

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

MADELEINE E. WYMER,

PLAINTIFF,

VS.

CIVIL ACTION NO. 18-C-14

**ALEXANDER SALVATORE HAMBRICK;
KIMBERLY HAMBRICK; BRAD HAMBRICK;
DC LLC doing business as Jameson's Annex;
MICHAEL S. SCHUMAN, individually and as
owner of DC LLC; and THOMAS H. VANLANDINGHAM,**

DEFENDANTS.

COMPLAINT

Now comes the Plaintiff, Madeleine E. Wymer, by counsel, who for her causes of action against the Defendants, Alexander Salvatore Hambrick, Kimberly Hambrick, Brad Hambrick, DC LLC doing business as Jameson's Annex, Michael S. Schuman, individually and as owner of DC LLC, and Thomas H. Vanlandingham, states as follows:

PARTIES

1. The Plaintiff, Madeleine E. Wymer, now is and at all times hereinmentioned was a resident of West Virginia.

2. The Defendant, Alexander Hambrick, now is and at all times hereinmentioned was a resident of West Virginia and upon information and belief, is currently incarcerated in the West Virginia Department of Corrections. For that reason, the Court may need to appoint a Guardian Ad Litem to protect his interests.

FILED

JAN 12 2018

JEAN FRIEND, CLERK

3. The Defendant, Kimberly Hambrick, now is and at all times hereinmentioned was a resident of West Virginia and the mother of the Defendant, Alexander Salvatore Hambrick.

4. The Defendant, Brad Hambrick, now is and at all times hereinmentioned was a resident of West Virginia and the father of the Defendant Alexander Salvatore Hambrick.

5. The Defendant, DC LLC (hereinafter referred to as "Defendant DC"), now is and at all times hereinmentioned was a limited liability corporation doing business in West Virginia and particularly operating a business at 376B High Street, Morgantown, West Virginia known as Jameson's Annex.

6. The Defendant, Michael S. Schuman (hereinafter referred to as "Defendant Schuman"), now is and at all times hereinmentioned was a resident of West Virginia and the owner and operator of DC LLC.

7. The Defendant, Thomas H. Vanlandingham (hereinafter referred to as "Defendant Vanlandingham"), now is and at all times hereinmentioned was a resident of West Virginia and the owner of a parcel of real estate located at 376B High Street, Morgantown, West Virginia.

JURISDICTION AND VENUE

8. Jurisdiction and venue are proper in the Circuit Court of Monongalia County, West Virginia in that the acts and omissions asserted herein occurred in Monongalia County, West Virginia and there exists no diversity of jurisdiction by

and among the parties.

STATEMENT OF FACTS

9. On or about January 16 and 17, 2016, the Defendant Van Landingham, owned a parcel of real estate located at 376B High Street, Morgantown, West Virginia.

10. On said dates, Defendant Vanlandingham leased or otherwise permitted Defendants Schuman and DC to operate a place of business known as Jameson's Annex wherein alcoholic beverages were served to the public.

11. On the morning of January 17, 2016, Defendants Schuman and DC, and with the permission of Defendant Vanlandingham, served alcohol to the Defendant, Alexander Salvatore Hambrick, and then allowed him to leave and operate a motor vehicle thereafter.

12. The Defendants, Kimberly Hambrick and Brad Hambrick, enabled the Defendant, Alexander Salvatore Hambrick, to have access to a certain 1995 F150 Ford pick-up truck.

13. On said date, shortly after leaving Jameson's Annex, the Defendant, Alexander Salvatore Hambrick, drove his motor vehicle on the streets of Morgantown, West Virginia and then onto a sidewalk adjacent to Stewart Street in Morgantown, West Virginia, where he struck and killed another pedestrian walking down the street with the Plaintiff.

14. As a direct and proximate result of the collision between said motor

vehicle and the other pedestrian, the Plaintiff incurred permanent and severe physical and mental injuries for which she is entitled to compensation.

COUNT ONE

(Negligent Operation of Motor Vehicle - Defendant, Alexander Salvatore Hambrick)

15. The Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 14 of the Complaint as if fully restated herein.

16. The Defendant, Alexander Salvatore Hambrick, had a duty to operate said motor vehicle in a reasonably prudent manner.

17. The Defendant, Alexander Salvatore Hambrick, failed to operate said motor vehicle in a reasonably prudent manner and was otherwise negligent.

18. As a direct and proximate result of the Defendant, Alexander Salvatore Hambrick's, failure to operate said motor vehicle in a reasonably prudent manner, the Plaintiff has sustained damages as set forth hereinbelow.

COUNT TWO

(Negligent Entrustment - Defendants, Kimberly Hambrick and Brad Hambrick)

19. The Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 18 of the Complaint as if fully restated herein.

20. The Defendants, Kimberly Hambrick and Brad Hambrick, had a duty

to ensure that any motor vehicle maintained under their control was not given to anyone who was irresponsible, unreliable or who would operate it in a reckless manner.

21. The Defendants, Kimberly Hambrick and Brad Hambrick, knew that the Defendant, Alexander Salvatore Hambrick, had a tendency to imbibe alcohol and then operate motor vehicles.

22. The Defendants, Kimberly Hambrick and Brad Hambrick, with knowledge that the Defendant, Alexander Salvatore Hambrick, would operate a motor vehicle after imbibing alcohol, were negligent in entrusting said motor vehicle to him and thus enabling him to operate said motor vehicle while intoxicated.

23. As a direct and proximate result of the Defendants, Kimberly Hambrick and Brad Hambrick's, negligent entrustment of said motor vehicle to the Defendant, Alexander Salvatore Hambrick, the Plaintiff has incurred damages as set forth hereinbelow.

COUNT THREE

(Premises Liability - Defendants, DC LLC, Michael S. Schuman and Thomas H. Vanlandingham)

24. The Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 23 of the Complaint as if fully restated herein.

25. Defendants DC, Schuman and Vanlandingham, all had a duty to

exercise reasonable care in the operation and maintenance of their premises in a reasonably prudent manner.

26. Defendants, DC, Schuman and Vanlandingham, breached said duty by failing to operate and maintain their premises in a reasonably prudent manner and were otherwise negligent.

27. As a direct and proximate result of said negligence, the Plaintiff has incurred damages as set forth hereinbelow.

COUNT FOUR

(Violation of Statute - Defendants, DC LLC, Michael S. Schuman and Thomas H. Vanlandingham)

28. The Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 27 of the Complaint as if fully restated herein.

29. Defendants, DC, Schuman and Vanlandingham, all had a duty to refrain from serving alcoholic beverages to intoxicated individuals in compliance with West Virginia Code §60-3-22(a)(3) and the West Virginia Common Law.

30. Defendants, DC, Schuman and Vanlandingham, had a duty to refrain from serving alcoholic beverages to persons under the age of 21 years in compliance with West Virginia Code §60-3-22(a)(1).

31. In violation of said laws, Defendants, DC, Schuman and Van Landingham, served alcoholic beverages to the Defendant, Alexander Salvatore Hambrick, having known or should have known that he was under the age of 21

years, intoxicated and intending to operate a motor vehicle after leaving their establishment.

32. Defendants, DC, Schuman and Vanlandingham, breached said duty by serving the Defendant, Alexander Salvatore Hambrick, alcoholic beverages while he was under the age of 21 years and intoxicated, and were otherwise negligent.

33. As a direct and proximate result of said violation of statutes by Defendants, DC, Schuman and Vanlandingham, the Defendant, Alexander Salvatore Hambrick, left said establishment in an intoxicated condition and caused damages to the Plaintiff as set forth hereinbelow.

COUNT FIVE

(Training, Managing and Supervising - Defendants, DC LLC, Michael S. Schuman and Thomas H. Vanlandingham)

34. The Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 33 of the Complaint as if fully restated herein.

35. Defendants, DC, Schuman and Vanlandingham, had a duty to adequately train, manage and supervise their employees to refrain from serving alcoholic beverages to persons under the age of 21 years and who were intoxicated.

36. Defendants, DC, Schuman and Vanlandingham, breached said duty by failing to properly train, manage and supervise their employees and allowing

them to serve the Defendant, Alexander Salvatore Hambrick, alcoholic beverages while he was under the age of 21 years and intoxicated.

37. As a direct and proximate result of said breach of duty by Defendants, DC, Schuman and Vanlandingham, the Defendant, Alexander Salvatore Hambrick, left said establishment and operated his motor vehicle in such a manner as to cause injuries and damages to the Plaintiff as set forth hereinbelow.

COUNT SIX

(Punitive Damages - All Defendants)

38. The Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 37 of the Complaint as if fully restated herein.

39. The conduct of all of the Defendants as set forth hereinabove rises to the level of being intentional, willful, wanton and with reckless disregard for the safety of others and the Plaintiff, in particular, and said Defendants acted with actual malice towards the Plaintiff for the conscious, reckless and outrageous indifference to the health, safety and welfare of others.

COUNT SEVEN

(Piercing the Corporate Veil - Defendant, Michael S. Schuman)

40. The Plaintiff realleges, reasserts and incorporates by reference each and every allegation set forth in Paragraphs 1 through 39 of the Complaint as if

fully restated herein.

41. Defendant Schuman owned and operated Defendant DC with such unity of interest and ownership that the separate personalities of Defendants Schuman and DC no longer existed.

42. Unity between Defendants Schuman and DC include, but are not limited to, the following:

- a. co-mingling of funds and other assets of the corporation with those of the individual owner;
- b. division of the corporate funds or assets to non-corporate uses;
- c. failure to maintain the corporate formalities necessary for the issuance of or the subscription of the company stock, such as formal approval of the stock issues by the Board of Directors;
- d. failure to adequately capitalize the corporation for the reasonable risks for the corporate undertaking;
- e. absence of separately corporate assets;
- f. use of the corporation as a mere shell or conduit to operate a single venture;
- g. sole ownership of all of the stock by one individual;
- h. disregard of legal formalities and failure to maintain proper arms-lengths relationships between the individual and the corporation;

- i. diversion of corporate assets from the corporation by or to the owner to the detriment of creditors and the manipulation of assets and liabilities between the owner and their corporation to concentrate the assets with the owner and the liabilities on the corporation;
- j. such other acts that may be determined through this litigation.

43. In that there exists unity of interest and ownership between Defendants Schuman and DC, and that an inequitable result would occur otherwise, it is appropriate for the Court to permit the Plaintiff to pierce the corporate veil of Defendant DC and pursue a cause of action directly against Defendant Schuman for the negligent acts of Defendant DC.

44. As a direct and proximate result of piercing the corporate veil, Defendant Schuman is personally liable for any and all negligent acts or omissions by Defendant DC resulting in the damage incurred by the Plaintiff.

DAMAGES

45. As a direct and proximate result of the Defendants' and each of their wrongful conduct as set forth hereinabove, the Plaintiff is entitled to the following relief and damages:

- A. Past and future medical bills;
- B. Past and future physical pain and suffering;
- C. Past and future mental pain and suffering;

- D. Loss of enjoyment of life;
- E. Punitive damages;
- F. Attorney fees and costs; and
- G. Such other incidental damages as may be determined through litigation.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff demands judgment of and against Defendants, and each of them, for compensatory and punitive damages as to be determined by a jury. The Plaintiff requests she be awarded her costs and expenses incurred in bringing this action, including reasonable attorney fees, and for such other relief as this Court deems just.

MADELEINE E. WYMER

By Counsel,

CICCARELLO, DEL GIUDICE & LAFON

By: _____

Michael J. Del Giudice (WV #982)
1219 Virginia Street, East, Suite 100
Charleston, West Virginia 25301
Phone: (304) 343-4440
Attorney for Plaintiff