

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT
C. A. FILE NO.: 2014-CP-40-1886

David Longstreet and Karen Longstreet,)
Individually and as the Personal)
Representatives of the Estate of Emma)
Longstreet and as the Natural Guardians of)
the minor children, Noah Longstreet,)
Levi Longstreet, Micah Longstreet and)
Kenneth M. Sinchak)

Plaintiffs,)

vs.)

Rabit, LLC d/b/a The Loose Cockaboose,)
Kelly Whitlock.)

Defendants.)

FIRST AMENDED COMPLAINT
(Wrongful Death / Survival Action)
Jury Trial Demanded

FILED
2014 MAR 28 PM 4:00
CLERK OF COURT
C.C.P. & J. BRIDE

The Plaintiffs, complaining of the Defendants herein, allege and will show unto this Honorable Court the following:

PARTIES AND JURISDICTION

1. The Plaintiffs are, and were at all times relevant to this action, citizens and residents of the County of Lexington, State of South Carolina.
2. Upon information and belief, Defendant Rabit, LLC d/b/a The Loose Cockaboose (hereafter "Defendant TLC"), is a limited liability company, organized and existing under the laws of the State of South Carolina with its principal place of business in Richland, South Carolina.
3. Defendant Kelly Whitlock, hereafter "Defendant Whitlock," is a member of Rabit,

LLC as well as the owner and operator of the drinking establishment known as The Loose Cockaboose or TLC. Further, that Defendant Whitlock, individually and on behalf of Defendant Rabbit, LLC, obtained the South Carolina Liquor License which was in use at The Loose Cockaboose at the time of the incident set forth below. Upon information and belief, Defendant Whitlock is a citizen and resident of Richland County, South Carolina.

4. The gross negligence and violations of the state liquor law giving rise to this action occurred in Richland County, South Carolina.

5. This Honorable Court has jurisdiction of the parties and the subject matter set forth herein and venue is proper in the County of Richland, South Carolina.

FACTUAL BACKGROUND

The Accident

6. On January 1, 2012, at approximately 10:40 a.m., Plaintiffs David Longstreet, Karen Longstreet and their four minor children, Noah, Levi, Micah and Emma, were in their minivan on the way to church in Lexington County, South Carolina. Plaintiff David Longstreet was the driver and his wife, Karen, was occupying the front passenger seat. At the same time, Kenneth Sinchak was driving home in a southerly direction on Old Cherokee Road in Lexington, South Carolina. Plaintiff Sinchak and the Longstreet Plaintiffs were stopped for a traffic light in adjacent lanes at the intersection of Old Cherokee and Sunset Boulevard, preparing to turn left onto eastbound Sunset Boulevard. Upon receiving the green light, both vehicles proceeded lawfully into the intersection.

7. At the same time, Patrick B. Hutto ("Hutto") was operating his 2003 Jeep in a

westerly direction on Sunset toward the intersection with Old Cherokee Road. As he approached the intersection at a high rate of speed, in what the Plaintiffs' now know to be a drunken stupor, Hutto disregarded the red traffic signal governing his lane of travel, drove into the intersection and violently collided with the driver's side of the Longstreet's van forcing it into Plaintiff Kenneth Sinchak's vehicle.

8. The collision killed six year old Emma Longstreet. Despite incurring a medical decapitation from the force of the impact, Emma underwent several hours of life sustaining and resuscitative measures by medical personnel with her mother by her side until her father could be stabilized and transported from the ER to say goodbye to his daughter. The collision also placed the surviving three minor children in intensive care with significant and permanent injuries, tore tendons in Karen Longstreet's shoulder, fractured David Longstreet's neck, and caused unimaginable pain and suffering, both mentally and physically, that continues today.

9. Plaintiff Sinchak was also knocked unconscious from the force of the collision and injured seriously, severely and permanently in and about various and diverse parts of his body, including but not limited to a severe concussion, partial facial paralysis, memory deficits and permanent impairments.

10. The driver, still highly intoxicated from many hours of drinking at the bars owned and operated by the named Defendants, failed all field sobriety tests and ultimately registered a .208 blood alcohol level over five hours after he was served his last drink by the employees/managers of Defendant TLC, "The Loose Cockaboose."

11. The drunk driver, Patrick Hutto, ultimately pled guilty to ABHAN and felony DUI and received a nine-year prison sentence. Since his guilty plea, the driver disclosed the astounding amount of alcohol he was served until at least 5:30 a.m. on the morning of the wreck. He has since provided sworn testimony as to the conduct of the Defendant bars and individuals that were responsible for illegally operating facilities past 2:00 a.m. and continuing to profit from and serve a patron that they knew was grossly intoxicated.

12. All of the alleged conduct set forth below was done by employees/agents of the named defendants and in furtherance of the Defendants' business. Further, that all alleged misconduct by the individual managers, bartenders, servers and owners was done in the course and scope of their respective employment.

The Misconduct

13. The Plaintiffs are informed and believe the following facts occurred in the hours leading up to the wreck and the death of Emma Longstreet. In addition to sworn testimony received from numerous patrons and witnesses, the basis for the Defendants' gross negligence and collective misconduct is set forth, in part, in the affidavit of Patrick Hutto as follows:

14. **Jillian's**

... The party was to take place at Jillian's Bar on Gervais St. in downtown

Columbia. I hadn't consumed any alcohol prior to my arrival at Jillian's at

approximately 10:40 p.m. on December 31, 2011. Upon arriving at the bar I

immediately began drinking. I started with two beers and then had several "shots"

with my friends . . . I also took part in the initial "Champagne Toast" which was being promoted by the bar. I noticed that they had a fountain and were heavily promoting the consumption of the champagne but they did not seem concerned about the amount being consumed by us or anyone else in the bar. After toasting in the New Year, 2012, I continued to drink heavily and I was clearly feeling the effects of the alcohol by midnight. After the toast, the individual serving the champagne told me that he needed "to get rid of this stuff". He pushed it heavily on me and others and offered an empty tall beer glass versus the small plastic glasses which were used for the toast . . . Over the next hour and a half the champagne fountain attendant completely filled the beer glass with champagne at least six (6) times. . . By 1:45 a.m. I was severely intoxicated. Although some of the specifics of every conversation throughout the rest of the evening are often hazy, I do admit and acknowledge with absolute certainty that I was completely smashed by the time I left Jillian's and walked to the next bar, "The Big Ugly". I remember having *at least* two beers, three shots and six large glasses of champagne over the course of three hours at Jillian's – this is probably a conservative number but represents the minimum I recall drinking. I have been in jail since the morning of the accident and I have replayed this night and my decisions in my head over and over, time and again. I will never forget that evening or the days that followed. (Affidavit of Hutto dated November 22, 2013)

15. **The Big Ugly** – Perdikis and Thompson, LLC – Jason Perdikis

. . . I arrived at The Big Ugly right around 2:00 a.m. on January 1, 2012. I was drunk when I arrived and even more drunk when I left. I consumed at least two additional beers at The Big Ugly and paid for the same in cash. I left the Big Ugly between 3:00- 3:15 a.m. (Affidavit of Hutto dated November 22, 2013).

16. **The Loose Cockaboose "TLC"** – Rabit, LLC – Kelly Whitlock

. . . After I made it to my car, I drove to the final bar, The Loose Cockaboose. I do remember having trouble driving and thinking that I had to park my car. I was extremely drunk at this time and my condition was obvious to those around me. It was my understanding that the bar had previously closed but then reopened after hours to allow myself and other cash-paying customers back in for more drinking and partying. I make no excuses for my actions but simply want to admit to the truth of my alcohol consumption and my condition that evening/morning.

When I arrived at the The Loose Cockaboose, it was almost 3:45 a.m. I, along with most everyone in the bar, was "hammered". There is simply no better way to describe it. I continued to pay cash for the drinks. I can swear under oath that I know I had *at least* three vodka cranberries and more shots of alcohol. The total amount I consumed was most probably many times that amount but I can't recall the exact number. It is with much shame and regret that I admit to have started drinking at 10:45 the evening before and I did not stop until I stumbled to my car

at approximately 5:45 that morning in the parking lot of the Loose Cockaboose. I remember drinking the entire time but at this point I could barely stand and was exhausted. Friends offered to let me crash at their house and drove my car from the Loose Cockaboose to their apartment in Columbia. I don't remember the drive from the bar to their home but I do remember immediately passing out once we got into the apartment. The last alcohol I consumed was around 5:40 in the morning at The Loose Cockaboose. I did not consume anything else to drink after leaving the bar. My next memory was waking up the following morning and thinking I needed to get home for Church. I'll never know why I took a different route home than usual and I'll never forgive myself for my activities the night before. Because of my severe intoxication, I never saw the red light the following morning, did not realize I was speeding and rammed into the Longstreet's van.

My actions and those of the various bars in continuing to serve me after I was plainly drunk and out of control, resulted in my crushing a small six year old child on her way to church. I will never be able to fully express my regret and remorse over the pain I've caused. However, I will spend the rest of my life honoring her memory by truthfully telling this story. I was beyond drunk and was continually served at every bar I attended including the bars that were open after-hours. My actions are my fault and I take responsibility for them and will continue to serve my prison sentence as a result. However, if someone had cut me off, refused to

serve me in such an intoxicated state or refused to serve me after the bar had closed, it would have made a difference.

(Affidavit of Hutto dated November 22, 2013).

CAUSES OF ACTION

For A First Cause of Action **(Negligence, Gross Negligence)**

17. The relevant and consistent allegations above are incorporated herein as if set forth verbatim.

18. All Defendant bars, their owners/operators and holders/applicants of the respective liquor licenses had a statutory and common law duty to refrain from serving alcohol to patrons they knew or should have known were intoxicated. Further, said Defendants had a duty to refrain from promoting, allowing or causing patrons to become grossly intoxicated while attempting to maximize sales and profits. Defendants had a duty to follow local city and county regulations, state liquor law and the parameters of their respective licenses, including but not limited to, monitoring when and how much alcohol they served to their respective patrons. Finally, the named Defendants had a duty to innocent third-parties to not allow, cause or promote the excessive consumption of alcohol by their patrons so as to avoid the tragedy of events that are set forth above. Each of the named Defendants breached these duties and were negligent, grossly negligent, reckless, willful and wanton, in one or more of the following particulars, to wit:

- a. In serving alcohol to patrons they knew or should have known were severely intoxicated;
- b. In allowing patrons they knew or should have known were intoxicated into their establishments;

- c. In disregarding local and state law and serving alcohol to patrons after 2:00 a.m.;
- d. In failing to establish safe and sound policies to ensure employees did not violate their duty to refuse admission and/or service to intoxicated patrons;
- e. In hiding from local enforcement authorities their continued operations after legally permissible hours in an effort to maximize profits and attract customers of competition that had closed operations and followed local and state law;
- f. In generally disregarding the health, safety and welfare of innocent South Carolina citizens by knowingly and intentionally admitting and serving already grossly intoxicated patrons and while failing to call law enforcement;
- g. In failing to properly train, supervise or monitor their respective staff and at times engaging in the active promotion of said misconduct to achieve maximum profitability; and,
- h. In failing to exercise that degree of care and prudence that a reasonable person would have under similar circumstances.

19. Defendants' negligence, gross negligence, recklessness, willfulness, and wantonness have directly and proximately caused Plaintiffs David Longstreet, Karen Longstreet, Levi Longstreet, Noah Longstreet, Micah Longstreet and Kenneth Sinchak to suffer the following damages:

- a. Past and present medical expenses;
- b. Future medical expenses which are reasonably certain to occur;
- c. Past and present physical pain and suffering;
- d. Future physical pain and suffering as is reasonably certain will result;
- e. Past and present emotional and mental pain and suffering;
- f. Future emotional and mental pain and suffering as is reasonably certain will result;

- g. Permanent impairment and disability;
- h. Loss of earnings and ability to engage in gainful employment;
- i. Loss of enjoyment of life; and,
- j. Death of Emma Longstreet.

20. As a direct and proximate result of Defendants' negligent, grossly negligent, and reckless acts and/or omissions, the Longstreet family lost its only daughter and sister.

21. By way of an action for wrongful death, the acts and/or omissions of Defendants directly and proximately caused Emma Longstreet's death and resulted in her family sustaining damages, including, but not limited to, pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of Emma's society. Following the collision, Emma experienced tremendous pain and suffering for several hours until life sustaining measures were stopped and she died. By way of a survival action, the acts and/or omissions of Defendants directly and proximately caused Emma's death and related damages, including, but not limited to, funeral expenses, medical expenses, and such pain and suffering prior to death as may be shown through the evidence revealed through discovery in this matter.

22. Plaintiffs are informed and believe that they are entitled to a judgment against the Defendants for actual and punitive damages in such fair, just and reasonable amount as may be determined by the Trier of Fact.

For a Second Cause of Action
(Negligence Per Se -Violation of S.C. Code Ann. § 61-4-580)

23. The relevant and consistent allegations above are incorporated herein as if set forth verbatim.

24. S.C. Code Ann. § 61-4-580 states, in part, that no holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permittee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:

- (1) sell beer or wine to a person under twenty-one years of age;
- (2) sell beer or wine to an intoxicated person;

25. Plaintiffs are the members of a class of individuals and the general public which the legislature intended to protect in the passage of the aforementioned regulations and law.

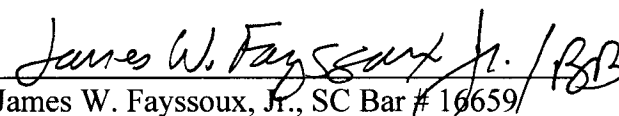
26. The damages suffered by Plaintiffs were directly and proximately caused by the Defendants' acts and/or omissions and violations of S.C. Code Ann. § 61-4-580.

27. Plaintiffs are informed and believe that they are entitled to judgment against the Defendants for actual and punitive damages in such fair, just and reasonable amount as may be determined by the Trier of Fact.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for actual and punitive damages against Defendants Kelly Whitlock and Rabbit, LLC d/b/a The Loose Cockaboose in an amount to be determined by the Trier of Fact or for such other relief this Honorable Court deems just and proper.

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