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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 7061

In the
Supreme Court of Appeals of Virginia
at Richmond

ANNE KLEIN

v.

NATIONAL TODDLE HOUSE CORPORATION, ET AL.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 7061

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1968.

ANNE KLEIN,

Plaintiff in error,

against

NATIONAL TODDLE HOUSE CORPORATION and DOBBS HOUSES, INC.,

Defendants in error.

From the Circuit Court of the City of Norfolk
Clyde H. Jacob, Judge

Upon the petition of Anne Klein a writ of error is awarded her to a judgment rendered by the Circuit Court of the City of Norfolk on the 22nd day of February, 1968, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and The National Toddle House Corporation and another were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

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page 1 }

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NOTICE OF APPEAL AND ASSIGNMENT OF ERROR

To: The National Toddle House Corporation and Dobbs Houses, Inc.

Notice is hereby given that Anne Klein will appeal from a final judgment rendered by this Court on the 22nd day of February, 1968, and announces her intention of applying for a Writ of Error and *Supersedeas* to the Supreme Court of Appeals of Virginia.

ASSIGNMENT OF ERROR

The Trial Court erred in entering its Order on February 2, 1968, and in sustaining the defendants' demurrer to the amended motion for judgment filed on October 4, 1967, because said motion for judgment was proper, sufficient and stated a cause of action, and there were no inconsistent allegations in said motion for judgment, and because the defendants had waived their right to demur to paragraph Fourteen of the motion for judgment.

The Trial Court erred in entering its Order on February 2, 1968, and in sustaining the defendants' motion to dismiss the plaintiff's suit, because said motion for judgment filed on October 4, 1967, was proper, sufficient and
page 2 } stated a cause of action, and there were no inconsistent allegations in said motion for judgment, and even if there were inconsistent allegations they should have been stricken from the motion for judgment without dismissing the plaintiff's suit.

The Trial Court erred in entering its Order on February 2, 1968, and in refusing to grant a pre-trial conference so as to specify the particular allegations or phases therein that were deemed to be inconsistent. If there was any inconsistency, the same was caused by the failure of the defendants to file a Fictitious Name Certificate as required by the Code of Virginia.

The Trial Court erred in entering its Order on November 2, 1965, and in denying the plaintiff's motion for discovery, because said motion for discovery was proper, and the defendants had failed to file a Fictitious Name Certificate as required by the Code of Virginia.

The Trial Court erred in entering its Order on July 26, 1966, and in sustaining defendants' motion to quash the interrogatories previously served by the plaintiff, because said interrogatories were proper, and the defendants had failed to file a Fictitious Name Certificate as required by the Code of Virginia.

Given under my hand this 11th day of April, 1968.

ANNE KLEIN

By Eugene Forrest Gordman
Of Counsel for Plaintiff

Filed Apr-12-1968

T. A. W. Gray, D. C.

* * * * *

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* * * * *

MOTION FOR JUDGMENT

The Plaintiff, Anne Klein, moves the Circuit Court of the City of Norfolk, Virginia, for a judgment and award of execution against the defendant, Dobbs Houses, Incorporated, for the sum of Twenty-Five Thousand ($25,000.00)Dollars, which sum of money is due the plaintiff from the defendant, for this, to-wit:

1. That on or about November 7, 1963, the defendant was the lessee of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the lessee, maintained and operated in, upon and about the said premises, a restaurant for public patronage.

2. That at all times herein mentioned the defendant was in possession and control of the aforesaid premises.

3. That on or about November 7, 1963, the defendant was the owner of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the

owner, maintained and operated in, upon and about the said premises, a restaurant for public patronage, and at all times herein mentioned the defendant was in possession and control of the aforesaid premises.

page 5 } 4. That on or about November 7, 1963, at approximately 7:00 p.m., the plaintiff went to the premises of the defendant with the intent to have dinner. The plaintiff walked up the entrance way along the side of the building leading to the front door and entered the premises and had dinner.

5. That after the plaintiff finished her dinner and paid her bill, she left the premises and walked on the walkway leading from the front door to the sidewalk.

6. That the defendant negligently and carelessly permitted the front walkway and particularly the step thereof, to be and remain darkened in the night time and to be and remain in a dangerous and unsafe condition, which condition existed prior to plaintiff's injuries herein, and of which condition the defendant had, or in the exercise or ordinary care, should have had notice and knowledge.

7. That the defendant negligently maintained the front walkway and step leading to the sidewalk.

8. That the defendant negligently failed to warn the plaintiff of the danger and negligently failed to provide any protection to her against same.

9. That the defendant negligently maintained bushes and shrubs along the said walkway and, in particular, abutting the step thereof, which blocked light from reaching the step.

10. That the condition of the aforesaid walkway and step constituted a nuisance and a menance to the public.

page 6 } 11. That the defendant at the aforesaid time and place violated Section 21-11 of the Code of the City of Norfolk, Virginia.

12. That the defendant maintained said nuisance.

13. That the plaintiff, while walking on the walkway, fell down the aforesaid step causing her to receive serious and disabling injuries.

14. That the aforesaid negligence and nuisance of the defendant was the proximate cause of the plaintiff's injuries.

15. That the plaintiff was caused to suffer and she will in the future be caused to suffer considerable physical pain and mental anguish.

16. That the plaintiff was caused to expend, and she will in the future be caused to expend large sums of money in an endeavor to be healed and cured of said injuries.

17. That the plaintiff was caused to lose large sums of money in wages, which she otherwise would have earned.

18. That the plaintiff was caused to be unable, and she will in the future be unable to perform her necessary and lawful affairs.

19. That the plaintiff has been caused to suffer and endure considerable pain and discomfort for a considerable period of time and she will in the future be caused to suffer and endure considerable pain and discomfort as a result of the injuries suffered by her.

20. That the plaintiff has been compelled to incur various debts and liabilities in the procurement of medicines, medical attention and other incidentals made necessary by reason hereof.

page 7 } WHEREFORE, the plaintiff moves the Court for judgment and award of execution against the defendant in the sum of Twenty-Five Thousand ($25,000.00) Dollars with interest and costs aforesaid.

ANNE KLEIN

By Eugene Forrest Gordman
Of Counsel

* * * * *

Filed in the Clerk's Office the 27th day of September, 1965

Teste: W. R. Hanckel, Clerk

Olive C. Glock, D. C.

* * * * *

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GROUNDS OF DEFENSE

The defendant Dobbs Houses, Inc., inaccurately named Dobbs Houses, Incorporated in the Motion for Judgment, as and for its Grounds of Defense to the Motion for Judgment filed herein, says:

1. That in reply to paragraphs 1, 2 and 3, it denies that

it maintained, operated, possessed or controlled a restaurant or the premises as alleged and described in the Motion for Judgment, and more specifically denying that it was either the lessee or owner as alleged.

2. That it denies the allegations of paragraphs 4 and 5.

3. That it denies the allegations of paragraphs 6, 7, 8 and 9; and it denies each and every other allegation of negligence charged against it.

4. That it denies the allegations of paragraphs 10, 11 and 12; and it denies each and every other allegation
page 10 } that it maintained a nuisance and menace to the public.

5. That notwithstanding the above, it alleges that the plaintiff was guilty of negligence which was a proximate or contributing cause of the accident alleged.

6. That it denies the allegations of paragraphs 13 through 20; and it further denies each and every other allegation that the plaintiff sustained any injuries or damages for which she is entitled to recover from it.

7. That it denies that it owes the plaintiff Twenty-five Thousand Dollars ($25,000.00) or any other amount.

DOBBS HOUSES, INC.,

By William T. Prince
Of Counsel

Filed 10-14-65

Dave Ward, D. C.

* * * * *

page 11 }

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INTERROGATORIES

Pursuant to Section 8-320, Code of Virginia, the plaintiff requests the defendant to answer the following interrogatories, under oath, within ten (10) days:

1. State the name of the person, partnership, firm or corporation that owned the restaurant business conducted under the name Toddle House on November 7, 1963, located at the intersection of Colley Avenue and Maury Avenue in the City of Norfolk, Virginia.

2. If a corporation, state the name and address of the present Registered Agent thereof.

3. State the name and address of the landlord or owner of the aforesaid premises.

4. State the name and address of the tenant of the aforesaid premises.

5. State in detail the business relationship between you and

(a) The owner of the aforesaid premises.

(b) The lessee of the aforesaid premises.

(c) The person, firm, partnership or corporation that was conducting the restaurant business on the aforesaid premises on November 7, 1963, as well as on the date this suit was instituted.

page 12 } 6. State the name of the person, firm, partnership or corporation that purchased the State and the City business licenses for conducting the restaurant business on the aforesaid premises for the year 1963 and for the year 1965.

WHEREFORE, plaintiff prays that the Clerk of the Court issue a subpoena to the defendant and serve the same upon James R. Farley, Registered Agent, 10 South 10th Street, Richmond, Virginia, attaching a copy of these interrogatories and directing the same to be answered by him within ten (10) days, under oath.

ANNE KLEIN

By Eugene Forrest Gordman
Of Counsel

* * * * *

Filed 10-15-65

T. A. W. Gray, D. C.

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* * * * *

MOTION

Now comes the plaintiff, Anne Klein, by her attorney, Eugene Forrest Gordman, and respectfully says as follows:

1. That the defendant has within its exclusive control information concerning the ownership of the restaurant business, the leasing and ownership of the premises and the name

of the person, partnership, firm or corporation that conducted the restaurant business operated under the name Toddle House at the time and place alleged in the Motion for Judgment, which information cannot be obtained by the plaintiff, Anne Klein.

This information is in good faith desired by way of discovery deposition by the plaintiff, Anne Klein, and the taking of the discovery deposition of the defendant will not delay the trial of the case nor will it cause undue expense or hardship

WHEREFORE, the plaintiff, Anne Klein, moves the Court for an Order requiring the defendant to give its discovery deposition to the plaintiff, Anne Klein, and requiring the defendant to produce the aforesaid information as soon as they come into the possession of either the defendant or its agent or in lieu thereof the authority to obtain the aforesaid information.

ANNE KLEIN

By Eugene Forrest Gordman
Of Counsel

Filed 10-26-65

Dave Ward, D. C.

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MOTION TO QUASH INTERROGATORIES

The defendant Dobbs Houses, Inc., moves the Court to quash the interrogatories served upon it on the ground that they failed to meet the tests of essentiality and relevancy, in that the facts sought are not necessary to the proof of the case pending herein, nor would the facts sought establish, in whole or in part, the plaintiff's cause of action against this defendant, all as required by Section 8-320, Code of Virginia, 1950, as amended.

DOBBS HOUSES, INC.

By William T. Prince
Of Counsel

Filed 10-28-65

Dave Ward, D. C.

* * * * *

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* * * * *

ORDER

This day came the plaintiff by Counsel and moved the Court to take discovery depositions of the defendant to inquire concerning facts of ownership of the restaurant business, the leasing and ownership of the premises and the name of the person, partnership, firm or corporation that conducted the restaurant business operated under the name Toddle House, and was argued by Counsel for the plaintiff and defendant.

And it appearing that Counsel for the plaintiff stated to the Court that the State Corporation Commission and the Commissioner of the Revenue of the City of Norfolk, Virginia had advised him that the Defendant, a foreign corporation, had not filed a Fictitious or Assumed Name Certificate and further that such certificate had not been filed for Toddle House, and further that the name Dobbs Houses appears on the menu in use in the Toddle House that is the subject of this litigation, however, the Court is of the opinion that the information sought by the plaintiff is not within the purposes of the rule for discovery and accordingly, it is Adjudged, Ordered and Decreed that the aforesaid motion is denied, to which ruling the plaintiff objects and excepts.

It is further Adjudged, Ordered and Decreed that the plaintiff is granted leave for twenty-one (21) days to amend her Motion for Judgment and to name and bring in additional parties defendant.

Enter: C. H. J.

Judge Nov 2, 65

* * * * *

page 19 } AMENDED MOTION FOR JUDGMENT

The plaintiff, Anne Klein, moves the Circuit Court of the City of Norfolk, Virginia, for a judgment and award of exe-

cution against the defendants for the sum of Twenty-Five Thousand ($25,000.00) Dollars, which sum of money is due the plaintiff from the defendants, for this, to-wit:

1. That on or about November 7, 1963, the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, was the lessee of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the lessee, owned, maintained and operated in, upon and about the said premises, a restaurant for public patronage.

2. That on or about November 7, 1963, the defendant, The National Toddle House Corp., a corporation, individually, and T/A Toddle House, was the lessee of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the lessee, owned, maintained and operated in, upon and about the said premises, a restaurant for public patronage.

page 20 } 3. That on or about November 7, 1963, the defendant, Dobbs Houses, Inc., a corporation, individually, and T/A Toddle House, was the lessee of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the lessee, owned, maintained and operated in, upon and about the said premises, a restaurant for public patronage.

4. That on or about November 7, 1963, the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, was the lessee of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the lessee, owned, maintained and operated in, upon and about the said premises, a restaurant for public patronage.

5. That at all times herein mentioned the defendant, The National Toddle House Corporation, a corporation, individually, and T/A Toddle House, was in exclusive possession and control of the aforesaid premises.

6. That at all times herein mentioned the defendant, The National Toddle House Corp., a corporation, individually, and T/A Toddle House, was in exclusive possession and control of the aforesaid premises.

page 21 } 7. That at all times herein mentioned the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House, was in exclusive possession and control of the aforesaid premises.

8. That at all times herein mentioned the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, was in exclusive possession and control of the aforesaid premises.

9. That on or about November 7, 1963, the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, was the owner of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the owner, maintained and operated in, upon and about the said premises, a restaurant for public patronage, and at all times herein mentioned the defendant was in exclusive possession and control of the aforesaid premises.

10. That on or about November 7, 1963, the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, was the owner of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the owner, maintained and operated in, upon and about the said premises, a restaurant for public patronage, and at all times herein mentioned the defendant was in exclusive possession and control of the aforesaid premises.

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11. That on or about November 7, 1963, the defendant, Dobbs Houses, Inc., a corporation, individually, and T/A Toddle House, was the owner of certain premises located at Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and as the owner, maintained and operated in, upon and about the said premises, a restaurant for public patronage, and at all times herein mentioned the defendant was in exclusive possession and control of the aforesaid premises.

12. That on or about November 7, 1963, the defendant, Dobbs Houses, Incorporated, a corporation, individually, and T/A Toddle House, was the owner of certain premises located at Colley Avenue and Maury Avenue in the City of Norfolk, Virginia, and as the owner, maintained and operated in, upon and about the said premises, a restaurant for public patronage, and at all times herein mentioned the defendant was in exclusive possession and control of the aforesaid premises.

13. That on or about November 7, 1963, the defendant, The National Toddle House Corporation, a corporation individually, and T/A Toddle House, owned and operated a restaurant business for public patronage in, upon and about a certain building and lot located at the intersection of Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and was in exclusive possession and control of said premises.

page 23 }

14. That on or about November 7, 1963, the

defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, owned and operated a restaurant business for public patronage in, upon and about a certain building and lot located at the intersection of Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and was in exclusive possession and control of said premises.

15. That on or about November 7, 1963, the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House, owned and operated a restaurant business for public patronage in, upon and about a certain building and lot located at the intersection of Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and was in exclusive possession and control of said premises.

16. That on or about November 7, 1963, the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, owned and operated a restaurant business for public patronage in, upon and about a certain building and lot located at the intersection of Colley Avenue and Maury Avenue, in the City of Norfolk, Virginia, and was in exclusive possession and control of said premises.

17. That on or about November 7, 1963, at approximately 7:00 p.m., the plaintiff went to the premises of the defendant, The National Toddle House Corporation, a cor-
page 24 } poration, individually and T/A Toddle House, with the intent to have dinner. The plaintiff walked up the entrance way along the side of the building leading to the front door and entered the premises and had dinner.

18. That on or about November 7, 1963, at approximately 7:00 p.m., the plaintiff went to the premises of the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, with the intent to have dinner. The plaintiff walked up the entrance way along the side of the building leading to the front door and entered the premises and had dinner.

19. That on or about November 7, 1963, at approximately 7:00 p.m., the plaintiff went to the premises of the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House, with the intent to have dinner. The plaintiff walked up the entrance way along the side of the building leading to the front door and entered the premises and had dinner.

20. That on or about November 7, 1963, at approximately 7:00 p.m., the plaintiff went to the premises of the defendant,

Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, with the intent to have dinner.
page 25 } The plaintiff walked up the entrance way along the side of the building leading to the front door and entered the premises and had dinner.

21. That after the plaintiff finished her dinner and paid her bill, she left the aforesaid premises and walked on the walkway leading from the front door to the sidewalk, at said time and place.

22. That the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House negligently and carelessly permitted the front walkway and particularly the step thereof, to be and remain darkened in the night time and to be and remain in a dangerous and unsafe condition, which condition existed prior to plaintiff's injuries herein, and of which condition the defendant had, or in the exercise of ordinary care, should have had notice and knowledge, at said time and place.

23. That the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House negligently and carelessly permitted the front walkway and particularly the step thereof, to be and remain darkened in the night time and to be and remain in a dangerous and unsafe condition, which condition existed prior to plaintiff's injuries herein, and of which condition the defend-
page 26 } ant had, or in the exercise or ordinary care, should have had notice and knowledge, at said time and place.

24. That the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House negligently and carelessly permitted the front walkway and particularly the step thereof, to be and remain darkened in the night time and to be and remain in a dangerous and unsafe condition, which condition existed prior to plaintiff's injuries herein, and of which condition the defendant had, or in the exercise or ordinary care, should have had notice and knowledge, at said time and place.

25. That the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House negligently and carelessly permitted the front walkway and particularly the step thereof, to be and remain darkened in the night time and to be and remain in a dangerous and unsafe condition, which condition existed prior to plaintiff's injuries herein, and of which condition the defendant had, or in the exercise or ordinary care, should have had notice and knowledge, at said time and place.

26. That the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, negligently maintained the front walkway and step leading to the sidewalk, at said time and place.

page 27 } 27. That the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, negligently maintained the front walkway and step leading to the sidewalk, at said time and place.

28. That the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House negligently maintained the front walkway and step leading to the sidewalk, at said time and place.

29. That the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House negligently maintained the front walkway and step leading to the sidewalk, at said time and place.

30. That the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, negligently failed to warn the plaintiff of the danger and negligently failed to provide any protection to her against same, at said time and place.

31. That the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, negligently failed to warn the plaintiff of the danger and negligently failed to provide any protection to her against same, at said time and place.

32. That the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House, negligently failed to warn the plaintiff of the danger and negligently failed to provide any protection to her against same, at said time and place.

page 28 } 33. That the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, negligently failed to warn the plaintiff of the danger and negligently failed to provide any protection to her against same, at said time and place.

34. That the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, negligently maintained bushes and shrubs along the said walkway and, in particular, abutting the step thereof, which blocked light from reaching the step, at said time and place.

35. That the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, negligently maintained bushes and shrubs along the said walkway and, in particular, abutting the step thereof, which blocked light from reaching the step, at said time and place.

36. That the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House, negligently maintained bushes and shrubs along the said walkway and, in particular, abutting the step thereof, which blocked light from reaching the step, at said time and place.

37. That the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, negligently maintained bushes and shrubs along the said walkway and, in particular, abutting the step thereof, which

page 29 } blocked light from reaching the step, at said time and place.

38. That the aforesaid condition of the aforesaid walkway and step constituted a nuisance and a menace to the public, at said time and place.

39. That the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, at the aforesaid time and place violated Section 21-11 of the Code of the City of Norfolk, Virginia.

40. That the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, at the aforesaid time and place violated Section 21-11 of the Code of the City of Norfolk, Virginia.

41. That the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House, at the aforesaid time and place violated Section 21-11 of the Code of the City of Norfolk, Virginia.

42. That the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, at the aforesaid time and place violated Section 21-11 of the Code of the City of Norfolk, Virginia.

43. That the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, maintained said nuisance, at said time and place.

page 30 } 44. That the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House maintained said nuisance, at said time and place.

45. That the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House maintained said nuisance, at said time and place.

46. That the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House maintained said nuisance, at said time and place.

47. That at the aforesaid time and place the said restaurant business and the exclusive possession and control

of the aforesaid premises, in, upon and about which the aforesaid restaurant business was conducted and operated by The National Toddle House Corporation, and subsequent to the aforesaid date the said The National Toddle House Corporation merged and/or consolidated and/or sold and/or assigned and/or transferred and/or otherwise disposed of its assets to Dobbs Houses, Inc., and/or Dobbs Houses, Incorporated and Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated is liable for and responsible for liabilities, claims or causes of action against The National Toddle House Corporation, in general, and these causes of action in particular.

page 31 } 48. That the said The National Toddle House Corporation sold, transferred or assigned its assets without complying with the Bulk Sales Act of the State of Virginia and the assets of the said The National Toddle House Corporation acquired by Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated are liable for and responsible for and the said Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated are liable for and responsible for claims, liabilities and causes of action that arose prior to the transfer, sale or assignment of its assets that they made without complying with the Bulk Sales Act of the State of Virginia.

49. That the plaintiff, while walking at the said time and place, on the walkway, fell down the aforesaid step causing her to receive serious and disabling injuries, said walkway and step is on the aforesaid premises.

50. That the aforesaid negligence and nuisance of the defendant, The National Toddle House Corporation, a corporation, individually and T/A Toddle House, was the proximate cause of the plaintiff's injuries.

51. That the aforesaid negligence and nuisance of the defendant, The National Toddle House Corp., a corporation, individually and T/A Toddle House, was the proximate cause of the plaintiff's injuries.

page 32 } 52. That the aforesaid negligence and nuisance of the defendant, Dobbs Houses, Inc., a corporation, individually and T/A Toddle House, was the proximate cause of the plaintiff's injuries.

53. That the aforesaid negligence and nuisance of the defendant, Dobbs Houses, Incorporated, a corporation, individually and T/A Toddle House, was the proximate cause of the plaintiff's injuries.

54. That the plaintiff was caused to suffer and she will

in the future be caused to suffer considerable physical pain and mental anguish.

55. That the plaintiff was caused to expend, and she will in the future be caused to expend large sums of money in an endeavor to be healed and cured of said injuries.

56. That the plaintiff was caused to lose large sums of money in wages, which she otherwise would have earned.

57. That the plaintiff was caused to be unable, and she will in the future be unable to perform her necessary and lawful affairs.

58. That the plaintiff has been caused to suffer and endure considerable pain and discomfort for a considerable period of time and she will in the future be caused to suffer and endure considerable pain and discomfort as a result

page 33 } of the injuries suffered by her.

59. That the plaintiff has been compelled to incur various debts and liabilities in the procurement of medicines, medical attention and other incidentals made necessary by reason hereof.

WHEREFORE, the plaintiff moves the Court for judgment and award of execution against the defendants in the sum of Twenty-five Thousand ($25,000.00) Dollars with interest and costs aforesaid.

ANNE KLEIN

By Eugene Forrest Gordman
Of Counsel

* * * * *

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* * * * *

ORDER

This day came the plaintiff, by counsel, and moved the Court to amend Paragraph 47 of the Amended Motion for Judgment in this case, and it appearing to the Court that said Amendment is proper, it is hereby

ORDERED, ADJUDGED AND DECREED that Paragraph 47 of the Amended Motion for Judgment is hereby amended to read as follows:

47. That at the aforesaid time and place the aforesaid restaurant business was owned and/or conducted and/or operated by The National Toddle House Corporation, and that at the aforesaid time and place, The National Toddle House Corporation was in exclusive possession and control of the aforesaid premises, including the walkway and step aforesaid, and subsequent to the aforesaid date, the said The National Toddle House Corporation merged with and/or consolidated with and/or sold to and/or assigned

page 36 } and/or transferred to and/or otherwise disposed of its assets to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, and Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated agreed to and did assume all of the estate, property, rights, privileges and franchises and all of the obligations of The National Toddle House Corporation and the said Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated did agree to and did assume the liabilities of The National Toddle House Corporation; and The National Toddle House Corporation was on notice of the claim of this plaintiff and its liability to this plaintiff prior to said merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or other disposition of its assets to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated; and Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, was on notice, or with the exercise of reasonable care, should have been on notice of the claim of this plaintiff at the time of said merger with and/or consolidation with and/or sale from and/or assignment from and/or transfer from and/or other disposition of the assets of The National Toddle House Corporation to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated; and Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated is liable for and responsible for the liabilities, claims or causes of action against The National Toddle House Corporation, in general, and these causes of action in particular; and at the aforesaid time and place and/or at the time of the aforesaid merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or other disposition of its assets to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, the said The National Toddle House Corporation was a subsidiary of Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, and at the aforesaid time and place and/or at the time of said merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or other disposition of its assets to Dobbs Houses,

Inc. and/or Dobbs Houses, Incorporated, the said The National Toddle House Corporation was a wholly owned subsidiary of Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated.

Enter: Nov. 5-65

C. H. J. Judge

* * * * *

page 37 }

* * * * *

MOTION TO DISMISS

The defendants The National Toddle House Corporation and Dobbs Houses, Inc., by counsel, move the Court to dismiss the amended motion for judgment served upon them on the following grounds:

1. That there has been a misjoinder of defendants as appears on the face of the amended motion for judgment.

2. That the allegations are so vague, indefinite and inconsistent that it cannot be ascertained which corporate defendant it is claimed was the owner, lessee or operator of the restaurant business allegedly liable for in-
page 38 } juries sustained by the plaintiff.

3. That the allegations are inconsistent in that the plaintiff has alleged that each of the defendants was both the owner and lessee of the described premises.

THE NATIONAL TODDLE
HOUSE CORPORATION

DOBBS HOUSES, INC.,

By William T. Prince
Of Counsel

* * * * *

Filed 11-9-65

Dave Ward, D. C.

* * * * *

page 49 }

* * * * *

ORDER

This day came the plaintiff by counsel, and moved the Court to strike the responsive pleadings heretofore filed by the defendant, Dobbs Houses, Inc., and the testimony of witnesses were presented and was argued by counsel.

Upon consideration whereof, it is hereby ADJUDGED, ORDERED and DECREED that the further defense of this suit by the defendant, Dobbs Houses, Inc., is hereby stayed for ten (10) days from the date of the entry of this Order and the said defendant is hereby given 10 days from the entry of this Order to file a certificate as required by Section 59-169 of the Code of Virginia, 1950, as amended, to which action of the Court the defendant, Dobbs Houses, Inc., object and hereby notes its exception, and the plaintiff objects and excepts to said action of the Court.

Enter: 1-20-66

T. M. J.

* * * * *

page 50 }

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This day came the defendant, Dobbs Houses, Inc., and moved the Court to vacate the order entered by the Court on January 20, 1966 and was argued by Counsel.

Upon consideration whereof, it is hereby Ordered, Adjudged and Decreed that the said Order of this Court entered on January 20, 1966 which stayed the proceedings herein is hereby vacated, to which action of the Court the plaintiff objected and noted her exception.

Enter: 1-28-66

T. M. J.

* * * * *

page 54 }

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ORDER

This cause came on to be heard on the motion of Dobbs Houses, Inc. to quash interrogatories served upon it; and the motion of the defendants The National Toddle House Corp. and Dobbs Houses, Incorporated to quash service of process made upon James Farley; and the motion of the defendants The National Toddle House Corporation and Dobbs Houses, Inc. to dismiss the amended motion for judgment; and were argued by counsel;

And it appearing to the court from the affidavit of James R. Farley, filed with the papers herein, that he is not, and has never been, Registered Agent for The National Toddle House Corp. or Dobbs Houses, Incorporated, according to his records, and there being no evidence to the contrary; it is ORDERED that the motion of said defendants be sustained and that service of process made upon James R. Farley as Registered Agent for The National Toddle House Corp. and Dobbs Houses, Incorporated be, and the same hereby is, quashed;

page 55 } And it further appearing to the court that as to the defendants The National Toddle House Corporation and Dobbs Houses, Inc., there is a misjoinder of defendants as appears from the amended motion for judgment; but it is ORDERED that leave be granted the plaintiff to further amend her amended motion for judgment, within five (5) days of the entry of this order; to which action of the court in sustaining the defendants' position that there is a misjoinder of the defendants, the plaintiff objected and excepted;

And it further appearing to the court that the plaintiff's allegations that the defendants both owned and leased the premises described in the motion for judgment is not an inconsistent position, it is ORDERED that the said defendants' motion to dismiss on the ground stated in paragraph 3 of its said motion be overruled, to which action of the court the said defendants objected and excepted;

And it further appearing to the court that there being a misjoinder of defendants and that the defendant Dobbs Houses, Inc.'s motion to quash interrogatories should be sustained because of the misjoinder, it is ORDERED that

the interrogatories be, and the same are hereby, quashed, to which action of the court the plaintiff objected and excepted.

Enter this Order: 7-26-67

T. M. J. Judge

* * * * *

page 56 }

* * * * *

AMENDED MOTION FOR JUDGMENT

The plaintiff, Anne Klein, moves the Circuit Court of the City of Norfolk, Virginia, for a judgment and award of execution against the defendants for the sum of Twenty-Five Thousand ($25,000.00) Dollars, which sum of money is due the plaintiff from the defendants, for this, to-wit:

1. That on or about November 7, 1963, the defendants owned and operated a restaurant business for public patronage in, on and about a certain building and lot located at the intersection of Colley Avenue and Maury Avenue in the City of Norfolk, Virginia, and the defendants were in exclusive possession and control of said premises.

page 57 } 2. That at all times herein mentioned, the defendants were in exclusive possession and control of the aforesaid premises.

3. That on or about November 7, 1963, the defendants leased, owned, maintained, operated and controlled the said premises located at Colley Avenue and Maury Avenue in the City of Norfolk, Virginia.

4. That the defendants did trade and do business at the aforesaid premises under the name of Toddle House.

5. That on or about November 7, 1963, at approximately 7:00 p. m., the plaintiff went to the premises of the defendants with the intent to have dinner. The plaintiff walked up the entrance way along the side of the building leading to the front door and entered the premises and had dinner.

6. That after the plaintiff finished her dinner and paid her bill, she left the aforesaid premises and walked on the walkway leading from the front door to the sidewalk, at said time and place.

7. That the defendants negligently and carelessly permitted the front walkway and particularly the step thereof, to be and remain darkened in the night time and to be and remain in a dangerous and unsafe condition, which condition existed prior to plaintiff's injuries herein, and of which condition the defendants had, or in the exercise of ordinary care, should have had notice and knowledge, at said time and place.

8. That the defendants negligently maintained the front walkway and step leading to the sidewalk, at said time and place.

9. That the defendants negligently failed to warn the plaintiff of the danger and negligently failed to provide any protection to her against same, at said time and place.

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10. That the defendants negligently maintained bushes and shrubs along the said walkway and, in particular, abutting the step thereof, which blocked light from reaching the step, at said time and place.

11. That the aforesaid condition of the aforesaid walkway and step constituted a nuisance and a menace to the public, at said time and place.

12. That the defendants, at the aforesaid time and place, violated Section 21-11 of the Code of the City of Norfolk, Virginia.

13. That the defendants maintained said nuisance, at the said time and place.

14. That at the aforesaid time and place the aforesaid restaurant business was owned and/or conducted and/or operated by the National Toddle House Corporation, and that at the aforesaid time and place, the National Toddle House Corporation was in exclusive possession and control of the aforesaid premises, including the walkway and step aforesaid, and subsequent to the aforesaid date, the said The National Toddle House Corporation merged with and/or consolidated with and/or sold to and/or assigned and/or transferred to and/or otherwise disposed of its assets to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, and Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated agreed to and did assume all of the estate, property, rights, privileges and franchises and all of the obligations of The National Toddle House Corporation and the said Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated did agree to and did assume the liabilities of The National Toddle House Corporation; and The National Toddle House Corporation was

on notice of the claim of this plaintiff and its liability to this plaintiff prior to said merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or other disposition of its assets to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated; and Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, was on notice, or with the exercise of reasonable care, should have been on notice of the claim of this plaintiff at the time of said merger with and/or consolidation with and/or sale from and/or assignment from and/or transfer from and/or other disposition of the assets of The National Toddle House Corporation to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated; and Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated is liable for and responsible for the liabilities, claims or causes of action against The National Toddle House Corporation, in general, and these causes of action in particular; and at the aforesaid time and place and/or at the time of the aforesaid merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or other disposition of its assets to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, the said The National Toddle House Corporation was a subsidiary of Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, and at the aforesaid time and place and/or at the time of said merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or other disposition of its assets to Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated, the said The National Toddle House Corporation was a wholly owned subsidiary of Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated.

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15. That the said The National Toddle House Corporation sold, transferred or assigned its assets without complying with the Bulk Sales Act of the State of Virginia and the assets of the said The National Toddle House Corporation acquired by Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated are liable for and responsible for and the said Dobbs Houses, Inc. and/or Dobbs Houses, Incorporated are liable for and responsible for claims, liabilities and causes of action that arose prior to the transfer, sale or assignment of its assets that they made without complying with the Bulk Sales Act of the State of Virginia.

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16. That the plaintiff, while walking at the said time and place, on the walkway, fell down the aforesaid step causing

her to receive serious and disabling injuries, said walkway and step is on the aforesaid premises.

17. That the aforesaid negligence and nuisance of the defendants was the proximate cause of the plaintiff's injuries.

18. That the plaintiff was caused to suffer and she will in the future be caused to suffer considerable physical pain and mental anguish.

19. That the plaintiff was caused to expend, and she will in the future be caused to expend large sums of money in an endeavor to be healed and cured of said injuries.

20. That the plaintiff was caused to lose large sums of money in wages, which she otherwise would have earned.

21. That the plaintiff was caused to be unable, and she will in the future be unable to perform her necessary and lawful affairs.

22. That the plaintiff has been caused to suffer and endure considerable pain and discomfort for a considerable period of time and she will in the future be caused to suffer and endure considerable pain and discomfort as a result of the injuries suffered by her.

23. That the plaintiff has been compelled to incur various debts and liabilities in the procurement of medicines, medical attention and other incidentals made necessary by reason hereof.

page 61 } WHEREFORE, the plaintiff moves the Court for judgment and award of execution against the defendants in the sum of Twenty-five Thousand ($25,000.00) Dollars with interest and costs aforesaid.

ANNE KLEIN

By Eugene Forrest Gordman
Of Counsel

* * * * *

Filed 7-31-67

T. A. W. Gray, D. C.

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DEMURRER

The defendants, The National Toddle House Corporation and Dobbs Houses, Inc., hereinafter referred to as National and Dobbs, respectively, demur to the amended motion for judgment filed herein on July 31, 1967 on the ground that the allegations contained therein are inconsistent in that it is alleged throughout that both defendants owned, operated and controlled the business and premises described therein on November 7, 1963, the alleged time of the plaintiff's alleged injuries, but in paragraph 14 thereof, it is alleged that at said time the defendant, National, owned and operated the said business and that subsequent thereto the defendant, Dobbs, assumed all of the obligations of National;

And the said defendants further demur on the ground that the amended motion for judgment contains allegations against two defendants no longer parties to the action.

THE NATIONAL TODDLE HOUSE CORPORATION AND DOBBS HOUSES, INC.

By William T. Prince
Of Counsel

* * * * *

Filed 8-10-67

T. A. W. Gray, D. C.

* * * * *

page 65 }

* * * * *

ORDER

This cause came on upon the demurrer of the defendants, The National Toddle House Corporation and Dobbs Houses, Inc., and was argued by counsel;

And it appearing to the court that the allegations contained in the amended motion for judgment filed on July 31, 1967 are inconsistent in that it is alleged throughout that both defendants owned, operated and controlled the business and premises described in said amended motion for judgment, although in paragraph 14 thereof, it is alleged that at the same time the defendant, The National Toddle House Corporation, owned and/or conducted and/or operated the said premises and was in exclusive possession and control thereof; and upon the further ground that said amended motion for judgment contains allegations against two defendants no longer parties to the action;

It is ORDERED that the said defendants' demurrer be and the same hereby is sustained with leave granted the plaintiff to further amend her motion for judgment within ten (10) days of the entry of this order, to all of which action the plaintiff objects and excepts.

Enter this Order:

Thos. M. Johnston Judge

To the Clerk of the Circuit Court of the City of Norfolk. Enter this Order in vacation Oct. 3, 1967.

* * * * *

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AMENDED
MOTION FOR JUDGEMENT

The plaintiff, Anne Klein, moves the Circuit Court of the City of Norfolk, Virginia, for a judgement and award of execution against the defendants for the sum of Twenty-Five Thousand ($25,000.00) Dollars, which sum of money is due the plaintiff from the defendants, for this, to-wit:

1. That on or about November 7, 1963, the defendants owned and operated a restaurant business for public patronage in, on and about a certain building and lot located at the intersection of Colley Avenue and Maury Avenue in the City of Norfolk, Virginia, and the defendants were in ex-

clusive possession and control of said premises.

page 68 } 2. That at all time herein mentioned, the defendants were in exclusive possession and control of the aforesaid premises.

3. That on or about November 7, 1963, the defendants leased, owned, maintained, operated and controlled the said premises located at Colley Avenue and Maury Avenue in the City of Norfolk, Virginia.

4. That the defendants did trade and do business at the aforesaid premises under the name of Toddle House.

5. That on or about November 7, 1963, at approximately 7:00 p.m., the plaintiff went to the premises of the defendants with the intent to have dinner. The plaintiff walked up the entrance way along the side of the building leading to the front door and entered the premises and had dinner.

6. That after the plaintiff finished her dinner and paid her bill, she left the aforesaid premises and walked on the walkway leading from the front door to the sidewalk, at said time and place.

7. That the defendants negligently and carelessly permitted the front walkway and particularly the step thereof, to be and remain darkened in the night time and to be and remain in a dangerous and unsafe condition, which condition existed prior to plaintiff's injuries herein, and of which condition the defendants had, or in the exercise of ordinary care, should have had notice and knowledge, at said time and place.

8. That the defendants negligently maintained the front walkway and step leading to the sidewalk, at said time and place.

9. That the defendants negligently failed to warn the plaintiff of the danger and negligently failed to provide any protection to her against same, at said time and place.

page 69 } 10. That the defendants negligently maintained bushes and shrubs along the said walkway and, in particular, abutting the step thereof, which blocked light from reaching the step, at said time and place.

11. That the aforesaid condition of the aforesaid walkway and step constituted a nuisance and a menace to the public, at said time and place.

12. That the defendants, at the aforesaid time and place, violated Section 21-11 of the Code of the City of Norfolk, Virginia.

13. That the defendants maintained said nuisance, at the said time and place.

14. The said The National Toddle House Corporation merged with and/or consolidated with and/or sold to and/or assigned and/or transferred to and/or otherwise disposed of its assets to Dobbs Houses, Inc., and Dobbs Houses, Inc. agreed to and did assume all of the estate, property, rights, privileges and franchises and all of the obligations of The National Toddle House Corporation and the said Dobbs Houses, Inc. did agree to and did assume the liabilities of The National Toddle House Corporation; and The National Toddle House Corporation was on notice of the claim of this plaintiff and its liability to this plaintiff prior to said merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or disposition of its assets to Dobbs Houses, Inc. and Dobbs Houses, Inc. was on notice, or with the exercise of reasonable care, should have been on notice of the claim of this plaintiff at the time of said merger with and/or consolidation with and/or sale from and/or assignment from and/or transfer from and/or other disposition of the assets of The National Toddle House Corporation to Dobbs Houses, Inc. and Dobbs Houses, Inc. is liable for and responsible for the liabilities, claims or causes of action against The National Toddle House Corporation, in general, and these causes of action in particular;

page 70 } and at the aforesaid time and place and/or at the time of the aforesaid merger with and/or consolidation with and/or sale to and/or assignment to and/or transfer to and/or disposition of its assets to Dobbs Houses, Inc.

15. That the said The National Toddle House Corporation sold, transferred or assigned its assets without complying with the Bulk Sales Act of the State of Virginia and the assets of the said The National Toddle House Corporation acquired by Dobbs Houses, Inc. are liable for and responsible for and the said Dobbs Houses, Inc. are liable for and responsible for claims, liabilities and causes of action that arose prior to the transfer, sale or assignment of its assets that they made without complying with the Bulk Sales Act of the State of Virginia.

16. That the plaintiff, while walking at the said time and place, on the walkway, fell down the aforesaid step causing her to receive serious and disabling injuries, said walkway and step is on the aforesaid premises.

17. That the aforesaid negligence and nuisance of the de-

fendants was the proximate cause of the plaintiff's injuries.

18. That the plaintiff was caused to suffer and she will in the future be caused to suffer considerable physical pain and mental anguish.

19. That the plaintiff was caused to expend, and she will in the future be caused to expend large sums of money in an endeavor to be healed and cured of said injuries.

20. That the plaintiff was caused to lose large sums of money in wages, which she otherwise would have earned.

21. That the plaintiff was caused to be unable, and she will in the future be unable to perform her necessary and lawful affairs.

22. That the plaintiff has been caused to suffer and endure considerable pain and discomfort for a considerable period of time and she will in the future be caused to suffer and endure considerable pain and discomfort as a result of the injuries suffered by her.

page 71 } 23. That the plaintiff has been compelled to incur various debts and liabilities in the procurement of medicines, medical attention and other incidentals made necessary by reason hereof.

WHEREFORE, the plaintiff moves the Court for judgement and award of execution against the defendants in the sum of Twenty-five Thousand ($25,000.00) Dollars with interest and costs aforesaid.

ANNE KLEIN

By Eugene Forrest Gordman
Of Counsel

* * * * *

Filed 10-4-67

Dave Ward, D. C.

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DEMURRER TO FOURTH AMENDED MOTION FOR JUDGMENT

The defendants, The National Toddle House Corporation and Dobbs Houses, Inc., hereinafter referred to as National

and Dobbs respectively, demur to the fourth amended motion for judgment filed herein on or about October 3, 1967 on the ground that the allegations contained therein are inconsistent in that it is alleged throughout that both defendants owned, operated and controlled the business and premises described therein on November 7, 1963, the alleged time of the plaintiff's alleged injuries, although in paragraph 14 thereof, it is alleged that subsequent to November 7, 1963 the defendant, National, disposed of its assets and liabilities to the defendant, Dobbs, which assumed all of the obligations of the defendant, National, including the alleged liability to the plaintiff as set out in said fourth amended motion for judgment.

MOTION TO DISMISS

The defendants, National and Dobbs, move the Court to dismiss the plaintiff's fourth amended motion for
page 73 } judgment on the ground that the allegations contained therein are substantially like and substantively identical to the allegations contained in her third amended motion for judgment, filed on July 31, 1967, to which defendants' demurrer was sustained.

THE NATIONAL TODDLE
HOUSE CORPORATION AND
DOBBS HOUSES, INC.

By William T. Prince
Of Counsel

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This cause came on upon the demurrer to the third amended motion for judgment, (which has been referred to by the defendants as the fourth amended motion for judgment) and the motion to dismiss filed by the defendants, The National Toddle House Corporation and Dobbs Houses, Inc.; and upon consideration of the arguments of counsel and the memoranda of law submitted by counsel, the court being of the opinion that the third amended motion (referred to by the

defendants as the fourth amended motion for judgment) is demurrable on the ground that the allegations contained therein are inconsistent in that it is alleged throughout that both defendants owned, operated and controlled the business and premises described therein on November 7, 1963, the alleged time of the plaintiff's alleged injuries, while in paragraph 14 thereof, it is alleged that subsequent to November 7, 1963 the defendant, The National Toddle House Corporation, disposed of its assets and liabilities to the defendant, Dobbs Houses, Inc., which assumed all of the obligations of the defendant, The National Toddle House Corporation, including the alleged liability to the plaintiff as set out in

page 77 } said amended motion for judgment, it is therefore ORDERED that the said defendants' demurrer be and the same hereby is sustained without further leave granted to amend;

And it is further ORDERED that the said defendants' motion to dismiss be sustained and that this action be dismissed on the ground that the allegations contained in the third amended motion for judgment (referred to by the defendants as the fourth amended motion for judgment) are substantially like and substantively identical to the allegations contained in the amended motion for judgment filed on July 31, 1967, to which defendants' demurrer was sustained;

And it is further ORDERED that the motion of the plaintiff to dismiss the demurrer on the grounds that the defendants waived the objection contained in their demurrer by reason of the fact that they did not raise this objection at the time that the defendants filed their first motion to dismiss on November 9, 1965, is overruled;

Enter this Order:
2-22-68

C. H. J. Judge

I ask for this:
William T. Prince p. d.

Seen and to the foregoing action of the Court the plaintiff objects and excepts.
Eugene Forrest Gordman p. q.

* * * * *

A Copy—Teste:

Howard G. Turner, Clerk.

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