

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

YVONNE WIEDERHOLD, as
Personal Representative of the Estate of
RICHARD E. WIEDERHOLD, deceased,

CASE NO.: 2011-CA-001589-0

DIVISION: 37

Plaintiff,

v.

DOMINO'S PIZZA LLC, a Michigan
Limited Liability Company;
and JEFFREY S. KIDD,

Defendants,

AMENDED COMPLAINT

COMES NOW the Plaintiff, YVONNE WIEDERHOLD, as Personal Representative of the Estate of Richard E. Wiederhold, deceased, and sues the Defendants, DOMINO'S PIZZA LLC (hereinafter "DOMINO'S") and JEFFREY S. KIDD (hereinafter "KIDD") for damages, costs, and alleges that at all times material:

JURISDICTIONAL ALLEGATIONS

1. This is an action for damages in excess of this Court's minimum jurisdictional amount of fifteen thousand dollars (\$15,000.00).
2. Plaintiff, YVONNE WIEDERHOLD, is the surviving spouse of Richard E. Wiederhold, deceased, and is the Personal Representative of his estate.
3. At all times material, Defendant DOMINO'S was a Michigan corporation incorporated pursuant to the laws of the State of Michigan with its principal offices in Ann Arbor, Michigan, and is licensed to and doing business within the State of Florida.

4. At all times material, Defendant DOMINO'S, through its employees, agents, apparent agents, and franchisees, operated a worldwide business for the purpose of undertaking transactions for the sale and delivery of pizza and other food items.

5. At all times material, Defendant KIDD was a resident of Orlando, Orange County, Florida, and at all times material was a delivery driver for Fischler Enterprises of C.F., Inc. ("Fischler") acting within the course and scope of his employment, agency or servitude as a food delivery driver.

6. At all times material, Fischler was a franchisee, agent, apparent agent, or joint venturer of/with Defendant DOMINO's, as more fully described below.

GENERAL ALLEGATIONS

7. On or about January 13, 2011, Defendant KIDD was operating a motor vehicle at or near the intersection of Cupid Avenue and State Road 50 in Orlando, Orange County, Florida, in the course and scope of his employment, agency, or apparent agency and at the direction and control, express or implied, of Fischler and Defendant DOMINO'S.

8. At that time and place, Defendant KIDD negligently operated or maintained the motor vehicle he was operating and caused Plaintiff's motor vehicle, in which she and Richard E. Wiederhold were travelling, to overturn and strike a tree.

9. As a direct and proximate result of Defendant KIDD's negligence, Richard E. Wiederhold suffered severe and incapacitating injuries, leading to his eventual death.

EMPLOYMENT, AGENCY AND APPARENT AGENCY

10. At all times material, Defendant KIDD was acting as an employee, agent, or apparent agent of Fischler.

11. At all times material, Fischler was a franchisee, agent, apparent agent, or joint venturer with Defendant DOMINO'S which, pursuant to a franchise agreement and operations manual provided by Defendant DOMINO'S as a condition to operations, is subject to the actual control or right to control of Defendant DOMINO'S.

12. Said franchise agreement and operations manual dictate the manner of operation of Fischler's franchise, including but not limited to, the limited area in which Fischler may operate, the manner of dress of employees, the hiring and firing practices of Fischler, and the delivery protocols which Defendant KIDD was to obey in his capacity as a delivery driver, and in the event that Fischler failed to abide by said protocols of operation, Defendant DOMINO'S held an exclusive right to terminate the business of Fischler.

13. Defendant KIDD was subject to the actual control or right to control of Fischler and Defendant DOMINO'S in the method and manner of fulfilling his responsibilities of employment, including, but not limited to, the exact delivery responsibilities Defendant KIDD was performing at the time of the subject accident.

14. At all times material, Defendant DOMINO'S had actual control over Fischler and its employees and agents and is therefore vicariously liable for the actions of Fischler and its employees and agents, including Defendant KIDD.

15. At all times material, Defendant DOMINO'S had the right to control the actions of Fischler and its employees and agents and is therefore vicariously liable for the actions of Fischler and its employees and agents, including Defendant KIDD.

16. At all times material, Defendant KIDD was acting as an employee, agent, or apparent agent of Fischler and Defendant DOMINO'S because his actions were within the

course and scope of his employment, agency, or apparent agency with the joint venture of the parties.

17. Because the control exercised or possessed by Defendant DOMINO'S is significant, Fischler and Defendant KIDD are employees or agents of Defendant DOMINO'S. *See Font v. Stanley Steamer Intern., Inc.* 849 So.2d 1214 (Fla. 5th DCA 2003)(*citing Parker v. Domino's Pizza, Inc.* in holding that there is no "bright line" for determining when the franchisee is an agent of the franchisor, rendering summary judgment inappropriate in such circumstances); *See also Parker v. Domino's Pizza, Inc.*, 629 So. 2d 1026 (Fla. 4th DCA 1994) (*denying* summary judgment in favor of Domino's regarding the nature of the relationship between the franchisee and franchisor).

JOINT VENTURE/PARTNERSHIP

18. At all times material hereto, Defendant DOMINO'S was involved in a joint venture with Fischler to undertake the particular business transaction of selling and delivering pizza and other food items.

19. Defendant DOMINO'S and Fischler engaged in an agreement whereby the two would make joint efforts to further the core business of selling and delivering pizza and other food items under the "Domino's" brand.

20. Defendant DOMINO'S and Fischler combined their resources and efforts in furtherance of this joint venture, including but not limited to, the following ways:

- a. Defendant DOMINO'S and Fischler contribute monetarily to the marketing and advertising of the products which form the core of the particular business transaction for which the joint venture is purposed;

- b. Defendant DOMINO'S and Fischler contribute non-monetary resources to the marketing and advertising of the products which form the core of the particular business transaction for which the joint venture is purposed;
 - c. Defendant DOMINO'S and Fischler coordinate their efforts with regards to the taking of food orders through various mechanisms including, but not limited to, website and mobile applications;
 - d. Defendant DOMINO'S and Fischler combine their resources to maximize the day-to-day operations of the joint venture by use of proprietary computer software/hardware referred to as the "Pulse" system;
 - e. Defendant DOMINO'S and Fischler combine their efforts to maximize the day-to-day operations of the joint venture by jointly determining matters such as menu offerings, price options and "specials";
 - f. Defendant DOMINO'S and Fischler combine their efforts to maximize the day-to-day operations of the joint venture by sharing joint input on the source, quality, and quantity of the food items sold in furtherance of the particular transaction which forms the core of the joint venture;
21. Defendant DOMINO'S and Fischler share a joint control or right of control of the venture in many respects, including but not limited to, the following:
- a. Defendant DOMINO'S and Fischler jointly determine the standards by which the day-to-day operations of the venture must function;
 - b. Defendant DOMINO'S and Fischler jointly control the means of gathering orders for the particular transaction which forms the core of the venture;

- c. Defendant DOMINO'S and Fischler jointly share a right to control the menu offerings for the particular transaction which forms the core of the venture;
- d. Defendant DOMINO'S and Fischler jointly share a right to control the pricing options for the particular transaction which forms the core of the venture;
- e. Defendant DOMINO'S and Fischler jointly share a right to control the manner in which employees are screened and hired;
- f. Defendant DOMINO'S and Fischler jointly share a right to control the manner in which employees trained;
- g. Defendant DOMINO'S and Fischler jointly share a right to control the manner in which employees interact with customers;

22. Defendant DOMINO'S and Fischler share a joint ownership interest in the subject matter of the joint venture in that Fischler has license to operate the business for only as long as Defendant DOMINO'S agrees to allow it to do so as Defendant DOMINO'S holds an ownership interest granting it the right to strip said license and cease operations of the venture.

23. Defendant DOMINO'S and Fischler have a common right and duty to share in profits and losses as evidenced by, including but not limited to, the fees paid by Fischler to Defendant DOMINO'S being dependent on volume of business, specific sales achievement goals, and revenues paid to Defendant DOMINO'S on a per order basis, e.g., for each individual order received through website or mobile applications, Fischler pays fees to Defendant DOMINO'S.

24. At all material times, Defendant KIDD was acting as an agent of Fischler and Defendant DOMINO'S and acting in furtherance of the particular business transaction of selling

and delivering food items which forms the core of the joint venture between Fischler and Defendant DOMINO'S.

25. Therefore, Defendant DOMINO'S is vicariously liable for the acts of Defendant KIDD because his alleged negligence occurred during the furtherance of the joint venture.

NEGLIGENCE AGAINST ALL DEFENDANTS

Plaintiff realleges and incorporates by reference paragraphs 1 through 25 and further alleges that at all times material:

26. At all times material, Defendant KIDD owed a duty to Plaintiff, and all motorists with whom he shared the roadway, to operate and/or maintain his vehicle in a reasonable safe and prudent manner.

27. At the time and place referenced herein, Defendant KIDD breached that duty by negligently operating or maintaining his motor vehicle so that it caused Plaintiff's motor vehicle, in which she and Richard E. Wiederhold were travelling, to overturn and strike a tree.

28. As set forth above, at all times material Defendant KIDD was an employee and/or agent acting within the course and scope of his employment/agency and in furtherance and on behalf of the joint venture between Fischler and Defendant DOMINO'S.

29. As a direct and proximate result of Defendant KIDD's negligence, the Estate of Richard E. Wiederhold suffered damages more specifically set forth hereinafter.

CLAIM OF THE ESTATE OF RICHARD E. WIEDERHOLD, DECEASED

The Plaintiff realleges and incorporates by reference paragraphs 1 through 29 and further alleges that at all times material:

30. As a direct and proximate result of the Defendants' negligence, Richard E. Wiederhold, for a period of over one year, suffered bodily injury and resulting pain and

disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money.

CLAIM OF DECEDENT'S SURVIVOR, YVONNE WIEDERHOLD

Alternatively, the Plaintiff realleges and incorporates by reference paragraphs 1 through 30 and further alleges that at all times material:

31. As a direct and proximate result of the Defendants' negligence, the decedent's surviving spouse, Yvonne Wiederhold, has suffered, and will suffer into the future, the loss of her husband's companionship and protection and her mental pain and suffering as a result of her husband's death.

WHEREFORE the Plaintiff prays that this Honorable Court permit election of remedies post-verdict and enter judgment for the Plaintiff for compensatory damages, costs, or any other relief deemed just by his Court and demands a jury trial on all issues so triable.

Respectfully submitted,

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