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COURT FILE NUMBER QBG No. _____ of A.D. 2017

COURT OF QUEEN'S BENCH FOR SASKATCHEWAN

JUDICIAL CENTRE SASKATOON

PLAINTIFF: SASKATCHEWAN GOVERNMENT INSURANCE

DEFENDANTS: THE INDUSTRIAL KITCHEN AND LOUNGE CORPORATION operating as THE INDUSTRIAL KITCHEN & BAR and MCDE HOLDINGS LTD. operating as CRACKERS LICENSED COCKTAIL & DINING ROOM

COURT OF QUEEN'S BENCH
FILED
JUL 06 2017
SASKATOON

NOTICE TO DEFENDANT

- 1. The Plaintiff may enter judgment in accordance with this Statement of Claim or the judgment that may be granted pursuant to The Queen's Bench Rules unless, in accordance with paragraph 2, you:
(a) serve a Statement of Defence on the Plaintiff; and
(b) file a copy of it in the office of the local registrar of the Court for the judicial centre named above.
2. The Statement of Defence must be served and filed within the following period of days after you are served with the Statement of Claim (excluding the day of service):
(a) 20 days if you were served in Saskatchewan;
(b) 30 days if you were served elsewhere in Canada or in the United States of America;
(c) 40 days if you were served outside Canada and the United States of America.
3. In many cases a Defendant may have the trial of the action held at a judicial centre other than the one at which the Statement of Claim is issued. Every Defendant should consult a lawyer as to his or her rights.
4. This Statement of Claim is to be served within 6 months from the date on which it is issued.
5. This action is brought against you under the expedited procedure as set out in Part 8 of The Queen's Bench Rules.
6. This Statement of Claim is issued at the above-named judicial centre on the 6th day of July, 2017.

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STATE OF CLAIM 200.00
CLERK 1

[Signature] Local Registrar

STATEMENT OF CLAIM

1. The Plaintiff, Saskatchewan Government Insurance, is a corporation constituted under *The Saskatchewan Government Insurance Act, 1980* with its head office at Regina, Saskatchewan, and it is authorized and empowered to administer *The Automobile Accident Insurance Act, R.S.S. 1978, c. A-35* (the "Act").
2. The Defendant, The Industrial Kitchen and Lounge Corporation, is a registered corporation in the Province of Saskatchewan, with its registered office in the City of Saskatoon, in the Province of Saskatchewan, operating a business under the name and style of The Industrial Kitchen & Bar.
3. The Defendant, MCDE Holdings Ltd., is a registered corporation in the Province of Saskatchewan, with its registered office in the City of Saskatoon, in the Province of Saskatchewan, operating a business under the name and style of Crackers Licensed Cocktail & Dining Room.
4. At all material times, Catherine McKay of Saskatoon, Saskatchewan, was the owner and operator of a 2012 Jeep Wrangler Unlimited motor vehicle (hereinafter referred to as the "McKay vehicle").
5. At all material times, Jordan Van de Vorst was the owner and operator of a 2005 Hyundai Elantra motor vehicle (hereinafter referred to as the "Van de Vorst vehicle") which was designated in an unexpired owner's certificate of insurance (licence plate # 593 EPA) issued pursuant to the Act. Chanda Van de Vorst, Miguire Van de Vorst and Kamryn Van de Vorst were passengers in the said Van de Vorst vehicle.
6. On or about January 3, 2016, Jordan Van de Vorst was operating the Van de Vorst vehicle in a westerly direction on Highway #11 on the northern edge of the City of Saskatoon, Saskatchewan, when Catherine McKay, operating the McKay vehicle,

failed to stop at a stop sign at the junction of Wanuskewin Road and Highway #11, causing a collision between the two vehicles (the “Collision”). At the time of the Collision, Catherine McKay was operating her vehicle at highway speeds in a reckless and negligent manner causing it to collide with the Van de Vorst vehicle.

7. As a result of the Collision, all the occupants of the Van de Vorst vehicle, Jordan Van de Vorst, Chanda Van de Vorst, Miguire Van de Vorst and Kamryn Van de Vorst were fatally injured.
8. On or about July 27, 2016, Catherine McKay was convicted of four counts of impaired driving causing death under the *Criminal Code* (Canada) and received a custodial sentence in relation to her part in the Collision.
9. The Plaintiff states, prior to the Collision, during the evening hours of January 2, 2016, Catherine McKay attended at each of the business premises owned and operated by each of the Defendants, and was sold and consumed alcohol at each of the Defendants’ businesses thereby impairing her ability to drive.
10. The Plaintiff states each of the Defendants, as a commercial business selling alcohol beverages at its business premises, owed a duty of care to persons who could be expected to use the highways, in this case, the Van de Vorst family on the morning of January 3, 2016.
11. The Plaintiff states that each Defendant breached their duty of care to persons who could have been expected to use the highways on the night of the Collision.
12. Further, the Plaintiff states the Collision and all resulting loss, damage and/or fatalities were caused by the negligence of the Defendants (hereinafter referred to as the “tavern” or “taverns”), particulars of which include *inter alia* :
 - a) Continuing to serve Catherine McKay alcohol when each tavern knew or ought to have known that McKay was, or had become intoxicated;

- b) Failing to maintain an adequate and reasonable system to determine how much alcohol each of its patrons, such as Catherine McKay, consumed on the day and date of the accident, as well as the evening prior to the accident;
- c) Each tavern failed to maintain an adequate and reasonable system to ensure safe passage home of its patrons;
- d) Each tavern knew or ought to have known that Catherine McKay was likely to drive while in an intoxicated and/or impaired state;
- e) Each tavern failed to protect the Van de Vorst family when it knew or ought to have known that they were members of the general public operating their vehicle on a Saskatchewan highway, and would be at risk as a result of Catherine McKay operating her motor vehicle on January 2 and 3, 2016 while in a state of intoxication;
- f) Each tavern failed to contact the Saskatoon City Police, or other such policing authorities, to advise that Catherine McKay was impaired and operating a motor vehicle from each of their tavern premises, thereby failing to protect the Van de Vorst family who were operating their motor vehicle on a highway;
- g) Each tavern failed to take a positive step to place Catherine McKay in the care and custody of a sober person when each tavern knew or ought to have known she was impaired, thereby exposing the Van de Vorst family, operating their motor vehicle on a highway, to an operator who was impaired while operating a vehicle;
- h) Each tavern failed to take any or reasonable steps to prevent Catherine McKay from operating her motor vehicle when she was in an impaired state at the time she was leaving each tavern, when it was apparent that she intended to drive her motor vehicle;
- i) Each tavern failed to make the necessary and sufficient enquiries of Catherine McKay to determine if she was intending on operating a motor vehicle, thereby endangering the lives of the Van de Vorst family through her operation of a motor vehicle while intoxicated and/or impaired;
- j) Such other grounds as may be proven by the Plaintiff in the course of this action.

13. Further, and in the alternative, the Plaintiff says that the negligence of each of the Defendants contributed to the damages claimed herein, and the Plaintiff pleads and relies on the provisions of *The Contributory Negligence Act*.
14. The Plaintiff states each tavern over-served Catherine McKay and knew or ought to have known she was impaired and further allowed Catherine McKay to drive away from their tavern without taking proper and effective action.
15. The Plaintiff states that each tavern caused or contributed to the collision of the McKay vehicle with the Van de Vorst vehicle, by over-serving Catherine McKay and allowing her to leave each tavern in an intoxicated and/or impaired state to operate a motor vehicle.
16. The Plaintiff states, in relation to the Defendant, The Industrial Kitchen and Lounge Corporation, this tavern was aware Catherine McKay frequently consumed alcohol at their business premises as to become intoxicated and/or impaired.
17. The Plaintiff states each Defendant has breached Sections 125 and 126(2) of *The Alcohol and Gaming Regulation Act, 1997* by selling or supplying beverage alcohol to Catherine McKay who appeared to be intoxicated on the evening of January 2, 2016 and/or the early morning hours of January 3, 2016.
18. Under the provisions of Section 45(7) of the Act, the Plaintiff, being the insurer of the McKay vehicle, by virtue of the owner's certificate of insurance, settled *The Fatal Accidents Act* claims of the Estate of Jordan Van de Vorst and the Estate of Chanda Van de Vorst for the amount of \$90,000.00.
19. As a result of the Collision, the Van de Vorst vehicle was damaged beyond economical repair. Pursuant to Part III of the Act, the Plaintiff paid the sum of \$4,836.34, representing the actual cash value of the Van de Vorst vehicle, including

contents of the vehicle less salvage value. Towing and storage charges of \$687.20 were also paid (the "Property Claim").

20. The Plaintiff brings this action in its own name, pursuant to Section 80(1) of the Act, to recover the sum of \$5,523.54 which it has paid out under Part III of the Act, and to recover the sum of \$90,000.00 it has paid out under Part IV of the Act.
21. The Plaintiff, therefore, claims jointly and severally as against the Defendants:
- a) Payment or Judgment in the amount of \$5,523.54 for Part III payments under the Act;
 - b) Payment of Judgment in the amount of \$90,000.00 for Part IV payments under the Act;
 - c) Interest pursuant to the provisions of *The Pre-Judgment Interest Act*;
 - d) Costs of the within action.

DATED at Saskatoon, Saskatchewan, this 5th day of July, 2017.

T. J. MacLEOD, Q.C.

Per: 

Solicitor for the Plaintiff.

Saskatchewan Government Insurance

ADDRESS FOR SERVICE:

Name of firm:

T. J. MacLeod, Q.C.

Name of lawyer in charge of file:

Dale Brown

Address of legal firm:

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SE SK 3893905