

**IN THE CIRCUIT COURT, IN AND FOR THE  
SIXTH JUDICIAL CIRCUIT, IN AND FOR  
PINELLAS COUNTY, FLORIDA**

**CASE NO.: 09-04133-CI-19**

**ARIEL MILIAN and LUMEY CAMACHO,  
his wife, and BRYAN MILIAN, a minor, by  
and through his natural parents and guardians,**

**Plaintiffs,**

**vs.**

**DEVELOPERS DIVERSIFIED REALTY  
CORPORATION, a foreign corporation,  
DDRM BARDMOOR SHOPPING CENTER  
LLC, a foreign limited liability company,  
PROPERTY SOLUTIONS, INC., a Florida  
corporation, and DDR SOUTHEAST PROPERTY  
MANAGEMENT CORP. f/k/a INLAND SOUTHEAST  
PROPERTY MANAGEMENT CORP., a foreign corporation,**

**Defendants.**

---

**THIRD AMENDED COMPLAINT**

COME NOW Plaintiffs, ARIEL MILIAN and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents and guardians, by and through their undersigned counsel, and sue Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, a foreign corporation, DDRM BARDMOOR SHOPPING CENTER LLC, a foreign limited liability company, DDR SOUTHEAST PROPERTY MANAGEMENT CORP. f/k/a INLAND SOUTHEAST PROPERTY MANAGEMENT CORP., a foreign corporation, and PROPERTY SOLUTIONS, INC., a Florida corporation, and allege as follows:

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000.00) exclusive of interest, costs, and attorney's fees.

2. At all times material hereto, Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, were and are husband and wife and resided in Kissimmee, Osceola County, Florida.

3. At all times material hereto, BRYAN MILIAN, a minor, was born on April 28, 2007 and was and is the natural son of Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO.

4. At all times material hereto, Defendant, DEVELOPERS DIVERSIFIED REALTY CORPORATION, was and has been a foreign corporation with its principal place of business in Beachwood, Ohio. Further, at all times material hereto, said Defendant was and has been managing, leasing, and maintaining that certain shopping center known as Bardmoor Shopping Center located at 10801 Starkey Road, Largo, Pinellas County, Florida.

5. At all times material hereto, Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC was and has been a foreign limited liability company with its principal place of business in Beachwood, Ohio. Further, at all times material hereto, said Defendant was and has been owning, managing, leasing, and maintaining that certain shopping center known as Bardmoor Shopping Center located at 10801 Starkey Road, Largo, Pinellas County, Florida.

6. At all times material hereto, Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., f/k/a INLAND SOUTHEAST PROPERTY MANAGEMENT CORP., was and has been a foreign corporation authorized to conduct and conducting business in Pinellas County, Florida. Further, at all times material hereto, said Defendant was and has been owning, managing, leasing, and maintaining that certain shopping center known as Bardmoor Shopping Center located at 10801 Starkey Road, Largo, Pinellas County, Florida.

7. At times in this Third Amended Complaint, the above Defendants shall be collectively referred to as "DDR."

8. At all times material hereto, Defendant, PROPERTY SOLUTIONS, INC., was and has been a Florida corporation authorized to conduct and conducting business in Pinellas County, Florida.

9. The actions, inactions, omissions, and other incidents alleged herein occurred in Pinellas County, Florida.

10. At all times material hereto, Plaintiff, ARIEL MILIAN, was employed as a delivery truck driver who made deliveries to various Panera Bread Bakery Cafés in Florida, including the Panera Bread Bakery Café located at the Bardmoor Shopping Center described above.

11. On or about April 24, 2008, Plaintiff, ARIEL MILIAN, was making a delivery at the above described Panera Bread Bakery Café in Pinellas County, Florida, and was therefore lawfully upon said premises as a business invitee.

12. At said time and place, a canopy overhang on the rear side of the shopping center at the delivery dock/entrance for the above described Panera Bread Bakery Café collapsed upon Plaintiff, ARIEL MILIAN, while he was performing his delivery.

13. At all times material, DDR were and are engaged in the business of buying, selling, maintaining, managing and operating approximately 520 shopping centers, such as Bardmoor Shopping Center, across the United States of America, including approximately 27 in the State of Florida, and approximately 15 in Puerto Rico.

14. On or about February 22, 2007, Defendants, DDR, acquired INLAND SOUTHEAST PROPERTY MANAGEMENT CORP. and in the process acquired approximately 350 shopping centers and, as successor in interest, took possession of all management, maintenance, repair and operation records, and assumed control, operation, maintenance, and

management of the Bardmoor Shopping Center, and acquired the assets and liabilities of INLAND SOUTHEAST PROPERTY MANAGEMENT CORP., and further undertook to inspect, maintain, operate and manage the shopping center and permit occupancy by both tenants and invitees.

15. At all times material, Defendants, DDR, maintained possession and control of the common areas of the shopping center, including common hallways, the roofing system, the exterior grounds, the exterior walls, the undercanopy, and the rear awning/canopy system.

## COUNT I

### NEGLIGENCE CLAIM AGAINST

#### DEVELOPERS DIVERSIFIED REALTY CORPORATION

Plaintiffs reallege and incorporate by reference paragraphs one through fifteen above as if fully set forth herein.

16. At all times material hereto, Defendant, DEVELOPERS DIVERSIFIED REALTY CORPORATION, had a duty to use reasonable care in maintaining the premises in a reasonably safe condition.

17. At all times material hereto, Defendant, DEVELOPERS DIVERSIFIED REALTY CORPORATION, owed a duty to warn invitees, including Plaintiff, of concealed perils which should have been known to or discovered by Defendant through the exercise of reasonable care.

18. At all times material hereto, Defendant, DEVELOPERS DIVERSIFIED REALTY CORPORATION, assumed and undertook a duty to inspect the premises and owed a duty to use reasonable care under all the circumstances in the inspection of the premises.

19. At all times material hereto, Defendant, DEVELOPERS DIVERSIFIED REALTY CORPORATION, had a duty to implement a mode of operating its business so as to use reasonable care in inspecting and maintaining the premises and in discovering concealed perils which could be discovered by Defendant through the exercise of reasonable care.

20. At all times material hereto, Defendant, DEVELOPERS DIVERSIFIED REALTY CORPORATION, had a non-delegable duty to Plaintiff under Florida common law, as well as pursuant to § 768.0710(1), *Florida Statutes (2004)*, to use reasonable care in maintaining said premises in a reasonably safe condition, to warn Plaintiff of perils which are or should have been known to Defendants, its agents, servants, and employees, and to conduct regular inspections appropriate for said premises and to implement a mode of operating that satisfied those legal duties.

21. At all times material hereto, the aforescribed canopy was in an unreasonably unsafe condition and this unsafe condition was either known to Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, or should have been known to Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, through the exercise or ordinary care in the operation, inspection and maintenance of the business premises.

22. Defendants, DEVELOPERS DIVERSIFIED REALTY CORPORATION, breached their duties to Plaintiffs *inter alia* by failing to use reasonable care in the maintenance and operation of said premises, permitting construction of the said canopy without proper permitting and inspections, failing to use due care in the inspection and maintenance of the canopy following construction, failing to correct the dangerous condition of the canopy when they knew or by the exercise of reasonable care should have known of its dangerous condition, failing to inspect or adequately inspect the premises, including the canopy, for the safety of

invitees, such as Plaintiff, failing to conduct regular inspections for the safety of invitees such as Plaintiff, failing to implement a mode of operations that satisfied their legal duties to Plaintiffs, and failing to warn Plaintiff of the dangerous and unsafe condition of the canopy when Defendant, its agents, servants or employees knew or should have known of its dangerous condition.

23. As a direct and proximate result of the negligence of Defendant, DIVERSIFIED REALTY CORPORATION, Plaintiff, ARIEL MILIAN, suffered bodily injury in and about his body and extremities, resulting in great mental and physical pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of previously existing condition(s). Said losses are either permanent or continuing and Plaintiff will suffer said losses in the future. Further, Plaintiff, ARIEL MILIAN, sustained significant permanent injury resulting in permanent total disability.

24. As a direct and proximate result of the negligence of Defendant, DIVERSIFIED REALTY CORPORATION, Plaintiff, LUMEY CAMACHO, has sustained a loss of her husband's services, comfort, society and attentions in the past, and she will so sustain said losses in the future.

25. As a direct and proximate result of the negligence of Defendant, DIVERSIFIED REALTY CORPORATION, Plaintiff, BRYAN MILIAN, a minor, has sustained permanent loss of his father's services, comfort, companionship, and society.

WHEREFORE, the Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents, sue Defendant, DIVERSIFIED REALTY CORPORATION, a foreign corporation, for damages and demand judgment in excess

of Fifteen Thousand Dollars (\$15,000.00), plus prejudgment interest for liquidated damages, and costs, and demand trial by jury of all issues so triable.

**COUNT II**

**NEGLIGENCE CLAIM AGAINST**

**DDRM BARDMOOR SHOPPING CENTER LLC**

Plaintiffs reallege and incorporate by reference paragraphs one through fifteen above as if fully set forth herein.

26. At all times material hereto, Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC, had a duty to use reasonable care in maintaining the premises in a reasonably safe condition.

27. At all times material hereto, Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC, owed a duty to warn invitees, including Plaintiff, of concealed perils which should have been known to or discovered by Defendant through the exercise of reasonable care.

28. At all times material hereto, Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC, assumed and undertook a duty to inspect the premises and owed a duty to use reasonable care under all the circumstances in the inspection of the premises.

29. At all times material hereto, Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC, had a duty to implement a mode of operating its business so as to use reasonable care in inspecting and maintaining the premises and in discovering concealed perils which could be discovered by Defendant through the exercise of reasonable care.

30. At all times material hereto, Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC , had a non-delegable duty to Plaintiff under Florida common law, as well as

pursuant to § 768.0710(1), *Florida Statutes (2004)*, to use reasonable care in maintaining said premises in a reasonably safe condition, to warn Plaintiff of perils which are or should have been known to Defendants, its agents, servants, and employees, and to conduct regular inspections appropriate for said premises and to implement a mode of operating that satisfied those legal duties.

31. At all times material hereto, the aforescribed canopy was in an unreasonably unsafe condition and this unsafe condition was either known to Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC, or should have been known to Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC, through the exercise or ordinary care in the operation, inspection and maintenance of the business premises.

32. Defendants, DDRM BARDMOOR SHOPPING CENTER, LLC, breached their duties to Plaintiffs *inter alia* by failing to use reasonable care in the maintenance and operation of said premises, permitting construction of the said canopy without proper permitting and inspections, failing to use due care in the inspection and maintenance of the canopy following construction, failing to correct the dangerous condition of the canopy when they knew or by the exercise of reasonable care should have known of its dangerous condition, failing to inspect or adequately inspect the premises, including the canopy, for the safety of invitees, such as Plaintiff, failing to conduct regular inspections for the safety of invitees such as Plaintiff, failing to implement a mode of operations that satisfied their legal duties to Plaintiffs, and failing to warn Plaintiff of the dangerous and unsafe condition of the canopy when Defendant, its agents, servants or employees knew or should have known of its dangerous condition.

33. As a direct and proximate result of the negligence of Defendant, DDRM BARDMOOR SHOPPING CENTER LLC, Plaintiff, ARIEL MILIAN, suffered bodily injury in



and about his body and extremities, resulting in great mental and physical pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of previously existing condition(s). Said losses are either permanent or continuing and Plaintiff will suffer said losses in the future. Further, Plaintiff, ARIEL MILIAN, sustained significant permanent injury resulting in permanent total disability.

34. As a direct and proximate result of the negligence of Defendant, DDRM BARDMOOR SHOPPING CENTER LLC, Plaintiff, LUMEY CAMACHO, has sustained a loss of her husband's services, comfort, society and attentions in the past, and she will so sustain said losses in the future.

35. As a direct and proximate result of the negligence of Defendant, DDRM BARDMOOR SHOPPING CENTER, LLC, Plaintiff, BRYAN MILIAN, a minor, has sustained permanent loss of his father's services, comfort, companionship, and society.

WHEREFORE, the Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents, sue Defendant, DDRM BARDMOOR SHOPPING CENTER LLC, a foreign limited liability company, for damages and demand judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus prejudgment interest for liquidated damages, and costs, and demand trial by jury of all issues so triable.

### **COUNT III**

### **NEGLIGENCE CLAIM AGAINST**

### **DDR SOUTHEAST PROPERTY MANAGEMENT CORP.**

Plaintiffs reallege and incorporate by reference paragraphs one through fifteen above as if fully set forth herein.

36. At all times material hereto, Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., had a duty to use reasonable care in maintaining the premises in a reasonably safe condition.

37. At all times material hereto, Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., owed a duty to warn invitees, including Plaintiff, of concealed perils which should have been known to or discovered by Defendant through the exercise of reasonable care.

38. At all times material hereto, Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., assumed and undertook a duty to inspect the premises and owed a duty to use reasonable care under all the circumstances in the inspection of the premises.

39. At all times material hereto, Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., had a duty to implement a mode of operating its business so as to use reasonable care in inspecting and maintaining the premises and in discovering concealed perils which could be discovered by Defendant through the exercise of reasonable care.

40. At all times material hereto, Defendants, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., had a non-delegable duty to Plaintiff under Florida common law, as well as pursuant to § 768.0710(1), *Florida Statutes (2004)*, to use reasonable care in maintaining said premises in a reasonably safe condition, to warn Plaintiff of perils which are or should have been known to Defendants, its agents, servants, and employees, and to conduct regular inspections appropriate for said premises and to implement a mode of operating that satisfied those legal duties.

41. At all times material hereto, the aforescribed canopy was in an unreasonably unsafe condition and this unsafe condition was either known to Defendants, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., or should have been known to Defendants, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., through the exercise or ordinary care in the operation, inspection and maintenance of the business premises.

42. Defendants, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., breached their duties to Plaintiffs *inter alia* by failing to use reasonable care in the maintenance and operation of said premises, permitting construction of the said canopy without proper permitting and inspections, failing to use due care in the inspection and maintenance of the canopy following construction, failing to correct the dangerous condition of the canopy when they knew or by the exercise of reasonable care should have known of its dangerous condition, failing to inspect or adequately inspect the premises, including the canopy, for the safety of invitees, such as Plaintiff, failing to conduct regular inspections for the safety of invitees such as Plaintiff, failing to implement a mode of operations that satisfied their legal duties to Plaintiffs, and failing to warn Plaintiff of the dangerous and unsafe condition of the canopy when Defendant, its agents, servants or employees knew or should have known of its dangerous condition.

43. As a direct and proximate result of the negligence of Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., Plaintiff, ARIEL MILIAN, suffered bodily injury in and about his body and extremities, resulting in great mental and physical pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of previously existing

condition(s). Said losses are either permanent or continuing and Plaintiff will suffer said losses in the future. Further, Plaintiff, ARIEL MILIAN, sustained significant permanent injury resulting in permanent total disability.

44. As a direct and proximate result of the negligence of Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., Plaintiff, LUMEY CAMACHO, has sustained a loss of her husband's services, comfort, society and attentions in the past, and she will so sustain said losses in the future.

45. As a direct and proximate result of the negligence of Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., Plaintiff, BRYAN MILIAN, a minor, has sustained permanent loss of his father's services, comfort, companionship, and society.

WHEREFORE, the Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents, sue Defendant, DDR SOUTHEAST PROPERTY MANAGEMENT CORP., a foreign limited liability company, for damages and demand judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus prejudgment interest for liquidated damages, and costs, and demand trial by jury of all issues so triable.

#### **COUNT IV**

#### **NEGLIGENCE CLAIM AGAINST PROPERTY SOLUTIONS, INC.**

Plaintiffs reallege and incorporate by reference paragraphs one through fifteen above as if fully set forth herein.

46. At all times material hereto, Defendant, PROPERTY SOLUTIONS, INC., contracted with Defendants, DDR, to conduct an inspection during the Defendants', DDR,

purchase and acquisition of Bardmoor Shopping Center located at 10801 Starkey Road in Largo, Pinellas County, Florida. A copy of the proposal and contract between those parties is attached hereto as Exhibit "A" and delineates that Defendant, PROPERTY SOLUTIONS, INC., contracted with Defendants, DDR, and agreed to conduct a property condition assessment including, *inter alia*, identifying the material elements of the structural frame and building envelop, including the building framing system, roof framing system, facade system, exterior balconies, roof system, rooftop equipment, drainage, roof condition, attachment methods, miscellaneous appurtenances, etc., and to observe for general conditions and note any physical deficiencies identified or any unusual items or conditions observed and for any evidence of material repairs, significant ponding, or evidence of material roof leaks.

47. At all times material hereto, PROPERTY SOLUTIONS, INC., had a duty or assumed a duty to properly and reasonably inspect Bardmoor Shopping Center for dangerous conditions or defects that posed a risk of injury to occupants and invitees upon the property and knew or should have known that its work was being performed for the safety of occupants and invitees upon said property and that the failure to properly inspect the property for dangerous conditions and defects would create a foreseeable zone of risk of injury to such occupants or invitees.

48. At all times material hereto, the aforescribed canopy was in an unreasonably unsafe condition and this unsafe condition was either known to Defendants, PROPERTY SOLUTIONS, INC., or should have been known to Defendants, PROPERTY SOLUTIONS, INC., through the exercise or ordinary care in the operation, inspection and maintenance of the business premises.

49. Defendant, PROPERTY SOLUTIONS, INC., breached their duties to Plaintiffs *inter alia* by failing to use reasonable care in inspection and assessment of said premises, failing to use due care in the inspection of the canopy system that failed, failing to recommend correction or further inspection of the canopy system that later failed when they knew or by the exercise of reasonable care should have known of its dangerous condition, failing to inspect or adequately inspect the premises, including the canopy, for the safety of invitees, such as Plaintiff, and failing to warn Plaintiff of the dangerous and unsafe condition of the canopy when said Defendant, its agents, servants or employees knew or should have known of its dangerous condition.

50. As a direct and proximate result of the negligence of Defendant, PROPERTY SOLUTIONS, INC., Plaintiff, ARIEL MILIAN, suffered bodily injury in and about his body and extremities, resulting in great mental and physical pain and suffering, disability, disfigurement, permanent and significant scarring, mental anguish, loss of the capacity for the enjoyment of life, expenses of hospitalization, medical and nursing care and treatment, loss of earnings, loss of the ability to earn money, and aggravation of previously existing condition(s). Said losses are either permanent or continuing and Plaintiff will suffer said losses in the future. Further, Plaintiff, ARIEL MILIAN, sustained significant permanent injury resulting in permanent total disability.

51. As a direct and proximate result of the negligence of Defendant, PROPERTY SOLUTIONS, INC., Plaintiff, LUMEY CAMACHO, has sustained a loss of her husband's services, comfort, society and attentions in the past, and she will so sustain said losses in the future.

52. As a direct and proximate result of the negligence of Defendant, PROPERTY SOLUTIONS, INC., Plaintiff, BRYAN MILIAN, a minor, has sustained permanent loss of his father's services, comfort, companionship, and society.

WHEREFORE, the Plaintiffs, ARIEL MILIAN, and LUMEY CAMACHO, his wife, and BRYAN MILIAN, a minor, by and through his natural parents, sue Defendant, PROPERTY SOLUTIONS, INC., for damages and demand judgment in excess of Fifteen Thousand Dollars (\$15,000.00), plus prejudgment interest for liquidated damages, and costs, and demand trial by jury of all issues so triable.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2010

Respectfully submitted,

---

MELVIN B. WRIGHT, Esquire  
Florida Bar No. 559857  
COLLING GILBERT WRIGHT & CARTER  
The Florida Firm  
801 North Orange Avenue, Suite 830  
Orlando, FL 32801  
(407) 712-7300  
(407) 712-7301  
[MWright@TheFloridaFirm.com](mailto:MWright@TheFloridaFirm.com)  
Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, by U.S. Mail – postage paid, this \_\_\_\_\_ day of July, 2011, to: Michael Reed, Esq./Amy Prevatt, Esq, Wicker, Smith, O'Hara, McCoy & Ford, P.A., 100 North Tampa Street, Ste. 3650, Tampa, FL 33602 and Michael Kraft, Esq., 201 East Kennedy Blvd, Ste. 900, Tampa, FL 33602.

MELVIN B. WRIGHT, ESQ.  
FBN 559857  
Colling Gilbert Wright & Carter  
The Florida Firm  
801 N. Orange Ave., Ste. 830  
Orlando, FL 32801  
Telephone: (407) 712-7300  
Facsimile: (407) 712-7301  
Attorneys for Plaintiff  
[mwright@thefloridafirm.com](mailto:mwright@thefloridafirm.com)