

2024CI05418

CAUSE NO. _____

CHINA BRANFORD, INDIVIDUALLY	§	IN THE DISTRICT COURT
AND AS NEXT FRIEND OF E.B.,	§	
A MINOR,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	____ JUDICIAL DISTRICT
	§	
	§	
CITY OF UNIVERSAL CITY, AND	§	
PLAYCORE INC. DOING BUSINESS AS	§	
PLAY & PARK STRUCTURES	§	
<i>Defendants.</i>	§	BEXAR COUNTY, TEXAS

PLAINTIFFS’ ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiffs China Branford, Individually and as next friend of E.B., a Minor, file Plaintiffs’ Original Petition complaining of Defendants, Universal City and Playcore, Inc. doing business as Play and Park Structures.

I. DISCOVERY

1. Plaintiffs intend to conduct discovery in this suit under Level Three, pursuant to Rule 190.4 of the Texas Rules of Civil Procedure, and will seek an order, agreed or otherwise, to this effect.

II. PARTIES

2. **Plaintiff.** China Branford (“Plaintiff” or “China”) is a natural person who at all times relevant to this cause of action has been and continues to be a resident of Saint Hedwig, Bexar County, Texas.

3. **Plaintiff.** E.B., a minor, is represented by next friend China Branford and is a natural person and all times relevant to this cause of action has been and continues to be resident of Saint Hedwig, Bexar County, Texas.

4. **Defendant.** Universal City (“Universal City”) is a municipal governmental entity existing within Bexar County, State of Texas, and may be served by serving Universal City’s mayor, John Williams, or clerk, Kristin Mueller, both of whom may be served at 2150 Universal City Boulevard, Universal City, Texas 78148, or wherever they may be found.

5. **Defendant.** Playcore Wisconsin, Inc. doing business as Play & Park Structures (“Play & Park”) is a Foreign For-Profit Corporation doing business in the State of Texas and can be served with citation through its registered agent, CT Corporation, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201-3136, or wherever it may be found.

III. VENUE & JURISDICTION

6. Venue is proper in Bexar County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code, § 15.002(a)(1) in that all or substantially all of the events or acts or omissions giving rise to the claim occurred in Bexar County, Texas.

7. The court has subject matter jurisdiction over this claim against Universal City under the Texas Tort Claims Act because the Texas Legislature waived Universal City’s sovereign immunity for claims involving personal injury caused by park equipment subject to Universal City’s control and management. *See* Tex. Civ. Prac. & Code §§ 101.021; 101.0215 (a)(13). Specifically, section 101.0215 (a)(13) provides, in pertinent part:

(a) A municipality is liable under this chapter for damages arising from its governmental functions, which are those functions that are enjoined on a municipality by law and are given it by the state as part of the state’s sovereignty, to be exercised by the municipality in the interest of the general public, including but not limited to ...

(13) parks and zoos.

Tex. Civ. Prac. & Code §101.0215 (a)(13).

8. Damages sought are within the jurisdictional limits of this court. Pursuant to Tex. R. Civ. P. 47, Plaintiffs asserts they are seeking monetary relief in excess of \$1,000,000.00.

IV. FACTS

9. On December 29, 2023, E.B. was playing on the Inclusive Orbit roundabout (“the roundabout”) that Universal City paid Play & Park to install at Veterans Park located at 737 East Aviation Boulevard, Universal City, Texas. The roundabout was supposed to be installed and maintained such that the ground level whirl sits flush with the playground surfacing. *See* Figure 1.



Figure 1

10. However, due to improper installation by Play & Park and improper maintenance by Universal City, the roundabout was flush in some areas with the playground surfacing, *see* Figure 2, but in other areas there was a gap between the edge of the whirl and the playground surfacing large enough for a child’s finger to be inserted. *See* Figure 3.



Figure 2



Figure 3

11. While spinning on the roundabout, E.B.'s pinky and ring finger on her left hand became caught in the gap between the edge of the whirl and the playground surfacing and were severed. *See* Figure 4.



Figure 3

12. China, E.B.'s mother, heard E.B. scream in pain. E.B. ran to China who saw that E.B.'s fingers had been severed and the wounds were gushing blood. China contacted EMS and E.B. was rushed to the hospital.

13. E.B. sustained severe and debilitating injuries as a result of the incident on the improperly installed and maintained roundabout. China, who was located in the immediate vicinity at the time of the incident, experienced a sensory and contemporaneous observance of the incident

and suffered shock as a result of the direct emotional impact of observing the incident and her daughter's injuries.

V. NEGLIGENCE: PLAY & PARK

14. Play & Park owed Plaintiffs a duty to operate, manage, and control its installation business, including the installation of the roundabout, in an ordinary and reasonable manner.

15. Notwithstanding its duty, Play & Park, by and through its agents, servants and/or employees, was guilty of one or more of the following careless and negligent acts and/or omissions:

- a. Caused or allowed the roundabout to be installed in an unsafe fashion;
- b. Failed to inspect the roundabout to ensure it was properly and safely installed;
- c. Improperly allowed a gap big enough for a child's finger to be inserted to exist between the whirl and the playground surfacing; and,
- d. Failed to warn of the dangers associated with the roundabout.

16. Play & Park owed a duty to train and supervise its agents, servants and/or employees in an ordinary and reasonable manner. Notwithstanding its duty, Play & Park was guilty of one or more of the following careless and negligent acts and/or omissions:

- a. Failed to properly supervise its agents, servants and/or employees with regard to the installation of the roundabout; and,
- b. Failed to adequately train its agents, servants and/or employees how to properly install the roundabout.

17. Each of Play & Park's acts and omissions, singularly or in combination with others, constituted negligence that directly and proximately and substantially caused the occurrence made the basis of this action, and the personal injuries and damages sustained by Plaintiffs.

VI. PREMISES LIABILITY: UNIVERSAL CITY

18. Universal City is a governmental unit, more specifically a municipality located in Bexar County, Texas, which owned, controlled, managed, maintained, and/or was in possession of Veterans Park — including the playground equipment and Inclusive Orbit roundabout at issue— located at 737 East Aviation Boulevard, Universal City, Bexar County, Texas, where E.B. was injured.

19. Pursuant to Tex. Civ. Prac. & Rem. Code §101.022(a), Universal City owed Plaintiffs the duty that a private person owes to a licensee on private property. In that regard, Universal City Defendant had a legal duty to warn Plaintiffs of the unreasonably dangerous condition posed by the roundabout, or to make the premises safe.

20. The roundabout's condition was a premises defect which posed an unreasonable risk of harm about which Universal City failed to provide any type of warning or make any effort to make the roundabout reasonably safe, thus breaching the duty owed to Plaintiffs. It was foreseeable to a reasonably prudent person or entity that someone using the roundabout, especially a child, would be injured by the unsafe condition of the roundabout.

21. Universal City knew of the danger posed by the roundabout. Despite this actual knowledge of the unreasonably dangerous condition posed by the roundabout, Universal City did not adequately warn Plaintiffs about the condition and did not make the condition reasonably safe. Conversely, Plaintiffs did not have actual knowledge of the dangerous condition posed by the roundabout before the incident, nor was the unreasonably safe condition open and obvious.

22. Each of Universal City's acts and omissions, singularly or in combination with others, constituted negligence that directly and proximately and substantially caused the occurrence made the basis of this action, and the personal injuries and damages sustained by

Plaintiffs.

23. Within 60 days of the incident in question, Plaintiffs gave Defendant notice of their claims, as required by local ordinance, and/or Defendant had actual notice that Plaintiffs were injured. Specifically, Plaintiffs provided a Notice of Claim to Defendant, including photographs of E.B.'s injuries, by way of correspondence dated January 5, 2023.

VII. DAMAGES

24. As a direct and proximate result of Defendants' negligence, E.B. suffered severe personal injuries, pain and suffering, mental anguish, physical impairment, and disfigurement, and China incurred reasonable and necessary expenses for the care and relief of E.B.'s injuries. For a long time to come, if not for the rest of her life, E.B. will continue to suffer physical injuries, pain and suffering, mental anguish, physical impairment, and disfigurement. Additionally, as a result of the incident, China will incur reasonable and necessary medical expenses in the future until E.B. reaches the age of eighteen, and E.B. will incur future medical expenses after the age of eighteen.

25. China is entitled to recover bystander damages as a result of contemporaneously witnessing the incident that caused severe injuries to her daughter, E.B. China is entitled to recover for the mental anguish sustained as a result of witnessing not only the tragic incident but also her daughter's physical and mental decline.

26. Plaintiffs are entitled to recover, and also seek, prejudgment and post judgment interest as allowed by law.

VIII. CONDITIONS PRECEDENT

27. All conditions precedent have been performed or have occurred to support Plaintiffs' pleadings and causes of action.

IX. NOTICE PURSUANT TO RULE 193.7 TEX. R. CIV. P.

28. Notice is hereby given to Defendants that Plaintiffs intend to use all documents produced by each party in pretrial and/or trial of this cause, to the extent allowed pursuant to the Texas Rules of Civil Procedure.

X. REQUEST FOR JURY TRIAL

29. Plaintiffs respectfully request a trial by jury and has paid the jury fee.

XII. PRAYER

WHEREFORE, Plaintiffs requests that Defendants be cited to appear and answer herein and that, on final trial, Plaintiffs have judgment against Defendants for:

1. All medical expenses in the past and future;
2. Mental anguish in the past and future;
3. Physical pain in the past and future;
4. Physical impairment in the past and future;
5. Disfigurement in the past and future;
6. Prejudgment and post judgment interest as allowed by law;
7. Costs of suit; and
8. All other relief to which Plaintiffs are entitled.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFFS

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