charges.

49. The acts of Defendant RUSSELL deprived Plaintiff MICHELLE of her right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

50. Plaintiff MICHELLE has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendant RUSSELL pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff MICHELLE ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with interest against Defendant RUSSELL;

B. that the Plaintiff be awarded punitive damages against the Defendant RUSSELL;

C. that the Plaintiff be awarded costs of this litigation to be paid by Defendant RUSSELL; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant RUSSELL.

COUNT V
(Violation of Civil Rights- Alex/Stanford)

51. Defendant STANFORD illegally detained and restricted the freedom of Plaintiff ALEX and therefore Defendant STANFORD intentionally or recklessly disregarded the constitutional rights of Plaintiff ALEX secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

52. Defendant STANFORD used unnecessary and excessive force in with regard to Plaintiff ALEX and therefore Defendant STANFORD intentionally or recklessly disregarded the constitutional rights of Plaintiff ALEX secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

53. As a direct and proximate result of the wrongful conduct of Defendant STANFORD as alleged above, Plaintiff ALEX suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life, as well as loss of the costs and related charges of his defense of criminal charges.

54. The acts of Defendant STANFORD deprived Plaintiff ALEX of his right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

55. Plaintiff ALEX has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendant STANFORD pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff, ALEX ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with interest against Defendant STANFORD;

B. that the Plaintiff be awarded punitive damages against the Defendant STANFORD;

C. that the Plaintiff be awarded costs of this litigation to be paid by Defendant STANFORD; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant STANFORD.

COUNT VI
(Violation of Civil Rights- Alex/Russell)

56. Defendant RUSSELL illegally detained and restricted the freedom of Plaintiff ALEX and therefore Defendant RUSSELL intentionally or recklessly disregarded the constitutional rights of Plaintiff ALEX secured by the Fourth, Fifth

and Fourteenth Amendments to the Constitution of the United States.

57. Defendant RUSSELL used unnecessary and excessive force in arresting Plaintiff ALEX and therefore Defendant RUSSELL intentionally or recklessly disregarded the constitutional rights of Plaintiff ALEX secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

58. As a direct and proximate result of the wrongful conduct of Defendant RUSSELL as alleged above, Plaintiff ALEX suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life, as well as loss of the costs and related charges of his defense to criminal charges.

59. The acts of Defendant RUSSELL deprived Plaintiff ALEX of his right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

60. Plaintiff ALEX has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendant RUSSELL pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff ALEX ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with interest against Defendant RUSSELL;

B. that the Plaintiff be awarded punitive damages against the Defendant RUSSELL;

C. that the Plaintiff be awarded costs of this litigation to be paid by Defendant RUSSELL; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant RUSSELL.

COUNT VII
(Violation of Civil Rights- Alex/Knott)

61. Defendant KNOTT illegally detained and restricted the freedom of Plaintiff ALEX and therefore Defendant KNOTT intentionally or recklessly disregarded the constitutional rights of Plaintiff ALEX secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

62. Defendant KNOTT used unnecessary and excessive force in arresting Plaintiff ALEX and therefore Defendant KNOTT intentionally or recklessly disregarded the constitutional rights of Plaintiff ALEX secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

63. As a direct and proximate result of the wrongful conduct of Defendant KNOTT as alleged above, Plaintiff ALEX suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life, as well as loss of the costs and related charges of his defense to criminal charges.

64. The acts of Defendant KNOTT deprived Plaintiff ALEX of his right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

65. Plaintiff ALEX has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendant KNOTT pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff ALEX ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with interest against Defendant KNOTT;

B. that the Plaintiff be awarded punitive damages against the Defendant KNOTT;

C. that the Plaintiff be awarded costs of this litigation to be paid by Defendant KNOTT; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant KNOTT.

COUNT XIII
(Violation of Civil Rights-Justin/Ritz)

66. At all times material hereto, Defendant RITZ was acting through its agents, servants and employees, and specifically through its managing agent in charge, Defendant BARNER.

67. The acts and conduct of Defendant RITZ as alleged herein were done in wilful participation and conspiracy with Defendants KNOTT, STANFORD AND RUSSELL as deputy sheriffs, and thus under color of state law.

68. Defendant RITZ illegally detained and restricted the freedom of Plaintiff JUSTIN and therefore Defendant RITZ intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

69. Defendant RITZ used unnecessary and excessive force in escorting Plaintiff JUSTIN and therefore Defendant RITZ intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

70. As a direct and proximate result of the wrongful conduct of Defendant RITZ as alleged above, Plaintiff JUSTIN suffered bodily injury and resulting pain and suffering, mental anguish, loss of employment, and loss of capacity for the enjoyment of life, as well as loss of the costs and related charges of his defense of criminal charges.

71. The acts of Defendant RITZ deprived Plaintiff JUSTIN of his right to be free from the use of excessive force and otherwise deprived Plaintiff of due process of law in violation of the rights, privileges, and immunities guaranteed to the Plaintiff under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States of America.

72. Plaintiff JUSTIN has retained the undersigned law firm to bring this suit and has agreed to pay said law firm a reasonable fee for services rendered, and is therefore entitled to reimbursement from Defendant RITZ pursuant to the provisions of 42 U.S.C. 1983.

WHEREFORE, Plaintiff, JUSTIN ZIVOJINOVICH, prays:

A. that the Plaintiff be awarded compensatory damages, together with interest against Defendant RITZ;

B. that the Plaintiff be awarded punitive damages against the Defendant RITZ;

C. that the Plaintiff be awarded costs of this litigation to be paid by Defendant RITZ; and

D. that the Plaintiff be awarded reasonable attorney's fees incurred in connection with the prosecution of this matter to be paid by Defendant RITZ.

COUNT IX
(Violation of Civil Rights- Justin/Barner)

73. At all times material hereto, Defendant RITZ was acting through its agents, servants and employees, and specifically through its managing agent in charge, Defendant BARNER.

74. The acts and conduct of Defendant BARNER as alleged herein were done in wilful participation and conspiracy with Defendants KNOTT, STANFORD AND RUSSELL as deputy sheriffs, and thus under color of state law.

75. Defendant BARNER illegally detained and restricted the freedom of Plaintiff JUSTIN and therefore Defendant BARNER intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.

76. Defendant BARNER used unnecessary and excessive force in escorting Plaintiff JUSTIN and therefore Defendant BARNER intentionally or recklessly disregarded the constitutional rights of Plaintiff JUSTIN secured by the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States.