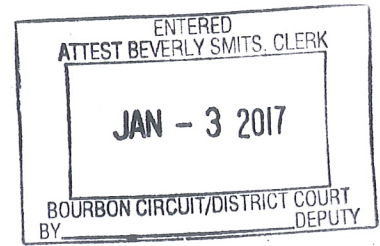


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COMMONWEALTH OF KENTUCKY  
BOURBON CIRCUIT COURT  
DIVISION II  
CASE NO. 14-CI-00011



DARYL CALDWELL

PLAINTIFF

v.

**TRIAL, JURY VERDICT AND JUDGMENT**

ROD FUSSINGER

DEFENDANT

\* \* \* \* \*

The parties and their counsel having appeared and this cause having come before the Court for trial on the 19<sup>th</sup> and 20<sup>th</sup> days of December, 2016, the following jury was sworn to try the case:

Zachary Goodpaster  
Stephen Eades  
Pamela Easley  
Lisa Steeley  
David Fryman  
Harvey Turley  
Travis Plummer  
Patricia Parker  
Mitchell Abney  
Shirley Bailey  
Mary Ann Albright  
Richard Hall  
Peter Cook  
Sherry Banta

The official reporter of this Court was directed to record all testimony and proceedings of this trial. All motions and rulings made during trial are shown in the official transcript.

The trial progressed and upon conclusion, David Fryman and Mitchell Abney were excused as alternate jurors. The Court, after conference with counsel for the parties, instructed the jury as follows:

**INSTRUCTION NO. 1**

Nine or more of you may agree upon a verdict or an answer to each question presented. If all twelve of you agree, the verdict or answer need only be signed by the foreperson; otherwise, it must be signed by the nine or more who agree to it. The nine or more of you who agree to a certain Interrogatory need not be the nine or more who agree to any other Interrogatory.

PLEASE PROCEED TO THE NEXT PAGE.

**DEFINITION NO. 1**

As used in these instructions, "ordinary care" means such care as the jury would expect an ordinarily prudent person to exercise under similar circumstances.

PLEASE PROCEED TO INSTRUCTION NO. 2

**INSTRUCTION NO. 2**

It was the duty of Defendant, Rod Fussinger, as the landlord:

- 1) to warn his tenant of any dangerous condition(s) he knew, or in the exercise of ordinary care, should have known, to be located on the property he leased to Plaintiff Caldwell

AND

- 2) to exercise reasonable diligence to keep common areas retained under the landlord's control in a safe condition.

PLEASE PROCEED TO INTERROGATORY NO. 1

**INTERROGATORY NO. 1**

Do you find from the evidence that Rod Fussinger breached the duty set out above, and that such breach was a substantial factor in causing Plaintiff's injuries?

YES \_\_\_\_\_ NO   X  

OR

\_\_\_\_\_  
FOREPERSON (if unanimous)

/s/ Sherri Banta

/s/ Harvey Turley

/s/ Zachary Goodpaster

/s/ Pamela Easley

/s/ Lisa Steeley

/s/ Shirley Bailey

/s/ Stephen Eades

/s/ Peter Cook

/s/ Richard Hall

/s/ Travis S. Plummer

IF YOU ANSWERED "NO" TO INTERROGATORY NO. 1, YOU HAVE FOUND FOR DEFENDANT, ROD FUSSINGER, AND YOU MAY RETURN TO THE COURTROOM.

IF YOU ANSWERED "YES" TO INTERROGATORY NO. 1, PLEASE PROCEED TO INSTRUCTION NO. 3.

**INSTRUCTION NO. 3**

It was the duty of Plaintiff, Daryl Caldwell, to exercise ordinary care for his own safety and protection.

Do you believe from the evidence that Daryl Caldwell failed to comply with this duty, and that such failure on his own part was a substantial factor in causing his injuries?

YES \_\_\_\_\_ NO \_\_\_\_\_

OR

\_\_\_\_\_  
FOREPERSON (if unanimous)

\_\_\_\_\_  
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PLEASE PROCEED TO INSTRUCTION NO. 4.

**INSTRUCTION NO. 4**

You will now determine from the evidence and fix a sum or sums of money that will fairly compensate Plaintiff Daryl Caldwell for the following damages which you believe from the evidence he has sustained as a direct result of his injuries.

- |               |                                                                                                          |                 |
|---------------|----------------------------------------------------------------------------------------------------------|-----------------|
| (1)           | Reasonable and necessary medical expenses<br>he has incurred in the past<br>(not to exceed \$102,014.76) | \$ _____        |
| (2)           | Past and present pain and suffering<br>(not to exceed \$150,000.00)                                      | \$ _____        |
| <b>TOTAL:</b> |                                                                                                          | <b>\$ _____</b> |

OR

\_\_\_\_\_  
FOREPERSON (if unanimous)


IF YOU ANSWERED "YES" TO INTERROGATORY NO. 1 AND "YES" TO INTERROGATORY NO. 2, PLEASE PROCEED TO INSTRUCTION NO. 5; OTHERWISE, YOU MAY RETURN TO THE COURTROOM.

**INSTRUCTION NO. 5**

You will now determine from the evidence and indicate in the following spaces what percentage of the total fault was attributable to each of the parties, as follows:

Plaintiff Daryl Caldwell: \_\_\_\_\_ %

Defendant Rod Fussinger: \_\_\_\_\_ %

TOTAL: \_\_\_\_\_ 100 %

(In determining the percentages of fault, you shall consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed.)

PLEASE RETURN TO THE COURTROOM



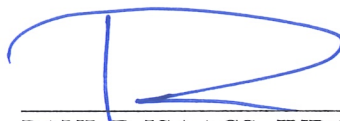
WHEREFORE, IT IS HEREBY ORDERED AND ADJUDGED BY THE COURT AS  
FOLLOWS:

1. Plaintiff, Daryl Caldwell, shall recover nothing on his claims against Defendant,  
Rod Fussinger.

2. Defendant, Rod Fussinger, pursuant to CR 54, is entitled to recover his costs.  
Defendant shall submit a bill of costs for the Court's consideration.

There being no just cause for delay, this is a final and appealable Judgment.

So ordered this 3<sup>rd</sup> day of Dec, 2017.

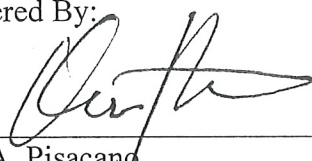


\_\_\_\_\_  
PAUL F. ISAACS, JUDGE  
BOURBON CIRCUIT COURT, DIVISION II

Have Seen:

Tendered 12/22/16; Disagreed  
Jason Ellis  
Counsel for Plaintiff

Tendered By:


  
\_\_\_\_\_  
Don A. Pisacano  
Counsel for Defendant

CLERK'S CERTIFICATE OF SERVICE

This is to certify that the foregoing has been served via U.S. mail, postage pre-paid, on this the 3 day of Jan, 2017, upon the following:

Vincent E. Johnson, Esq.  
Thomas H. Hughes, Esq.  
Jason Ellis, Esq.  
Siebert & Johnson, PLLC  
2741 Brownsboro Road  
Louisville, KY 40206

Don A. Pisacano, Esq.  
Miller, Griffin & Marks, P.S.C.  
271 W. Short St., Suite 600  
Lexington, KY 40507-1292

  
\_\_\_\_\_  
Clerk, Bourbon Circuit Court