

IN THE COURT OF COMMON PLEAS

HAMILTON COUNTY, OHIO

CASE NUMBER: A1704819

JUDGE STEVEN E. MARTIN

MCKENZIE DAVIS

PLAINTIFF

vs.

DELHI TOWNSHIP OHIO DBA DUNGEONS OF  
DELHI, ET AL.

DEFENDANTS

\* \* \* \* \*

DEPONENT:

MARK MATEIKAT

DATE:

FEBRUARY 16, 2018

\* \* \* \* \*

Mindy Davis

Certified Court Reporter

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EXHIBITS

(No exhibits were introduced into evidence.)

1           The deposition of MARK MATEIKAT, taken for the  
2 purpose of discovery and/or use as evidence in the  
3 within action, pursuant to notice, heretofore taken  
4 at the office of Droder & Miller, 125 West Central  
5 Parkway, Cincinnati, Ohio, on February 16, 2018, at  
6 9:00 a.m., upon oral examination, and to be used in  
7 accordance with the Ohio Rules of Civil Procedure.

8                           \* \* \* \* \*

9                           APPEARANCES

10          ATTORNEY FOR PLAINTIFF:

11          Blake R. Maislin, Esq.  
12          LAW OFFICES OF BLAKE R. MAISLIN, LLC  
13          2260 Francis Lane  
14          Cincinnati, Ohio 45206  
15          (513)721-5555

16          ATTORNEY FOR DEFENDANTS:

17          Richard J. Rinear, Esq.  
18          DRODER & MILLER  
19          125 West Central Parkway  
20          Cincinnati, Ohio 45202

21                           \* \* \* \* \*

22  
23  
24  
25

1                                    MARK MATEIKAT,  
2    called on behalf of the Plaintiff, after having been  
3    first duly sworn, was examined and deposed as  
4    follows:

5                                    CROSS-EXAMINATION

6    BY MR. MAISLIN:

7            Q.    Can you state your name for the record?

8            A.    Mark Alan Mateikat.

9            Q.    Okay. And, Mr. Mateikat, we're here to  
10   take your deposition. This is the second  
11   deposition. I really don't want to ask you anything  
12   that I previously asked you --

13          A.    Right.

14          Q.    -- in our first deposition.

15          A.    Okay.

16          Q.    It's really just to address an affidavit  
17   that was submitted in support of a motion for  
18   summary judgment on the refiling of --

19          A.    Yes.

20          Q.    -- the case McKenzie Davis versus Dungeons  
21   of Delhi, okay? Just a couple of background  
22   questions. I mean, it's been a while since I talked  
23   to you. What are you doing for a living, same stuff  
24   or --

25          A.    Yes.

1 Q. Okay. You still live in the same spot?

2 A. Yes.

3 Q. Same family unit --

4 A. Yes.

5 Q. -- you remarried or anything like that?

6 A. Nothing's changed.

7 Q. Okay. At one point I think the Dungeons  
8 of Delhi, was it out of business?

9 A. 2015, yes, and '16.

10 Q. Okay. Was it up and running last year?

11 A. We tried it in Delhi again and we didn't  
12 have much attendance. So it's probably -- well, I  
13 don't think we're going to do it anymore.

14 Q. Okay. What was the purpose of closing it  
15 in '15 and '16?

16 A. The building mostly.

17 Q. It didn't have anything to do with the  
18 lawsuit or anything like that?

19 A. Not that I know of.

20 Q. Okay. I'm looking at your affidavit. It  
21 looks like you have a copy of it in front of you.  
22 Just for the record, tell me how many pages you have  
23 there.

24 A. Five.

25 Q. And the first two are typewritten with

1 your signature at the bottom of the second and then  
2 there's pictures?

3 A. Yes.

4 Q. Can I just take a look at that copy there?

5 A. Yeah, sure can.

6 Q. Let me take a look at those pictures real  
7 quick. In your affidavit in paragraph 12, which is  
8 on the second page, it says, I am aware that  
9 McKenzie Davis testified that she and her friends  
10 parked in the front of the building on the night of  
11 her fall. And where did you get that from?

12 A. Everybody parks in the front.

13 Q. Okay.

14 A. That's the only parking spot.

15 Q. Is that your only knowledge upon which you  
16 base where she testified or did you actually read  
17 her transcript?

18 MR. RINEAR: I do want to just note an  
19 objection to communications that we've had.

20 MR. MAISLIN: I understand.

21 Q. Did you read the transcript?

22 A. No, I don't think I did. You mean the  
23 deposition?

24 MR. RINEAR: Her deposition, McKenzie  
25 Davis' deposition.

1           A.    No, I didn't read that.

2           Q.    And when you say proceeded along the side  
3 of the building with the graveyard scene characters,  
4 show me where you're talking about in the pictures.

5           A.    Okay. Well, it's not set up. It's right  
6 here.

7           MR. RINEAR: Okay. If you're referring  
8 to a picture -- there's a B, a C and a D. So  
9 anytime you refer to a picture, mention that  
10 letter.

11          A.    Picture B, here's the parking lot. You  
12 walk here and right here is where the graveyard is.  
13 And there's our ticket booth right there. So  
14 there's a path right here. We block this off.

15          Q.    Understood. Just so the record is clear,  
16 we're looking at B. The parking is, if you're  
17 looking at the picture of B, on the bottom left  
18 corner of the picture?

19          A.    Yes, bottom left corner. That's the  
20 parking lot right there.

21          Q.    Okay. And then they would walk along the  
22 road?

23          A.    That sidewalk. No, the sidewalk. See the  
24 sidewalk here?

25          Q.    Yes.

1           A.    Then there's a path here.

2           Q.    Okay.  And the graveyard scene, at least  
3   in Exhibit B, looks like where the shadow of the  
4   building was?

5           A.    Yeah, it's this whole thing here.  We set  
6   it up every year.  We parked the hearse there too.

7           Q.    Got it.  And I think the hearse is in one  
8   of the other pictures?

9           A.    Yes, in D.

10          Q.    Okay.  Now, let's see, it says, along the  
11   way, they encountered characters in costume outside  
12   before purchasing tickets.  Do you know that to be a  
13   fact or are you just saying in a typical situation  
14   people would generally encounter characters in  
15   costume outside?

16          A.    No, that is -- the graveyard is one of our  
17   scenes.  So every night I just take a piece of scrap  
18   paper and we do every scene, you know, like the  
19   graveyard, the first room medic ward.  And then as  
20   the kids come, we sign them to there.

21          Q.    Okay.  So I guess what you're saying is,  
22   because it's done all the time, it would have had to  
23   have been -- the graveyard scene would have had to  
24   have been active at the time that McKenzie --

25          A.    Yes, that's one of the favorite spots for



1 the actors.

2 Q. Got it. And it says in paragraph 11 of  
3 your deposition, it talks about the graveyard scene  
4 and the walkway. And I'm quoting the last sentence  
5 of paragraph 11, it says, it is manned by characters  
6 in costume who follow the patrons to begin getting  
7 them into the spirit of the haunt.

8 A. Yes.

9 Q. And when you say follow, I don't want to  
10 put words in your mouth, but I think in your  
11 deposition you said, you know, they sort of lurk  
12 behind them --

13 A. Or, yes, they just filter them through to  
14 the ticket booth.

15 Q. Got it. Are they chasing them or jumping  
16 at them?

17 A. No. Sometimes we have to encourage them  
18 to go through there, though.

19 Q. Okay. There's no running by any of the  
20 characters in costume outside?

21 A. No.

22 Q. And then they go around the building and  
23 they get their ticket and then they would get in  
24 line to go inside the entrance?

25 A. Yes, or they hang out there and wait for

1 friends.

2 Q. Okay. You said in page 36 of your  
3 deposition, and I have it if you want to see it, you  
4 said that, I'm quoting, any actor outside is  
5 friendly. And that would include what you're  
6 talking about here on the graveyard also, right?

7 A. Well, they -- I don't know what you mean  
8 by friendly.

9 Q. I don't know. I'm using your own words.  
10 Well, let me back up a second. On page 35 I said --  
11 I asked the question, do you recall anybody chasing  
12 after her, meaning McKenzie Davis, until she fell?  
13 Answer: No. No. We don't do that. Question: And  
14 why wouldn't you do that? Answer: Because somebody  
15 might get hurt. Question: It's foreseeable that  
16 somebody would get hurt? Answer: Right. Any actor  
17 outside is friendly. We take probably 60 to 100  
18 pictures with customers every single night. So do  
19 you know what you meant by friendly?

20 A. Just that they can take pictures with them  
21 and everything. They do not leave character,  
22 though, ever. We stress that.

23 Q. I understand.

24 A. Most of them don't say a word.

25 Q. What is the difference in how the

1 characters behave from outside, let's say in the  
2 graveyard, and then like inside?

3 A. Nothing, no difference. Everyone has a  
4 skit that they do.

5 Q. Okay. When you say that, you mean each  
6 character is in character and that's their skit; is  
7 that a fair way of saying it?

8 A. Yes. Yes.

9 Q. When you say in your affidavit that it's  
10 manned by characters in costumes who follow the  
11 patrons to begin getting them into the spirit of the  
12 haunt, when you say follow the patrons, I mean, are  
13 they jumping out and scaring them?

14 A. No. We usually have a gravedigger.  
15 That's usually who does it. So he walks around and  
16 maybe find them a spot to be buried or something  
17 like that. It depends on who's out there.

18 Q. Okay. But they're not jumping out from  
19 corners?

20 A. No. There is no corners.

21 Q. Do you recall who was working the  
22 graveyard that night?

23 A. No.

24 Q. Do you recall, as we sit here, any of the  
25 characters that were working other than maybe your

1 son?

2 A. No, he always does the first room.

3 Q. And that's the first room with the camera  
4 so he can see who's coming down?

5 A. Yes.

6 Q. Do you recall McKenzie Davis actually  
7 being in that area of the graveyard?

8 A. No.

9 Q. All right. When's the first time that you  
10 recall seeing McKenzie?

11 A. Right at the beginning of the line.

12 Q. And I think we talked about all the rest  
13 at the first deposition?

14 A. Yes.

15 Q. Is that the same for anybody that she may  
16 have been with at the time?

17 A. I'm trying to remember. I believe her  
18 friends were in line.

19 Q. Okay. But that's still again -- I'm  
20 trying to back us up from before --

21 A. Yes.

22 Q. -- the last deposition. So do you  
23 remember any of her friends being in the graveyard  
24 scene or anything like that?

25 A. No.

1 Q. Or coming around the corner?

2 A. No.

3 MR. MAISLIN: Okay. I don't have  
4 anything further.

5 MR. RINEAR: Mark, I have just a couple  
6 of questions.

7 EXAMINATION

8 BY MR. RINEAR:

9 Q. McKenzie Davis testified about a character  
10 she called the Grim Reaper outside before she got  
11 into the line?

12 A. Yes.

13 Q. Is that a character that you typically had  
14 out in that graveyard?

15 A. Almost every night, yes.

16 Q. And was the Grim Reaper -- tell me about  
17 that character. What did they do? What was their  
18 job?

19 A. He doesn't say a word. He just slowly  
20 walks around and kind of gives you a dead stare.  
21 But he walks through the graveyard, around the  
22 ticket booth by the line.

23 Q. Okay. So if she testified that there was  
24 a Grim Reaper character, that would be consistent  
25 with --

1 A. Yes.

2 Q. -- what you guys did most nights?

3 A. Yes. Usually the Grim Reaper, yes.

4 Q. Okay.

5 A. He's actually a weightlifter guy. He's  
6 very big. And he has kids that work there also.

7 Q. Okay. So it was typically one guy that  
8 did that role?

9 A. Yes. Yes.

10 Q. Do you recall that person's name?

11 A. Jim. I don't know his last name. I'd  
12 have to look it up. He's no longer with us. His  
13 daughter went to college. Most of the parents that  
14 volunteer with us, if their kid's there, they're  
15 real involved. But once their kids go to college,  
16 then they're not involved anymore.

17 Q. So the guy who did the Grim Reaper was an  
18 adult or a teenager?

19 A. An adult usually, yes. Yes. If he can't  
20 make it, someone else will dress up. We have the  
21 costumes.

22 Q. But you wouldn't know who was there that  
23 night?

24 A. Not that -- no. That's too long ago.

25 MR. RINEAR: Okay. That's all I have.

RECROSS-EXAMINATION

BY MR. MAISLIN:

Q. Just so we're clear, we don't know who the Grim Reaper was on that evening?

A. No, we do not.

MR. MAISLIN: Okay. Nothing further.

(Witness excused.)

(Deposition concluded at 9:07 a.m.)

Signature expressly waived

MARK MATEIKAT

DATE

1 )

2 STATE OF OHIO )

3 )

4 I, Mindy Davis, Notary Public for the State of  
5 Ohio, do hereby certify:

6 That the witness named in the deposition, prior  
7 to being examined, was by me duly sworn;

8 That said deposition was taken before me at the  
9 time and place therein set forth and was taken down  
10 by me in shorthand and thereafter transcribed into  
11 typewriting under my direction and supervision;

12 That said deposition is a true record of the  
13 testimony given by the witness and of all objections  
14 made at the time of the examination.

15 I further certify that I am neither counsel for  
16 nor related to any party to said action, nor in any  
17 way interested in the outcome thereof.

18 IN WITNESS WHEREOF I have subscribed my name  
19 and affixed my seal this 19th day of February, 2018.

20

21

22 MINDY DAVIS

23 Notary Public

24 My Commission expires: 04/03/21

25