

IN THE IOWA DISTRICT COURT FOR CERRO GORDO COUNTY

THE ESTATE OF DERRICK W. BERHOW
by and through the Executor of the Estate
MANDY BERHOW, MANDY BERHOW,
individually AND MANDY BERHOW as
Parent and Next Friend to T.R.B., a minor
child,

Plaintiffs,

v.

KEITH A. HALFWASSEN, MASON CITY
COUNTRY CLUB, INC. AND
CONSOLIDATED ELECTRICAL
DISTRIBUTORS, INC. d/b/a CULVER HAHN
ELECTRIC SUPPLY,

Defendants.

Case No. _____

**PETITION AT LAW AND
JURY DEMAND**

COME NOW the Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate Mandy Berhow, Mandy Berhow, individually, and Mandy Berhow as Parent and Next Friend to T.R.B. a minor child, through the law firm of Whitfield & Eddy Law and in support of their cause of action against all Defendants state as follows:

1. The deceased Derrick Berhow resided in Belmond, Iowa. The executor of the Estate is his wife, Mandy Berhow.
2. Plaintiff, Mandy Berhow, at all times material is the wife of the deceased, Derrick Berhow.
3. The executor of the Estate, Mandy Berhow has applied to the District Court and has received an order approving the filing of a wrongful death lawsuit regarding the death of her husband on or about August 23, 2018.
4. The minor child, T.R.B. is the adopted child of the deceased Derrick Berhow.

5. Defendant Keith A. Halfwassen (hereinafter referred to as “Halfwassen”) lives in Jewell, Iowa.

6. The Defendant Consolidated Electrical Distributors, Inc. d/b/a Culver Hahn Electric Supply (hereinafter referred to as “Culver Hahn”) is a business with its principle place of business in Mason City, Iowa.

7. Defendant Mason City Country Club, Inc. is a corporation with its principle place of business in Mason City, Iowa.

8. On or about August 23, 2018, the Defendant, Culver Hahn, sponsored a golf outing at the Mason City Country Club, Inc.

9. As part of the golf outing, the Mason City County Club and Culver Hahn provided alcoholic beverages to the golfing participants at the golf outing.

10. The deceased, Derrick Berhow and Halfwassen participated in the golf outing on August 23, 2018, at the Mason City Country Club, Inc. Halfwassen was served and consumed alcoholic beverages during the golf outing on August 23, 2018.

11. Defendants, Mason City County Club and Culver Hahn, served alcoholic beverages to Halfwassen during the outing.

12. Toward the end of the golf outing, Derrick Berhow was allowed to stand on a back of the golf cart at the Mason City Country Club, Inc.

13. As the golf cart was being driven by Halfwassen, and as Berhow was standing on the back of the golf cart, Berhow fell off the golf cart striking his head resulting in his death.

14. A blood alcohol test was administered to the Defendant Halfwassen. The test results confirmed Halfwassen was intoxicated at the time of Berhow’s death.

15. That the amount in controversy exceeds the Court’s jurisdictional limits.

16. Cerro Gordo County is the appropriate venue because it is the place where the accident occurred.

17. The Plaintiffs have complied with the notice provisions of Iowa Code § 123.93. On or about the 8th of February, the Defendant Mason City County Club, Inc. was served notice pursuant to Iowa Code § 123.93.

**Count I – Dram Shop Claim Against Defendant Mason City Country Club, Inc.
on Behalf of all Plaintiffs**

18. All of the above paragraphs are incorporated herein by reference.

19. On or about August 23, 2018, Defendant, Mason City County Club, Inc., by and through its employees, sold and served Keith Halfwassen beer or liquor to a point where it knew or should have known that Keith Halfwassen would become intoxicated.

20. On or about August 23, 2018, Defendant, Mason City County Club, Inc., by and through its employees, sold beer or liquor to Keith Halfwassen when it knew or should have known that Keith Halfwassen was intoxicated.

21. The sale and serving of beer or liquor by the Defendant, Mason City County Club, Inc., or its employees to Keith Halfwassen to a point where it knew or should have known that he would become intoxicated or knew or should have known that Keith Halfwassen was intoxicated, was a proximate cause of Keith Halfwassen's intoxication at the time of the golf cart accident on August 23, 2018, wherein Derrick Berhow was seriously injured and killed.

22. As a direct and proximate result of the Defendant, Mason City County Club, Inc., or its employees' sale and service of beer or liquor to Keith Halfwassen in violation of Iowa Code § 123.93, the Plaintiffs have been damaged as follows:

- a. Burial expenses;
- b. The present value of the amount of financial support which Decedent, Derrick Berhow, would have contributed to his son, T.R.B., but for his death;
- c. Plaintiff, Mandy Berhow, has suffered the loss of society, companionship, cooperation, and affection of her husband, Derrick Berhow;
- d. Plaintiff, T.R.B., a minor child, has suffered the loss of parental society, services, comfort, guidance, affection, and aid of his father, Derrick Berhow;
- e. Loss of net accumulation to the Estate;
- f. Pre-death physical, mental pain and suffering;
- g. Medical expenses; and
- h. Any and all damages recognized by Iowa law not specifically set forth herein.

23. Under Iowa law, the Defendant, Mason City County Club, Inc., is liable for the acts of its employees under doctrines of respondent superior, master-servant, or employer responsibility for acts of its employees.

WHEREFORE, the Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate, Mandy Berhow; Mandy Berhow, individually; and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, respectfully requests that judgment be entered against the Mason City Country Club, Inc., in an amount which will fully and fairly compensate the Plaintiffs for their injuries and damages, together with pre and post judgment interest at the maximum legal rate, the costs of this action, and for all further relief the Court may deem just and proper under the circumstances.

Count II – Negligence Against Defendant Mason City Country Club, Inc.

24. Plaintiff, The Estate of Derrick Berhow, repleads and re-alleges the allegations contained in the above paragraphs 1 - 17, and incorporate the same by reference herein.

25. On or about August 23, 2018, the Defendant Mason City County Club, Inc. had a common law duty to implement, enforce and follow rules for operation of the Mason City County Club and its employees from selling, serving or giving alcoholic beverages to an intoxicated person or one simulating intoxication.

26. On or about August 23, 2018, the Defendant Mason City Country Club, Inc. had a common law duty to implement, enforce and follow rules for the Defendant Mason City County Club that would provide a safe environment for invited guests and golfers at the Mason City County Club.

27. Berhow was an invited guest to the golf outing that was hosted by the Mason City Country Club, Inc.

28. Berhow was standing on the back of a golf cart while the golf cart was moving. Berhow fell off the golf cart striking his head. Berhow died from the fall off of the golf cart.

29. The driver of the golf cart was Halfwassen. Halfwassen was intoxicated at the time of Berhow's death.

30. The Defendant Mason City Country Club, Inc. breached its aforementioned duties in one or more of the following particulars:

- a. in allowing golfers at the Country Club to stand on the back of a golf cart while the golf cart was in operation;
- b. in allowing golfers at the Country Club to violate the rules and regulations of the Mason City Country Club, Inc.;
- c. in serving alcoholic beverages to the Halfwassen in an amount that allowed Halfwassen to become intoxicated;
- d. in failing to adequately supervise invitees at the golf outing;
- e. in failing to follow the proper safety procedure for the operation of the golf course;
- f. in failing to use reasonable care and caution;

- g. in failing to act in a reasonable manner under the circumstances then and there existing;
- h. in allowing intoxicated individuals to operate golf carts on its premises; and
- i. in allowing an unsafe condition to exist on its premises.

31. The negligence of the Defendant Mason City Country Club, Inc. was within the anticipated scope of liability of the Defendant Mason City Country Club, Inc.

32. That the damages suffered by all Plaintiffs were caused by the negligent conduct of Defendant Mason City Country Club, Inc. The damages to the Plaintiffs include but are not limited to the following:

- a. Burial expenses;
- b. The present value of the amount of financial support which Decedent, Derrick Berhow, would have contributed to his son, T.R.B., but for his death;
- c. Plaintiff, Mandy Berhow, has suffered the loss of society, companionship, cooperation, and affection of her husband, Derrick Berhow;
- d. Plaintiff, T.R.B., a minor child, has suffered the loss of parental society, services, comfort, guidance, affection, and aid of his father, Derrick Berhow;
- e. Loss of net accumulation to the Estate;
- f. Pre-death physical, mental pain and suffering;
- g. Medical expenses; and
- h. Any and all damages recognized by Iowa law not specifically set forth herein.

WHEREFORE the Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate, Mandy Berhow; Mandy Berhow, individually; and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, respectfully request that judgment be entered against the Mason City Country Club, Inc., in an amount which will fully and fairly compensate the

Plaintiffs for their damages together with interest thereon at the maximum legal rate, plus the costs of this action and any other relief the Court deems just and proper.

Count III – Negligence Against Defendant Keith Halfwassen

33. The Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate Mandy Berhow, Mandy Berhow, individually, and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, repleads and re-alleges the allegations contained in the above paragraphs 1 - 17, and incorporate the same by reference herein.

34. Plaintiff Berhow and Defendant Halfwassen had been participating in the golf outing at the Mason City Country Club, Inc. on August 23, 2018.

35. The Mason City County Club, Inc. had provided alcohol to Halfwassen during the golf outing on August 23, 2018.

36. Halfwassen consumed alcohol on the premises of the Mason City Country Club, Inc.

37. Defendant Halfwassen was intoxicated at the time of Berhow's death.

38. Defendant Halfwassen was operating a golf cart while intoxicated.

39. Defendant Halfwassen allowed Derrick Berhow to stand on the back of the golf cart while Halfwassen was driving the golf cart.

40. Defendant Halfwassen was negligent in one or more of the following in the following particulars:

- a. in failing to exercise reasonable care and caution;
- b. in failing to act in a reasonable manner under the circumstances then and there existing;
- c. in operating a golf cart in a unsafe manner;

- d. in allowing a fellow golfer ride on the back of the golf cart while the golf cart was moving;
- e. in driving a golf cart while intoxicated;
- f. in not following the rules and regulations of the Mason City Country Club, Inc. in the safe operation of a golf cart;

41. The actions of Defendant Halfwassen were within the anticipated scope of his liability.

42. That the damages suffered by all Plaintiffs were caused by the negligent conduct of Defendant Keith Halfwassen. The damages to the Plaintiffs include but are not limited to the following:

- a. Burial expenses;
- b. The present value of the amount of financial support which Decedent, Derrick Berhow, would have contributed to his son, T.R.B., but for his death;
- c. Plaintiff, Mandy Berhow, has suffered the loss of society, companionship, cooperation, and affection of her husband, Derrick Berhow;
- d. Plaintiff, T.R.B., a minor child, has suffered the loss of parental society, services, comfort, guidance, affection, and aid of his father, Derrick Berhow;
- e. Loss of net accumulation to the Estate;
- f. Pre-death physical, mental pain and suffering;
- g. Medical expenses; and
- h. Any and all damages recognized by Iowa law not specifically set forth herein.

WHEREFORE the Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate, Mandy Berhow; Mandy Berhow, individually; and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, respectfully request that judgment be entered against the Defendant Keith Halfwassen, in an amount which will fully compensate the Plaintiffs for their

damages together with interest thereon at the maximum legal rate, plus the costs of this action and any other relief the Court deems just and proper.

Count IV – Negligence Against Defendant Culver Hahn Electric Supply

43. The Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate Mandy Berhow, Mandy Berhow, individually, and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, plead and re-allege the allegations contained in the above paragraphs 1 - 17, and incorporate the same by reference herein.

44. On or about August 23, 2018, Defendant Culver Hahn sponsored a golf outing at the Mason City Country Club, Inc.

45. As part of the golf outing at the Mason City Country Club, Inc. the Defendant Culver Hahn supplied and/or allowed alcoholic beverages to be served to its guests at various points around the golf course.

46. During the day Halfwassen was served alcoholic beverages. At the time of Berhow's death, Halfwassen was intoxicated.

47. By sponsoring the golf outing, Defendant Culver Hahn had a duty to provide a safe environment for the participants and to follow all the rules of the Mason City Country Club.

48. Deceased, Derrick Berhow was an invited guest. Culver Hahn was negligent in one or more of the following particulars:

- a) in allowing alcohol to be served to Halfwassen;
- b) in allowing alcohol to be served to Halfwassen to the point Halfwassen became intoxicated;
- c) in failing to properly monitor the locations at the Mason City Country Club where alcoholic beverages were being served;

- d) in allowing a golf participant to ride on the back of a golf cart with an intoxicated driver;
- e) in failing to insure the safety of the invited guests to the golf outing at the Mason City County Club;
- f) in failing to use reasonable care and caution; and
- g) in failing to act in a reasonable manner under the circumstances then and there existing.

49. The fatal injuries to the deceased Berhow was within the anticipated scope of liability of the Defendant Culver Hahn.

50. That the damages suffered by the Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate, Mandy Berhow; Mandy Berhow, individually; and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, were caused by the negligent conduct of Culver Hahn. The damages to the Plaintiffs include but are not limited to the following:

- a. Burial expenses;
- b. The present value of the amount of financial support which Decedent, Derrick Berhow, would have contributed to his son, T.R.B., but for his death;
- c. Plaintiff, Mandy Berhow, has suffered the loss of society, companionship, cooperation, and affection of her husband, Derrick Berhow;
- d. Plaintiff, T.R.B., a minor child, has suffered the loss of parental society, services, comfort, guidance, affection, and aid of his father, Derrick Berhow;
- e. Loss of net accumulation to the Estate;
- f. Pre-death physical, mental pain and suffering;
- g. Medical expenses; and
- h. Any and all damages recognized by Iowa law not specifically set forth herein.

WHEREFORE the Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate, Mandy Berhow; Mandy Berhow, individually; and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, respectfully request that judgment be entered against the Defendant Culver Hahn Electric Supply, in an amount which will fully compensate the Plaintiffs for their damages together with interest thereon at the maximum legal rate, plus the costs of this action and any other relief the Court deems just and proper.

JURY DEMAND

COME NOW the Plaintiffs, The Estate of Derrick W. Berhow by the executor of the Estate Mandy Berhow, Mandy Berhow, individually, and Mandy Berhow as Parent and Next Friend to T.R.B., a minor child, individually, and hereby demand trial by jury of all the issues contained in the above-captioned matter.

Respectfully submitted,

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Electronically Filed.