

CAUSE NO. 2019-1249-5

RITA STABILE, Individually
and on Behalf of the ESTATE OF FABRIZIO
STABILE, and VINCENZO STABILE,
INDIVIDUALLY,
Plaintiffs

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IN THE DISTRICT COURT OF

MCLENNAN COUNTY, TEXAS

v.

BSR SURF RESORT, LLC, PARSONS
BAREFOOT SKI RANCH, LLC, and
BSR CABLE PARK,
Defendants

414TH JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION AND REQUEST FOR DISCLOSURE

COME NOW Plaintiffs, Rita Stabile, Individually and on behalf of the Estate of Fabrizio Stabile, and Vincenzo Stabile, individually (hereinafter jointly referred to as "Plaintiffs") and complain of BSR Surf Resort, LLC, Parsons Barefoot Ski Ranch, LLC, BSR Cable Park (hereinafter collectively referred to as "Defendants" or "BSR"), and for causes of action respectfully show as follows:

DISCOVERY CONTROL PLAN

1. Plaintiffs intend to conduct discovery under Level 3 of Rule 190 of the Texas Rules of Civil Procedure. Plaintiffs request that the Court enter a docket control order. Plaintiffs affirmatively plead that they seek monetary relief of more than \$1,000,000.

PARTIES

2. Plaintiffs Rita Stabile, individually and on behalf of the estate of Fabrizio Stabile, and Vincenzo Stabile, individually, are individuals and residents of New Jersey.

3. Defendant BSR Surf Resort, LLC, is a Texas limited liability company doing business in the State of Texas, and in McLennan County, both at the time of the occurrence in

question and at the present time, and may be served with citation by serving its registered agent, Stuart Parsons, in person or mailing to the registered agent by registered or certified mail, return receipt requested, a true copy of the citation and petition, at 596 Beaver Lake, Waco, Texas 76705, or anyplace else he may be found.

4. Defendant Parsons Barefoot Ski Ranch, LLC, is a Texas limited liability company doing business in the State of Texas, and in McLennan County, both at the time of the occurrence in question and at the present time, and may be served with citation by serving its registered agent, Stuart Parsons, in person or mailing to the registered agent by registered or certified mail, return receipt requested, a true copy of the citation and petition, at 596 Beaver Lake, Waco, Texas 76705, or anyplace else he may be found.

5. Defendant BSR Cable Park, LLC, is a Texas limited liability company doing business in the State of Texas, and in McLennan County, both at the time of the occurrence in question and at the present time, and may be served with citation by serving its registered agent, Stuart Parsons, in person or mailing to the registered agent by registered or certified mail, return receipt requested, a true copy of the citation and petition, at 596 Beaver Lake, Waco, Texas 76705, or anyplace else he may be found.

JURISDICTION AND VENUE

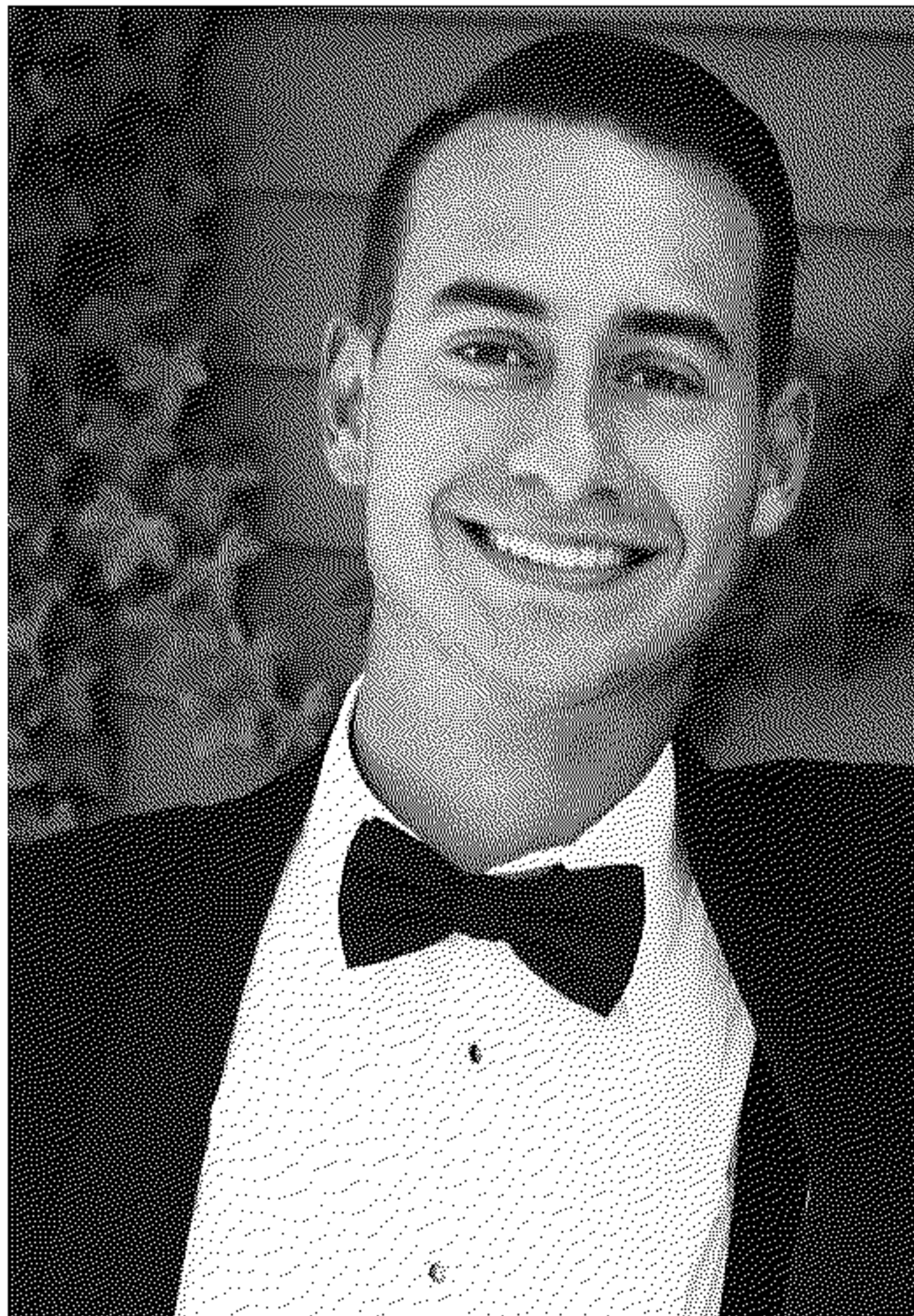
6. This court has personal jurisdiction over the parties because Defendants are Texas entities and regularly conduct business in, the State of Texas.

7. Venue in McLennan County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in McLennan County. Moreover, venue is proper as

to the Defendants under Tex. Civ. Prac. & Rem. Code § 15.002(a)(3) because McLennan County is the location of their principal offices in the State of Texas.

8. All Conditions precedent have been performed, have occurred or have been waived.

FACTUAL BACKGROUND



Fabrizio Stabile (Feb. 11, 1989 – Sep. 21, 2018)

9. In the summer of 2018, a group of close friends decided to travel from New Jersey to the BSR Surf Resort in Waco, Texas, after reviewing promotional videos and advertisements.

10. On or about September 8, 2018, Plaintiff and his friends were patrons and invitees of BSR Surf Resort. Unknown to Plaintiff, BSR's blue-green dyed waves masked a pathogen soup in which *Naegleria fowleri* amoeba -- the “brain-eating amoeba” – could thrive.



Naegleria fowleri - © Francine Marciano-Cabral

11. While he was surfing and in the water at BSR Surf Park, *Naegleria fowleri* amoebae from BSR's toxic water entered into Fabrizio Stabile's nose and migrated into his brain. Once there, the amoeba fed on brain and other cells, causing horrific injury and pain, and ultimately Fabrizio Stabile's death on September 21, 2018.

12. Consulted by Fabrizio's Stabile's treating physicians in New Jersey after amoebae were found in his cerebral spinal fluid, the United States Centers for Disease Control ("CDC") quickly determined to identify the source of the deadly parasite. Within a week of Fabrizio Stabile's death, a team from the CDC, together with personnel from the Texas Department of State Health Services ("DSHS") and the Waco-McLennan County Public Health District ("WMCPHD"), inspected the Defendants' water park, including an analysis of the water quality. The results of the inspection are a powerful indictment of BSR. The CDC wrote:

The presence of fecal indicator organisms (total coliforms, enterococci), viable thermophilic ameba, and high turbidity indicate **a treatment failure**, and when the water is warm, would create conditions amenable to *Naegleria fowleri* growth.

CDC Environmental Microbiology Laboratory Report, October 11, 2018 (“CDC Report”) (emphasis added). Fabrizio Stabile’s death could have been prevented by Defendants had they exercised ordinary care in the operation of their water park.

13. Based on epidemiologic and environmental assessments, the CDC and WMCPHD concluded that Fabrizio Stabile was exposed to the deadly *Naegleria fowleri* amoeba at BSR. The medical professionals determined that the causes of Fabrizio Stabile’s death were primary amoebic meningoencephalitis and *Naegleria fowleri* infection of the central nervous system.

CAUSES OF ACTION

A. NEGLIGENCE, NEGLIGENCE PER SE & GROSS NEGLIGENCE

14. Plaintiffs incorporate paragraphs 9-13 as if fully set forth herein.

15. Upon information and belief, Defendants own and operate the BSR Surf Resort. Defendants owe a duty to the public and to its customers to maintain the water in a safe condition. Defendants breached their duty to keep the water safe. That breach proximately caused the injury and death of Fabrizio Stabile.

16. Defendants owe a duty to the public and to its customers to comply with the applicable statutes and regulations of the State of Texas concerning maintaining the water in a safe condition. Defendants violated applicable statutes and regulations and breached their duty to keep the water safe. Those breaches, singularly or in combination, proximately caused the injuries to and death of Fabrizio Stabile.

17. Defendants’ actions, inactions, and omissions, when viewed objectively from Defendants’ standpoint at the time at issue, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, including Plaintiffs and Decedent. Further, Defendants had actual subjective awareness of the risks involved, but nevertheless

proceeded with conscious indifference to the rights, safety, and/or welfare of others. Therefore, Defendants actions also constitute gross negligence, for which Plaintiffs sue Defendants.

B. PREMISES LIABILITY

18. Plaintiffs incorporate paragraphs 9-17 as if fully set forth herein.

19. Upon information and belief, Defendants own and operate the BSR Surf Resort property.

20. Fabrizio Stabile was on Defendants' property with Defendants' knowledge, at Defendants' urging and for their mutual benefit. Fabrizio Stabile was Defendants' invitee.

21. Defendants knew or, in the exercise of reasonable diligence, should have known that there was a substantial risk of a recreational water illness at the BSR Surf Resort. Additionally, Defendants knew or reasonably should have known of the lack of proper water quality maintenance at their property and that it, combined with the risk of a recreational water illness at the BSR Surf Resort, created a dangerous condition posed an unreasonable risk of death or serious bodily harm to Fabrizio Stabile.

22. Defendants had a duty to use ordinary care to take reasonable measures to address the dangerous conditions at the BSR Surf Resort. Defendants breached this duty. Defendants' breach of duty proximately caused the injury and death of Decedent. Accordingly, Plaintiffs sue Defendants for negligence and premises liability.

C. WRONGFUL DEATH

23. Plaintiffs incorporate paragraphs 9-22 as if fully set forth herein.

24. Plaintiff Rita Stabile is the surviving mother of Decedent. Plaintiff Vincenzo Stabile is the surviving father of Decedent.

25. Decedent died as a result of Defendants' wrongful conduct.

26. Decedent would have been entitled to bring this action against Defendants if he had lived.

27. Defendants' conduct that caused Decedent's death was a proximate cause of injury to Plaintiffs.

28. Plaintiffs now seek damages in an amount to be determined by the trier of fact.

D. SURVIVAL CLAIM FOR PERSONAL INJURIES

29. Plaintiffs incorporate paragraphs 9-28 as if fully set forth herein.

30. Plaintiff Rita Stabile is the personal representative of Decedent's estate.

31. Had Decedent survived, he would have had a cause of action for injury to his person and would have been entitled to bring an action for the injury if he had lived. Defendants' negligent and grossly negligent conduct, as described above, caused Decedent's injury. Therefore, Plaintiff Rita Stabile brings this survival action on behalf of Decedent pursuant to Section 71.004 of the Texas Civil Practice and Remedies Code.

DAMAGES

32. Plaintiffs incorporate paragraphs 9-31 above as if fully set forth herein.

33. This claim for damages resulting from the wrongful death of Decedent is brought by Rita Stabile, his surviving mother, and Vincenzo Stabile, his surviving father, pursuant to TEX. CIV. PRAC. & REM. Code 71.001 et. seq.

34. Fabrizio Stabile was 29 years of age at the time of his death. He was in good health with a reasonable life expectancy of many years. As a result of the untimely death of Fabrizio, Plaintiffs have suffered pecuniary loss from his death, including loss of care, maintenance, support, services, advice, counsel and contributions of a pecuniary value that they would in reasonable probability, have received from their son during his lifetime, had he lived. Fabrizio was the beloved

only son of a very tight-knit family. The evidence will show that the relationship of Fabrizio with his parents was extraordinarily close. Rita and Vincenzo Stabile have suffered severe mental anguish, grief and sorrow as a result of the death of their only son Fabrizio Stabile and are likely to continue to suffer for a long time in the future.

35. Further, Plaintiff Rita Stabile, Individually and on Behalf of the Estate of Fabrizio Stabile, has incurred the reasonable and customary charges for the funeral and burial of Fabrizio Stabile.

36. Plaintiffs seek recovery of the following elements of actual compensatory damages to be determined by the jury:

a. Reasonable medical care and expenses in the past. These expenses were incurred by Decedent for the necessary care and treatment of his injuries resulting from the incident complained of herein and such charges are reasonable and were usual and customary charges for such services in Ventnor, Atlantic County, New Jersey;

b. Funeral and burial costs;

c. Physical pain and suffering of Decedent in the past;

d. Mental anguish in the past;

e. Mental anguish in the future;

f. Loss of earnings in the past;

g. Loss of earnings in the future;

h. Loss of consortium in the past, including damages to the family relationship, loss of care, comfort, solace, companionship, protection and services;

i. Loss of consortium in the future, including damages to the family relationship, loss of care, comfort, solace, companionship, protection and services; and

- j. Such other and further relief that Plaintiffs may be justly entitled.

EXEMPLARY DAMAGES

37. Plaintiffs incorporate the paragraphs 3-36 above as if fully set forth herein.

38. Defendants' acts or omissions described above, when viewed from the standpoint of Defendants at the time of the act or omission, involved an extreme degree of risk, considering the probability of harm to Decedent, Plaintiffs and others.

39. Defendants had actual, subjective awareness of the risk involved in the above-described acts or omissions, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of Decedent, Plaintiffs and others.

40. Therefore, for such actions/inactions on behalf of Defendants, Plaintiffs sue for exemplary damages to be determined by the jury and court.

JURY DEMAND

41. Plaintiffs demand a trial by jury.

REQUEST FOR DISCLOSURE

42. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose the information and material described in Rule 194.2 within fifty (50) days of the service of this Plaintiffs' Request for Disclosure to Defendant.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully pray that Defendants be cited to appear and answer herein, and that upon final hearing of the cause, judgment be entered for Plaintiffs against Defendants for damages in an amount within the jurisdictional limits of the Court together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and

such other and further relief, both general and special, at law or in equity, to which Plaintiffs may be entitled at law or in equity.

Respectfully submitted,

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