

COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT – DIVISION 9
CIVIL ACTION NO. 09-CI-6835

DEC 23 2009

TRACY MADDOX

PLAINTIFF

vs.

**COMPLAINT
JURY TRIAL DEMANDED**

LEXIDAN FOODS, LLC,
a Kentucky Limited Liability Company

DEFENDANT

Serve: Raymond A. Daniels
1795 Alysheba Way
Lexington, KY 40509
(agent for service of process)

KADAFIE LAMAR LOVE
2840 Kirsten Avenue
Indianapolis, IN 46218

DEFENDANT

Serve: Kentucky Secretary of State
(pursuant to KRS 454.210)

* * * * *

Plaintiff Tracy Maddox for her complaint against defendants Lexidan Foods, LLC and Kadafie Lamar Love states as follows:

I

Nature of the Case

1. This is an action arising from injuries suffered by plaintiff Tracy Maddox sustained while a patron at a Waffle House restaurant operated by Lexidan Foods, LLC. Lexidan Foods, LLC breached its duty to her to take reasonable measures to protect her from a confrontation between its employees and other patrons, to avoid embroiling and entangling her in a confrontation between its employees and other patrons and to maintain a

reasonably safe restaurant taking into account the foreseeable dangers and risks posed and raised by confrontations between its employees and other patrons. Defendant Love committed a tortious battery on Maddox. Maddox seeks recovery of compensatory and punitive damages.

II

Jurisdiction & Venue

2. Fayette Circuit Court has jurisdiction over this case pursuant to KRS 23A.010, because the amount in controversy exceeds the Court's jurisdictional minimum. Venue is proper in Fayette Circuit Court because the claims and causes of action pleaded herein arose in Fayette County, Kentucky.

III

Parties

3. Plaintiff Tracy Maddox is and has been at all times pertinent hereto a resident of the Commonwealth of Kentucky.

4. Defendant Lexidan Foods, LLC is a Kentucky limited liability company. According to Specialty Claims Management, an agent of Waffle House, Inc., Lexidan Foods, LLC is the the owner-operator of a Waffle House restaurant located at 2340 Buena Vista Drive, Lexington, Fayette County, Kentucky. Lexidan Foods, LLC may be served through its agent for service of process: Raymond A. Daniels, 1795 Alysheba Way, Lexington, KY 40509.

5. Defendant Kadafie Lamar Love is, upon information and belief, a resident of the state of Indiana. Defendant Love may be served through the Kentucky Secretary of State pursuant to KRS 454.210.

IV

Facts Giving Rise to the Lawsuit

6. On January 4, 2009, Maddox, along with a small group of friends and acquaintances, stopped to eat at the Waffle House restaurant located at 2340 Buena Vista Drive, Lexington, Fayette County, Kentucky.

7. Lexidan Foods, LLC (Lexidan) was the owner-operator of the Waffle House restaurant.

8. While Maddox and the rest of her party consumed their meal, a dispute of indeterminate origin arose between the employees and staff of Waffle House and another group of patrons, which included defendant Love.

9. Love and his group were initially not seated or standing proximate to Maddox-Shepherd as the dispute began and escalated.

10. The dispute between Love and his group and the Waffle House employees and staff continued to escalate to the point that the use of physical violence by Love and/or other members of his group was reasonably foreseeable.

11. Love and/or other members of his group displayed signs of intoxication or other impairment and threatened use of physical violence as their dispute with the Waffle House staff and employees escalated.

12. The staff and employees of Waffle House contributed to escalation of the dispute with Love and members of his party by use of profanity, other epithets and taunts.

13. A Waffle House employee succeeded in drawing Maddox-Shepherd into the dispute with Love and his party by verbally confronting and threatening Love and his party while standing behind a counter and then taking a path from behind the counter that drew Love and his party proximate to Maddox and her party.

14. As a result of the actions of the Waffle House employee, Maddox and her party were endangered and placed directly amidst the line of fire in the dangerously escalating confrontation between Love and his party and the Waffle House employees and staff.

15. Having drawn the dangerously escalating dispute atop Maddox and her party and further escalated to the point of physical violence, the Waffle House employees and staff succeeded in causing their dispute with Love and his party to break out into physical violence with Maddox and her party right amidst it.

16. As they saw the dispute escalating, Maddox and her party attempted to get their bill and leave the Waffle House.

17. Maddox and other members of her party acted reasonably to attempt to defuse the escalating dispute between Love and his party and the Waffle House staff in order to protect themselves from any injury.

18. Despite their reasonable efforts to defuse the situation and to protect themselves, Maddox and her party were attacked by Love and his party as part of their dispute with the Waffle House staff and employees.

19. Love inflicted substantial and severe physical injuries to Maddox.

20. Love was charged in Fayette Circuit Court Indictment No. 09-CR-300 with assault, second degree, based on the injuries he inflicted upon Maddox.

21. On July 31, 2009, Love entered a guilty plea in Fayette Circuit Court to an amended charge of assault, fourth degree arising from the injuries he inflicted on Maddox.

22. On August 3, 2009, the Fayette Circuit Court entered its judgment on Love's guilty plea.

23. As a result of the injuries suffered on January 4, 2009, Maddox has undergone surgery, required physical therapy and extensive dental work. She has suffered and is reasonably certain to suffer reduced and diminished physical capability. She has suffered and is reasonably certain to suffer substantial pain and suffering. Maddox has incurred and is reasonably certain to incur substantial medical and dental bills.

24. Defendants acted with gross negligence and/or reckless indifference to Maddox's rights.

V

Causes of Action

Count I

25. Plaintiff incorporates paragraphs 1 – 24 as if fully set forth herein.

26. Lexidan owed a duty to Maddox to take reasonable measures to protect her from a confrontation between its employees and other patrons, to avoid embroiling and entangling her in a confrontation between its employees and other patrons and to maintain a reasonably safe restaurant taking into account the foreseeable dangers and risks posed and raised by confrontations between its employees and other patrons.

27. Lexidan breached its duty to Maddox.

28. As a direct and proximate result of the Lexidan's breach of its duty to Maddox, Maddox has suffered substantial injuries including physical injury, physical disfigurement, pain and suffering past and present and incurred substantial medical and dental bills and is reasonably likely to incur further such bills.

Count 2

29. Plaintiff incorporates paragraphs 1 – 28 as if fully set forth herein.

30. Love's unwanted and unwelcome use of physical force and violence on Maddox constitutes the tort of battery under Kentucky law. *See Vitale v. Henchey*, 24 S.W.3d 651, 657 (Ky.2000); *Sigler v. Ralph*, 417 S.W.2d 239, 241 (Ky.1967).

31. As a direct and proximate result of Love's battery committed on Maddox, Maddox has suffered substantial injuries including physical injury, physical disfigurement, pain and suffering past and present and incurred substantial medical and dental bills and is reasonably likely to incur further such bills.

VI

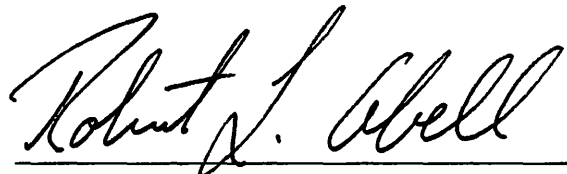
Demand for Relief

WHEREFORE, plaintiff Tracy Maddox demands entry of judgment as follows:

- (1) awarding her compensatory damages in such sum in excess of this court's jurisdictional minimum as warranted by the evidence at trial;
 - (2) awarding her punitive damages against defendants in such fair sum sufficient to punish each for their gross negligence and/or intentional, reckless and gross misconduct and deter repetition of same;
 - (3) awarding her costs, expenses, and reasonable attorney's fees;
- and,
- (4) such other relief as is warranted and appropriate.

DEMAND FOR TRIAL BY JURY

Pursuant to CR 38, plaintiff demands trial by jury on all issues herein so triable.



ROBERT L. ABELL
271 W. Short Street, Suite 200
PO Box 983
Lexington, KY 40588-0983
859.254.7076
859.231.0691 fax
COUNSEL FOR PLAINTIFF