

IN THE CIRCUIT COURT OF MADISON COUNTY, ALABAMA

JANE DOE, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 2016-900433
)	
JEREMY JOSEPH NELSON, <i>et al.</i>,)	
)	
Defendants.)	

JANE SMITH, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No.: 2016-900449
)	
JEREMY JOSEPH NELSON, <i>et al.</i>,)	
)	
Defendants.)	

NOTICE OF CLASS SETTLEMENT
PLEASE READ CAREFULLY THIS NOTICE AFFECTS YOUR LEGAL RIGHTS

You are receiving this notice because you have been identified as a member of a class action lawsuit asserting that the Defendants, Sanitary Systems, a janitorial service company, James Starkey, the owner of Sanitary Systems, and Jeremy Joseph Nelson, an employee of Sanitary Systems, are liable for placing cameras in the bathrooms and changing rooms used by minors and adults at Ann’s Studio of Dance, Bentley Cadillac Dealership, and WHNT 19 television station.

The aforementioned events occurred during the following time frames:

- At Ann’s Studio of Dance from approximately April 1, 2014 until Mr. Nelson’s arrest on October 7, 2014;
- At WHNT from approximately April 2013 until Mr. Nelson’s arrest on October 7, 2014; and
- At the Bentley Cadillac Dealership from approximately September 2014 until Mr. Nelson’s arrest on October 7, 2014.

This lawsuit is referred to as *Jane Smith, et al., v. Jeremy Joseph Nelson, et al.*, Case No. CV-2016-900449.00 pending in the Circuit Court of Madison County, Alabama.

On August 8, 2018, the Circuit Court of Madison County, Alabama issued an Amended Order granting Class Certification of this action pursuant to Rule 23 of the ALABAMA RULES OF

CIVIL PROCEDURE. The Court directed the parties to give notice to you and the other members of the Class in order to inform you of this pending lawsuit and your rights.

You have been identified as a member of this class and are entitled to monetary compensation. Please retain this document, as the following pages contain important and valuable information about this lawsuit and your rights.

FACTS AND LEGAL OBSTACLES TO RECOVERY

Defendants filed a Motion for Summary Judgment, the hearing for which was scheduled February 8, 2019. Defendant argued in its motion, that Starkey (employer) is not liable for the criminal acts of Nelson (employee). Defendant emphasized that Alabama courts have regularly held that a premises owner or employer cannot be held liable for the criminal acts of a third party, including an employee, unless extraordinary circumstances are present.

In support of this argument, Defendants cited to Ex parte South Baldwin Regional Medical Center, 785 So. 2d 368 (Ala. 2000), a case in which the Supreme Court considered facts in which parents sued a hospital, claiming assault and battery, negligent supervision and breach of duty to a business invitee, after their six-year-old daughter, while visiting a patient, was fondled by McFadden, a registered nurse employed at the hospital. The evidence showed that McFadden had been diagnosed with manic depression, and “had a history of emotional outbursts with fellow employees and at least one patient.” However, “[n]o evidence indicate[d] that McFadden had ever engaged in sexual misconduct before the incident made the basis of this action.”

Both South Baldwin and the present case alleged claims in which plaintiffs seek to hold an employer liable for sexual crimes against children committed by an employee who was working at the time he committed the subject act. As argued in Defendant’s Motion for Summary Judgment, both McFadden and Jeremy Nelson had issues in their pasts (mental illness and altercations with co-employees and patients for McFadden; substance abuse and domestic violence arrests for Nelson), from which one could argue that the decision to hire or retain them was questionable. Testimony showed that both McFadden and Nelson performed the duties associated with their employment well. Most importantly, the record contains no evidence as to either McFadden or Nelson of any sexual misconduct prior to the subject criminal act.

Defendant further argued that Plaintiff could not prevail in proving that Nelson’s acts occurred within the line and scope of his employment. “To recover against a defendant under the theory of *respondeat superior*, the plaintiff must establish the status of employer and employee and must show that the act was done within the line and scope of the employee’s employment.” Hudson v. Muller, 653 So.2d 942 (Ala. 1995). In support of this argument, Defendant cited to Hendley v. Springhill Memorial Hosp., 575 So.2d 547 (Ala. 1990), in which the Supreme Court considered facts in which a technician for a company that provided TENS units for a hospital, while at the hospital for the business of his employer, performed an unauthorized vaginal examination of the plaintiff. In upholding the trial court’s entry of summary judgment in favor of the hospital, the Court held:

It is a general rule that where an employee abandons his employer's business for personal reasons, the employment is suspended, and the employer is not liable for the actions of the employee during the temporary lapse in employment and during the time of the employee's absence from the employer's business. A tort committed by an agent, even if committed while engaged in the employment of the principal, is not attributable to the principal if it emanated from wholly personal motives of the agent and was committed to gratify wholly personal objectives or desires of the agent.

In the present case, Nelson testified that his acts were done solely to satisfy his own personal desires and signed a plea agreement stating as much. Further, he testified that none of his duties involved the use of a camera for any business purpose.

Nelson purchased all of the cameras he used from eBay. Nelson never discussed his purchases of camera equipment with Starkey. Nelson never discussed looking at pornographic images of children with Starkey. Nelson never told Starkey about how much he viewed pornography or the types of images he viewed. Starkey had no knowledge or suspicion that Nelson had used or was using surveillance cameras to record any person, whether dressed or undressed until after his arrest on October 7, 2014. Starkey never discovered any camera hidden by Nelson.

It should also be noted that no evidence was developed that Nelson ever shared images of any person from Ann's Studio of Dance, WHNT or the Bentley dealership with any other person. First, during his deposition, Nelson testified that he did not do so. The parties also took the depositions of two lead investigators from the Alabama Law Enforcement Agency (ALEA), Thomas Whitten and Scott Salser, as well as the ALEA forensic investigator, Robert Thompson. Neither Agents Whitten nor Salser was aware of any evidence that contradicted Nelson's testimony that he had not shared the images. Further, Agent Thompson testified that he had made a thorough forensic examination of Nelson's computers and other devices, explicitly searching for evidence that he had distributed any images and was unable to find evidence that he had done so. Finally, the parties issued subpoenas to the US Department of Homeland Security, Office of Immigration and Customs Enforcement (ICE), which had also participated in the investigation, and received confirmation from the Assistant US Attorney assigned to the case that none of the images found on Nelson's devices showed up on the database maintained by the National Center for Missing and Exploited Children, which further confirmed Nelson's testimony.

Starkey has run Sanitary Systems as a sole proprietor for over forty years to provide basic janitorial services to commercial clients. Had this matter been allowed to proceed to trial, the jury would have only seen that Mr. Starkey was financially responsible and not have been presented with any facts regarding any insurance coverage available.

It is Starkey's position that he did not owe a duty to the plaintiffs, as Nelson's acts were not foreseeable. Ultimately, the facts indicate that there was little to no evidence suggesting that Starkey knew of Nelson's conduct or knew of any facts that would have put him on notice that such conduct was a possibility.

The arguments pending Defendant's Motion for Summary Judgment were taken into great consideration by counsel for the Plaintiffs when determining whether settlement was in the best

interest of the class.

BASIC INFORMATION

1. **Why did I get this notice package?**

You are receiving this Notice because a settlement has been reached with the Defendants in the amount of \$1,250,000.00 plus litigation expenses, and you are entitled to a portion of this settlement in the form of monetary compensation. The Court has preliminarily approved this settlement on January 31, 2019.

2. **What will happen next?**

A fund will be created to divide any settlement or verdict proceeds among all 439 Class Members. This fund will also be used to provide compensation to the attorneys who represented the class and to offset the costs of administering the settlement or trial.

3. **What are the cash benefits of the settlement?**

After the payment of fees and expenses approved by the Court, each Class Member is eligible for a cash benefit which will be based on a pro rata distribution of the Settlement Fund.

HOW WILL YOU GET YOUR BENEFITS?

4. **Do I have to submit a claim form?**

You will not need to submit a claim form in order to receive settlement benefits. The check will be sent to your address automatically.

5. **When will I receive the settlement/verdict benefits?**

The Court will set a hearing to determine whether the settlement will receive final approval. If approved, settlement benefits will be mailed within 90 days of the date of the Court order granting final approval. Payments will only be delayed for a Class Member if we are unable to verify a Class Member's identity and address during that period. Pursuant to ALABAMA CODE § 26-2A-6, Parents or Guardians of minor Class Members will receive the funds to be used for the benefit of the minor Class Member.

6. **Do I have the right to object to the settlement?**

Yes. Objections to class settlement must be received on or before Friday, March 8, 2019. The Court has scheduled a Final Settlement Approval Hearing for Thursday, March 21, 2019 at 9:30 a.m. CST.

THE LAWYERS REPRESENTING YOU

7. **Do I have a lawyer in this case?**

Yes. The Court appointed the following attorneys as Class Counsel to represent you and the other Class Members:

- Drew Haskins of the law firm HENINGER GARRISON DAVIS, LLC in Birmingham, Alabama

- Eric Artrip of the law firm MASTANDO & ARTRIP, LLC in Huntsville, Alabama

You will not be charged individually for these lawyers. If you want to be represented by your own lawyer, you may hire one at your expense.

8. **How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of fees and expenses to be paid from the Settlement Fund. Class Counsel will request fees not to exceed 35% of the Settlement Fund. The fees awarded by the Court, which may be less than the amount requested, would pay Class Counsel for investigating the facts, litigating the case, and negotiating a settlement. The Defendants have agreed not to oppose or take any position related to Class Counsel's request for fees and expenses.

IF YOU DO NOTHING

9. **What happens if I do nothing at all?**

If you do nothing, the Court will determine whether to approve the settlement, and if approved, you will receive your settlement benefits automatically in a check sent to the same address where you received this notice, as outlined above.

GETTING MORE INFORMATION

10. **How can I get more details about the settlement?**

For more information, you can call or email Class Counsel at the following address:

Drew Haskins
205-326-3336
dhaskins@hgdlawfirm.com

Eric Artrip
256-532-2222
artrip@mastandoartrip.com

Please be prepared to provide your name, address and telephone number to Class Counsel. Or, you may find information on the following website:

www.MastandoArtrip.com/DoevNelsonClassActionSettlementInformation