

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL
CIRCUIT
Civil Action No.: 2019-CP-

MESWAET ABEL, AS PERSONAL
REPRESENTATIVE OVER THE ESTATE
OF ZERIHUN WOLDE AND AS
NATURAL PARENT AND LEGAL
GUARDIAN FOR ADAM WOLDE, AND
WUBIT WOLDE

SUMMONS

PLAINTIFFS,

VS.

LACK'S BEACH SERVICE, CITY OF
MYRTLE BEACH, AND JOHN DOE
LIFEGUARD

DEFENDANT.

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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s/ H. Cooper Wilson, III

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November 1, 2019
Charleston, South Carolina

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**COMPLAINT
(Jury Trial Demanded)**

PLAINTIFFS,

VS.

LACK'S BEACH SERVICE, CITY OF
MYRTLE BEACH, AND JOHN DOE
LIFEGUARD
DEFENDANT.

COMES NOW, Plaintiffs, Meswaet Abel individually, and as the personal representative of the Estate of Zerihun Wolde, deceased, and as the natural parent and legal guardian for Adam Wolde and Wubit Wolde and alleges as follows:

NATURE OF THE ACTION

1. This is a wrongful death, survival and bystander action arising from the catastrophic drowning of Zurihun Wolde. Meswaet Abel was the fiancé of Mr. Wolde and is the mother of his four (4) children. Furthermore, she is the duly appointed Personal Representative over his Estate which is pending and open in the State of Maryland. Meswaet Abel also brings this action as mother and legal guardian on behalf of Adam Wolde and Wubit Wolde.

PARTIES

2. Plaintiff, Meswaet Abel, is an adult individual who resides in Silver Springs, Maryland. She and Zurihun Wolde lived together for many years and were living together at the

time of his tragic death. Ms. Abel and Mr. Wolde were the parents of four (4) children who all resided with them in Silver Spring, Maryland. Ms. Abel brings this action in her capacity as Personal Representative over the Estate of Zurihund Wolde. (“Mr. Wolde”). (See Verification of Personal Representative marked as Exhibit A.)

3. Plaintiff, Adam Wolde (“Adam”) is a minor individual residing in Silver Spring, Maryland. This action is brought on his behalf and for his benefit by his mother Meswaet Abel.

4. Plaintiff, Wubit Wolde (“Wubit”) is a minor individual residing in Silver Spring, Maryland. This action is brought on his behalf and for his benefit by his mother Meswaet Abel.

5. Defendant, Lack’s Beach Service, Inc. (“Lack’s”) is a corporation organized and existing under the laws of the State of South Carolina. Lack’s principal place of business is in Horry County, South Carolina and at all times was doing business as Lack’s in Horry County, South Carolina.

6. Defendant, City of Myrtle Beach (“City”) is a municipality situated in Horry County, South Carolina. Each and every allegation made against the City of Myrtle Beach is brought pursuant to the South Carolina Tort Claims Act.

7. Defendant John Doe Life Guard are upon information and belief an employee, agent, and/or legal representative of Defendant Lack’s and was acting with the scope of his employment at times relevant.

JURISDICTION AND VENUE

8. This Court has jurisdiction over the subject matter of this action pursuant to Article V, § 11 of the South Carolina Constitution. This Court has jurisdiction over all parties as the Defendants do business in Horry County, South Carolina.

9. Venue is proper in this Court pursuant to S.C. Code Ann. § 15-7-30 as the most substantial part of the alleged actions occurred in Horry County.

FACTUAL BACKGROUND

10. On August 23, 2018 Zurihun Wolde, his fiancé, Meswaet Abel, their four children, and other family members left Silver Springs, Maryland for a vacation in Myrtle Beach South Carolina.

11. The family drove through the afternoon and early evening of August 23, 2018 arriving in at the Sea Crest Oceanfront Resort in Myrtle Beach on the evening of August 23, 2018.

12. The family checked into their rooms, had a leisurely dinner, and enjoyed the resort.

13. On the morning of August 24, 2018, Mr. Wolde woke up early, went to the local grocery store, and bought breakfast and beach supplies for his children to play with on the beach.

14. The family awoke shortly thereafter and enjoyed a late breakfast on their first day of vacation at the Sea Crest Resort in Myrtle Beach.

15. On or around 10:30AM – 11:00AM the family made their way to beach in front of the Sea Crest Resort.

16. The Sea Crest Resort is located at 803 South Ocean Blvd, Myrtle Beach, S.C. 29679.

17. The beach in front of the Sea Crest Resort contains lifeguard stands and beach chairs and umbrellas that are rented out by Defendant Lack's.

18. Lack's has a contract with Defendant City of Myrtle Beach that is titled "2018-2025 water safety franchise."

20. The fundamental purpose of the City of Myrtle Beach entering into this agreement is for the “protection of its tourist and residential population through an efficient and effective Water Safety Program.”

21. In the contract between the City of Myrtle Beach and Lack’s, the parties agreed that Lack’s would provide lifeguards and beach safety. Furthermore, the franchise agreement allowed Lack’s to rent equipment for profit.

22. The City granted Lack’s an exclusive right to sell beach equipment on certain areas of the Beachfront including the area directly in front of the Sea Crest Resort.

23. Lack’s profits from renting out beach equipment.

24. Prior to the incident complained of herein, Lack’s had lost its certification from the United States Lifesaving Association.

25. On September 30, 2016 the president of the United States Lifesaving Association (“USLA”) wrote a letter to the City of Myrtle Beach specifically warning about the dangers presented by combining lifesaving acts with commercial activities like renting beach chairs for money.

26. Specifically, the letter stated, “the USLA has identified the Myrtle Beach system of combining lifesaving and commercial activities to be an unreliable means of protecting swimmers.”

27. The letter from the USLA went on to say “The USLA will not certify any beach lifeguard agency that assigns lifeguards to a dual role of public safety and commercial activity because all water safety professionals agree that a distracted lifeguard cannot properly maintain safe surveillance of the water. In the interest of public safety, we encourage Myrtle Beach to

change its standards in accordance with USLA certification standards with respect to this and other points of the USLA certification program.”

28. Dual role lifeguarding is a system where the on-duty lifeguards are tasked with duties other than protecting safety. Specifically, the lifeguards are required to rent umbrellas and beach chairs as well as protect public safety.

29. Despite these clear and obvious warnings given in 2016, the City of Myrtle Beach and Lack’s refused to place the public’s safety as a higher importance than making money.

30. The City of Myrtle Beach and Lack’s entered into their contract in 2018 more than one (1) year after this warning. The contract permits and encourages the use of dual role lifeguarding.

31. Upon information and belief, Lack’s has a history of misrepresenting its efforts to make public safety a priority through training and other means. As a result of this misrepresentation Lack’s was stripped of its USLA certification years prior to the death of the Zurihun Wolde.

32. The city of Myrtle Beach and Lack’s received complaints by concerned residents and visitors. These complaints centered around the fact that Lack’s lifeguards were more focused on selling beach chairs and umbrellas than saving lives or protecting the public.

33. On August 9, 2018, a mere two weeks before the death of Zurihun Wolde, a complaint was received by the City of Myrtle Beach.

34. The incident complained of occurred on the beach in front of the Sea Crest Resort, which is the exact location where Zurihun Wolde would die from drowning on August 24, 2018.

35. The complaint noted that a lifeguard was selling beach chairs and umbrellas and was carelessly neglecting his duty to protect people in or near the water.

36. The complaint was forwarded to Lack's for them to address the issue.

37. Upon information and belief, Lack's took inadequate or zero corrective action to address the safety concern raised in the complaint.

38. Dual role lifeguarding sacrifices public safety in exchange for money.

39. Upon information and belief, the National Weather Service issued an alert on Thursday, August 23, 2018 stating that there were high rip currents present in the Myrtle Beach area.

40. Lack's and the City of Myrtle Beach knew or should have known of the rip currents and specifically the alert of the national weather service. Rip currents are a highly dangerous condition.

41. Zurihun Wolde and his family were never informed about the alert from the National Weather Service by Lack's or the City.

42. On the morning of August 24, 2018, Mr. Wolde and his family arrived at the beach in front of the Sea Crest resort. Ms. Abel and her twins put up an umbrella and beach chairs and began to build a sand castle.

43. Mr. Wolde and his older children, Adam and Wubit, went down to the water. At no point were there warning signs about the rip currents nor did lifeguards provided by Lack's warn them of the same.

44. At no time did lifeguards, to include Defendant John Doe, from Lack's attempt to prevent Mr. Wolde, Adam or Wubit from entering the water. Additionally, there were numerous people in the water; none of whom were being warned of any dangers present on the beach.

45. Mr. Wolde and his two older children entered the water and began to swim. At some point after their entry into the water, Mr. Wolde and his two children became caught in a rip current and began to struggle to return to shore.

46. Mr. Wolde struggled to save his two children and called for help. No lifeguard responded to his cries.

47. Other citizens came to his aid and were able to assist Wubit and Adam to shore while Mr. Wolde thrashed and struggled to stay afloat.

48. Eventually, Mr. Wolde's body made it to the shore where other beachgoers attempted to give him aid. After this point, lifeguards and other emergency personnel arrived on scene and began life saving efforts on Mr. Wolde. Defendant Lack's and Defendant John Doe lifeguard at no time attempted to rescue Mr. Wolde from the water.

49. He was rushed to Grand Strand Hospital where he was pronounced dead.

50. The Horry County Coroner's Office determined the cause of death to be asphyxia due to drowning.

51. At all times relevant to this complaint, Wubit Wolde and Adam Wolde were in the zone of danger to their father and were in imminent danger of drowning.

52. Wubit Wolde and Adam Wolde suffered psychological injuries which physically impacted both Wubit and Adam.

SURVIVAL ACTION
S.C. Code Ann. § 15-51-10

53. Plaintiff incorporates all paragraphs above as if fully stated herein.

54. Decedent, during the course of this incident, suffered injury and damages caused by the actionable conduct of these Defendants, which include, but are not limited to:

- a. Pain and suffering;

- b. Shock and terror;
- c. Mental and emotional distress;
- d. Medical bills;
- e. Funeral expenses; and
- f. Severe injury to the whole person.

55. Decedent's causes of action for his injuries and damages survive his death and pass to his Estate and Plaintiff seeks general, special, and punitive damages and such further relief as this Honorable Court and the jury deem just and proper.

WRONGFUL DEATH ACTION
S.C. Code Ann. § 15-51-20

56. Plaintiff incorporates all paragraphs above as if fully stated herein.

57. As a direct result of the actionable conduct of this Defendant, decedent met his untimely death.

58. The Plaintiff and the statutory beneficiaries of decedent's estate have experienced great mental anguish, suffering, grief, sorrow, bereavement, and loss of society, advice, companionship, comfort, protection, and pecuniary benefit.

59. The Plaintiff is informed and believes pursuant to the South Carolina Wrongful Death Act, it is entitled to a judgment against this Defendant for an award of actual damages in an amount to be determined by the trier of fact, and further are entitled to punitive damages, and for any additional relief the court deems just and proper.

GROUND OF LIABILITY

NEGLIGENCE, GROSS NEGLIGENCE, RECKLESSNESS – ALL DEFENDANTS

60. Plaintiff incorporates all paragraphs above as if fully stated herein.

61. At all times material hereto, Defendants Myrtle Beach and Lack's owed a duty to the Plaintiffs and the public at large to conduct their water safety program in a reasonably safe manner and to take the necessary steps to prevent foreseeable harm to the Plaintiffs.

62. Defendant Myrtle Beach owed a duty to Mr. Wolde to properly oversee Lack's services and Defendant Myrtle Beach breached its duty to Mr. Wolde to exercise reasonable care in oversight of Lack's and for the services provided by Lack's and in such other particulars as the evidence may show.

63. Defendants Lack's and the City of Myrtle Beach breached that duty in numerous ways that are outlined in this complaint.

64. As a result of that breach, Plaintiffs' decedent drowned and met his untimely death as a proximate result of the Defendants' gross negligence, negligence and/or recklessness.

65. The injuries and damages sustained by Plaintiff and her decedent were the direct and proximate result of the negligence, gross negligence, willfulness, wantonness, carelessness, and recklessness of Defendants Lack's and City of Myrtle Beach in one or more of the following particulars:

- a. By engaging in "dual role" lifeguarding;
- b. By not properly warning people on the beach of dangerous rip currents;
- c. By renting beach chairs, umbrellas and other beach equipment rather than protecting the Plaintiffs and the public at large;
- d. In failing to properly monitor alerts from the national weather service and take appropriate action;
- e. In ignoring the numerous warning from various sources indicating that dual role lifeguarding is inherently unsafe;
- f. In ignoring the September 30, 2016 letter from the USLA when the Defendants knew or should have known that to do so endangered lives;

- g. By failing to take action in response to the numerous complaints of citizens indicating that Lack's life-guards were more interested in selling beach equipment than protecting lives;
- h. By failing to prevent swimmers from entering an area of the ocean that contained a dangerous rip current;
- i. By failing to adequately train lifeguards;
- j. By overworking lifeguards;
- k. In failing to properly supervise the activities of its lifeguards;
- l. In such other ways as shall be shown and proven through discovery;
- m. In failing to exercise even slight care or effort to address concerns raised about Defendant Lack's performance as a franchisee;
- n. And by placing profits and money above safety.

65. As a direct and proximate result of the acts and/or omissions of Defendants, Plaintiff suffered severe emotional distress and Plaintiff's decedent suffered injuries before death and was killed.

66. The Plaintiff is informed and believes she is entitled to a judgment against the Defendants for an award of actual damages in an amount to be determined by the trier of fact, and further are entitled to punitive damages, and for any additional relief the court deems just and proper.

Bystander Liability – All Defendants

67. All previous paragraphs are incorporated herein as if stated verbatim.

67. Wubit Wolde and Adam Wolde assert a bystander claim for the physical manifestation of emotional injuries. The proximate cause of these injuries was the negligence, gross negligence, and reckless conduct of the Defendants.

68. Plaintiffs, Wubit Wolde and Plaintiff Adam Wolde were in the zone of danger and perceived their father's injuries and death. Both Plaintiffs suffered, and continue to suffer, physical manifestations of their emotional grief that can be objectively evaluated.

69. The Plaintiff is informed and believes Wubit Wolde and Adam Wolde are entitled to a judgment against the Defendants for an award of actual damages in an amount to be determined by the trier of fact, and further are entitled to punitive damages, and for any additional relief the court deems just and proper.

RELIEF REQUESTED

70. As a direct and proximate result of the Defendants' negligence, gross negligence, and recklessness, Plaintiff's decedent suffered conscious pain and suffering, shock and terror, mental and emotional distress, and a loss of earnings. Those injuries survive his death and pass to his Estate.

71. As a direct and proximate result of the Defendants' negligence, gross negligence, and recklessness, Plaintiffs have suffered pecuniary loss, mental shock and suffering, wounded feelings, grief and sorrow, loss of companionship, and deprivation of the use and comfort of the decedent's society. Additionally, Plaintiffs have incurred funeral and estate administration expenses as a result of the Defendants' negligence, gross negligence, and recklessness.

72. As a direct and proximate result of the Defendants' negligence, gross negligence, and recklessness, Plaintiffs have experienced severe and traumatic emotional distress.

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. For actual damages according to proof;
- B. For compensatory damages as permitted by law;
- C. For statutory damages as permitted by law;

- D. For punitive damages as determined by the trier of fact;
- E. For all costs of Court; and
- F. For such other relief as the trier of fact deems just and proper

JURY TRIAL DEMANDED

Trial by jury is demanded as to all issues set forth herein to the extent permitted by law.

Respectfully submitted,

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s/ H. Cooper Wilson, III

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