

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) Civil Action No.: 2020-CP-10-_____
SHAWN KISER,)
Plaintiff,)
vs.)
RUSTY ANCHOR RESTAURANT, LLC)
and LIBERTY TAPROOM & GRILL, INC,)
JOHN DOE MANAGER 1 AND 2, JOHN)
DOE SERVER 1 AND 2.)
Defendants.

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscribers at their office located at 3 Morris Street, Suite A, Post Office Box 21624, Charleston, South Carolina, 29413, within thirty (30) days of the service, exclusive of the day of such service; and if you fail to answer the Complaint within this time, the Plaintiff will move for entry of Default Judgment and apply to the Court for the relief sought therein.

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April 14, 2020
Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) Civil Action No.: 2020-CP-10-_____
)
SHAWN KISER,)
)
Plaintiff,) **COMPLAINT**
) (Jury Trial Demanded)
)
vs.)
)
RUSTY ANCHOR RESTAURANT, LLC)
and LIBERTY TAPROOM & GRILL, INC,)
JOHN DOE MANAGER 1 AND 2, JOHN)
DOE SERVER 1 AND 2.)
)
Defendants.

The Plaintiff, Shawn Kiser, by and through her undersigned attorneys, complaining of the Defendants would allege and show unto the Court the following:

JURISDICTION AND VENUE

1. The Plaintiff is a resident of Columbia, South Carolina and more particularly Richland County. The collision complained of herein occurred on or about September 21, 2019 in Lake Murray near the Town of Chapin, South Carolina.
2. Upon information and belief, Defendant Rusty Anchor Restaurant, LLC (hereafter "Rusty Anchor"), is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business located at 1925 Johnson Marina Rd, Chapin, SC 29036.
3. Defendant Rusty Anchor Restaurant, LLC does upon information and belief regularly conduct business in Richland County and, as alleged herein, committed tortious acts and/or omissions in Richland County, State of South Carolina.

4. Upon information and belief, Defendant Liberty Taproom & Grill, Inc. (hereafter "Liberty Taproom"), is a corporation organized and existing under the laws of the State of South Carolina and who owns and operates several locations in throughout South Carolina including 1602 Marina Road located in Richland County.

5. Defendant John Doe Server 1 and Defendant John Doe Manager 1 are upon information and belief residents of the State of South Carolina and were at all times relevant hereto employed by Rusty Anchor Restaurant, LLC, and were at all times relevant hereto acting within the course and scope of their employment.

6. Defendant John Doe Server 2 and Defendant John Doe Manager 2 are upon information and belief residents of the State of South Carolina and were at all times relevant hereto employed by Liberty Tap Room & Grill, Inc., and were at all times relevant hereto acting within the course and scope of their employment.

7. The allegations and injuries complained of herein arise out of Defendants' over-service of alcoholic beverages to Tracy L. Gordon which resulted in Shawn Kiser suffering permanent catastrophic personal injuries on September 21, 2019.

8. This Court has subject matter jurisdiction over the claims asserted herein, personal jurisdiction over the parties hereto, and venue is proper in Richland County.

FACTUAL ALLEGATIONS

9. Throughout South Carolina history the sale of alcohol has been regulated by the State due in part to the risk alcohol impairment poses to the State's citizenry.

10. Article VIII Sec. 1 of the South Carolina Constitution grants the General Assembly broad powers to "prohibit and to regulate the manufacture, sale and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to

manufacture, sell and retail alcoholic liquors or beverages within the State under the rules and restrictions as it considers proper..."

11. At all times relevant hereto the State of South Carolina has regulated the sale and distribution of alcohol by for profit, private businesses through a specific statutory scheme and more particularly Title 61 of the South Carolina Code of Laws.

12. An essential purpose of the statutory schemes and regulations enacted by the State of South Carolina is to protect innocent third parties from the kind of harm and injuries alleged herein. Further, Plaintiff is a member of the class of persons these statutes and regulations intend to protect.

13. In addition to the statutory schemes enacted by the State, the well-established common law of South Carolina imposes upon licensees specific legal duties and obligations with regard to how they operate their for profit businesses engaged in the sale of alcohol for money.

14. Defendants are in fact engaged in the business of selling alcohol for money and operated their for-profit enterprises pursuant to licenses issued by the State of South Carolina and were at all times relevant hereto subject to all applicable statutes and state administrative regulations concerning the sale of alcohol and as such Defendants owed Plaintiff a legal duty pursuant to state laws, rules, regulations, and guidelines governing the sale of alcohol within the State of South Carolina.

15. On the evening of September 21, 2019, Tracy L. Gordon was a business invitee at Defendants' premises located on Johnson Marina Rd, Chapin, SC and on Marina Rd, Suite D, Irmo, SC. While a patron of Rusty Anchor and Liberty Taproom, Tracy L. Gordon ordered, was served, and consumed numerous alcoholic beverages in a volume and manner that contributed to and caused him to become extremely intoxicated even though Defendants' Rusty Anchor and

Liberty Taproom bartenders, servers, and/or agents knew or should have known that he was intoxicated. Tracy L. Gordon was served alcohol throughout his time on Defendants' premises, including beer and several rounds of liquor shots.

16. As a result of Defendants' breach of the duty of care, Mr. Gordon became heavily intoxicated resulting in loss of critical judgment; diminished attention, judgment and control; impairment of motor coordination; loss of critical judgment; balance impairment; and reaction time impairment; all of which further resulted in Plaintiff's catastrophic personal injuries and damages in a boating accident subsequent to Tracy L Gordon leaving the Liberty Taproom and Rusty Anchor.

17. The Defendants owed the public in general and the Plaintiff in particular a duty of due care not to allow their patrons to become impaired or intoxicated, not to serve alcohol to its impaired or intoxicated patrons, and to protect the Plaintiff, as a member of the general public and a foreseeable injured party, from the foreseeable consequences of their patrons' impairment or intoxication, which they caused and/or to which they contributed.

18. Despite the legal obligations owed to Plaintiff on or about September 21, 2019 Defendants knowingly and illegally sold and caused to be served alcohol to Tracy L. Gordon in violation of South Carolina law including the well stated public policy of the State of South Carolina.

19. Thereafter, at approximately 9:00 pm on September 21, 2019 Stanley Kiser, his wife Shawn Kiser and his daughter Morgan were enjoying a boat ride on Lake Murray which is an approximately 50,000 acre reservoir impounded in the late 1920's to provide hydroelectric power to the State of South Carolina. Lake Murray is fed by the Saluda River and extends into the following four counties: Richland, Lexington, Newberry and Saluda.

20. During the course of their family boat ride and without notice or warning the Kiser family boat was violently struck by a boat operated by Tracy L. Gordon between the Rusty Anchor Restaurant and Susie Ebert Island.

21. As a direct and proximate cause of Defendants negligence and grossly negligent acts and/or omissions Tracy L. Gordon operated a boat upon Lake Murray in an intoxicated state and violently struck the Kiser family's pontoon boat causing Stanley Kiser to suffer catastrophic physical injuries and his untimely and tragic death.

22. At all times relevant hereto Stanley Kiser exercised due care and caution in the safe operation of the Kiser family boat and at all times relevant hereto acted reasonably and lawfully.

23. Mr. Gordon was arrested and charged with felony DUI resulting in death, and two counts of felony DUI resulting in great bodily injury.

24. Mr. Gordon was arrested and charged with felony DUI resulting in death, and two counts of felony DUI resulting in great bodily injury.

FOR A FIRST CAUSE OF ACTION
(DRAM SHOP LIABILITY/ NEGLIGENCE PER SE AGAINST ALL
DEFENDANTS)

25. Plaintiff realleges and reincorporates each and every preceding paragraph as if fully set forth herein verbatim.

26. As a for profit business involved in the sale of alcohol in South Carolina Defendants owed the public in general and Plaintiff more particularly a duty of due care not to allow their patrons to become impaired or intoxicated, not to serve alcohol to an intoxicated patron and to protect Plaintiff from the foreseeable consequences of injury by an intoxicated patron.

27. Further, these laws prescribe certain actions and define certain standards of conduct. The Plaintiff is in the class of persons sought to be protected by these laws. Plaintiff's

injuries represent the type of harm the regulations were intended to prevent. Further, Defendants' conduct violated these regulations and therefore are negligent per se under well-established South Carolina law.

28. Defendants failed to comply with state laws, rules, regulations, and guidelines governing the sale and service of alcohol to consumers in South Carolina.

29. Defendants, individually, concurrently and jointly served Mr. Gordon excess amounts of alcohol causing him to become grossly impaired in violation of the statutory and common laws of the State of South Carolina in the following particulars, including but not limited to:

- a. In serving Mr. Gordon to the point of impairment and intoxication and in continuing to serve him alcohol after Defendants knew or should have known that he was impaired in violation of the common law and statutory law of South Carolina including S.C. Code § 61-6-2220 and 61-4-580;
- b. In failing to appreciate Mr. Gordon's level of intoxication while being served alcohol and for failure to ensure Mr. Gordon would not operate a motor vehicle or motorized boat upon the public highways or waters of the State of South Carolina;
- c. In failing to protect Plaintiff from the risk of harm posed by its intoxicated patron;
- d. In deviating from the accepted standard of care in the service of alcoholic beverages to intoxicated persons;
- e. In failing to implement and/or enforce corporate policies and procedures to ensure the safe service of alcohol;
- f. In failing to adequately monitor the activities of its employees, wait staff, servers and managers in regards to the service of alcohol;
- g. In creating an atmosphere encouraging the over consumption/sale of alcohol;
- h. And in any and all other particulars as should be developed in discovery and presented at the trial of this case.

30. Defendants' negligence and negligence per se was the proximate cause of Plaintiff's actual damages including her injuries and subsequent loss of her leg. Defendants are liable for all damages that are the natural and probable consequences of their actions, and they are liable for punitive damages to be determined by the community – a jury.

31. Defendants' breach of the duties owed to Plaintiff actually and proximately caused serious injury to Plaintiff for which she sought medical treatment, suffered, and continues to suffer damages.

32. Defendants were negligent, careless, reckless, grossly negligent, willful and wanton in causing Gordon to become intoxicated and continuing to serve him after the Defendants knew or should have known he was intoxicated. All of which proximately caused the injuries and damages suffered by Plaintiff including but not limited to the following:

- a. Physical pain;
- b. Permanent impairment and injury;
- c. Suffering;
- d. Mental anguish;
- e. Emotional distress;
- f. Shock and injury to Plaintiff's nerves and nervous system;
- g. Medical bills and other economic loss; and
- h. Other damages that will be shown at trial.

33. Plaintiff is entitled to punitive damages in an amount determined by a jury due to the reckless, grossly negligent, and willful and wanton behavior of Defendants.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENT HIRING RETENTION AND SUPERVISION)

34. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

35. At all times relevant Defendants owed separate and independent duties to properly hire, properly train and properly supervise its employees in the operation of its for-profit enterprise.

36. Despite these legal obligations Defendants failed to adequately hire, train, and/or supervise its employees in the conduct of its business to ensure the safety of its patrons and the public.

37. Further and more particularly Defendants failed to adequately hire, train, and/or supervise its employees at all times leading up to and including September 21, 2019 in the safe service of alcohol in general and more particularly the service to Mr. Gordon.

38. Defendants failed to adequately and properly train, equip, and monitor the activities of its employees, wait staff, servers, and bartenders in the service of alcohol to the general public and more particularly were negligent, careless, reckless, grossly negligent, willful and wanton in causing Gordon to become intoxicated and continuing to serve him after the Defendants knew or should have known he was intoxicated and posed a risk of harm to others.

39. As a direct and proximate result of Defendants' negligent, careless, reckless, grossly negligent, willful and wanton acts and/or omissions Plaintiff suffered the following injuries and damages:

- a. Physical pain;
- b. Permanent impairment and injury;
- c. Suffering;
- d. Mental anguish;
- e. Emotional distress;

- f. Shock and injury to Plaintiff's nerves and nervous system;
- g. Medical bills and other economic loss; and
- h. Other damages that will be shown at trial.

40. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of Defendants as set forth above, as well as their violations of common and statutory law, Plaintiff is entitled to recover actual and punitive damages, jointly and severally, as determined by a jury at the trial of this action.

41. That as a direct and proximate result of the negligence per se, carelessness, recklessness, willfulness and wantonness of Defendants Liberty Taproom and Rusty Anchor, the Plaintiff Shawn Kiser did suffer extreme physical pain and suffering, serious bodily injury and subsequent loss of her leg.

42. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of the Defendants as set out above, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

FOR A THIRD CAUSE OF ACTION
(NEGLIGENT INFILCTION OF EMOTIONAL DISTRESS)

43. Plaintiff incorporates by reference, as if fully set forth, each and every allegation in the preceding paragraphs.

44. At all times relevant hereto Defendants owed Plaintiff the legal obligations and duties alleged herein.

45. Despite their legal obligations and duties Defendants failed to comply with state laws, rules, regulations, and guidelines governing the sale and service of alcohol to consumers in South Carolina.

46. Defendants, individually, concurrently and jointly served Mr. Gordon excess amounts of alcohol causing him to become grossly impaired in violation of the statutory and common laws of the State of South Carolina in the following particulars, including but not limited to:

- a. In serving Mr. Gordon to the point of impairment and intoxication and in continuing to serve him alcohol after Defendants knew or should have known that he was impaired in violation of the common law and statutory law of South Carolina including S.C. Code § 61-6-2220 and 61-4-580;
- b. In failing to appreciate Mr. Gordon's level of intoxication while being served alcohol and for failure to ensure Mr. Gordon would not operate a motor vehicle or motorized boat upon the public highways or waters of the State of South Carolina;
- c. In failing to protect Plaintiff from the risk of harm posed by its intoxicated patron;
- d. In deviating from the accepted standard of care in the service of alcoholic beverages to intoxicated persons;
- e. In failing to implement and/or enforce corporate policies and procedures to ensure the safe service of alcohol;
- f. In failing to adequately monitor the activities of its employees, wait staff, servers and managers in regards to the service of alcohol;
- g. In creating an atmosphere encouraging the over consumption/sale of alcohol;
- h. And in any and all other particulars as should be developed in discovery and presented at the trial of this case.

47. As a direct and proximate result of Defendants negligent, careless, reckless, grossly negligent, willful and wanton acts and/or omissions Defendants patron Tracy L. Gordon operated a boat upon Lake Murray in an intoxicated state and struck the Kiser family's pontoon boat causing death and catastrophic injuries.

48. Defendants' negligent and grossly negligent acts and/or omissions proximately caused the death of Plaintiff's husband of almost forty years.

49. Plaintiff was in her family's pontoon boat operated by her husband when he was struck and killed as a result of Defendants' negligent and grossly negligent acts and/or omissions.

50. As a direct and proximate result of Defendants negligent, careless, reckless, grossly negligent, willful and wanton acts and/or omissions Plaintiff suffered, continues to suffer and will in the future suffer extreme emotional distress capable of objective diagnosis as a result of watching her husband struggle for his life and take his last breath.

51. Due to the willful, wanton, reckless, grossly negligent, and negligent acts of the Defendants as set out above, Plaintiff is entitled to recover actual and punitive damages from Defendants as determined by a jury.

WHEREFORE, Plaintiff prays for the following:

- i. Because the allegations alleged herein constitute willful, wanton, reckless and grossly negligent conduct as well as the sale of alcohol Defendants are jointly and severally liable for the damages alleged herein regardless of each Defendants' contribution towards same pursuant to S.C. Code Ann. Sec. 15-38-15 (f).
- ii. Judgment against Defendants, as well as joint and several liability against Defendants for actual and punitive damages in an amount to be determined by the jury;
- iii. For the costs of this action; and
- iv. For such other and further relief as this Court deems just and proper.

{Signature page to follow}

Respectfully Submitted,

McLEOD LAW GROUP, LLC

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