

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

**STACY L. HORINGER-RYAN
INDIVIDUALLY AND AS
ADMINISTRATRIX FOR THE
ESTATE OF FORREST H. RYAN,
DECEASED**

1019 Canyon Street NW
Uniontown, Ohio 44685

Plaintiff,

-vs-

ZODIAC CLUB

1955 Triplett Boulevard
Akron, Ohio 44312

and

BERTISON ENTERPRISES L.L.C.

c/o Charles Alexander Bertison
169 Polonia Avenue
Akron, Ohio 44319

and

CLARA ANN MASIELLA

2066 Quayle Drive
Akron, Ohio 44312

and

ROBERT T. JARVIS

Lorain Correctional Institute
2075 S. Avon Beiden Road
Grafton, OH 44044

Defendants.

CASE NO.:

JUDGE _____

**COMPLAINT: ASSAULT AND
BATTERY; STATUTORY
NEGLIGENCE; PREMISES
LIABILITY; WRONGFUL DEATH;
PUNITIVE DAMAGES**

Now comes Plaintiff Stacy L. Horinger-Ryan, Individually and as Administratrix for the Estate of Forrest H. Ryan ("Plaintiff"), by and through the undersigned counsel, and for her

Complaint against Defendants Zodiac Club (“Zodiac”), Bertison Enterprises L.L.C. (“Bertison”), Clara Ann Masiella (“Masiella”), and Robert T. Jarvis (“Jarvis”) (collectively “Defendants”), states as follows:

INTRODUCTION

1. Stacy L. Horinger-Ryan is the duly appointed Administratrix for the Estate of Forrest H. Ryan.

2. All occurrences giving rise to these claims for relief occurred in Summit County, Ohio.

3. Defendant Zodiac is a registered fictitious name of Defendant Bertison with its principal place of business in Summit County Ohio. Upon information and belief, Zodiac is a restaurant and bar located at 1955 Triplett Boulevard, Akron, Summit County, Ohio 44312.

4. Defendant Bertison is an Ohio limited liability company organized under the laws of the State of Ohio with its principal place of business located in Summit County, Ohio.

5. Defendant Masiella is an individual domiciled in Summit County, Ohio and the owner and landlord of the premises located at 1955 Triplett Boulevard, Akron, Summit Count, Ohio 44312.

6. Defendant Jarvis is an individual currently incarcerated at Lorain Correctional Institute.

FACTUAL BACKGROUND

7. Plaintiff re-alleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

8. On January 7, 2016, Forrest H. Ryan (“Forrest”) arrived at the Zodiac on Triplett Boulevard in Akron, Ohio.

9. Forrest was a regular patron at the Zodiac Club.

10. January 7, which was a Thursday, was “Ladies’ Night” at Zodiac. For that night, Zodiac hired Jarvis as a disc jockey to play music and run a karaoke machine.

11. Defendant Jarvis was a regular disc jockey at Zodiac.

12. On the night of January 7, prior to attacking Forrest, Jarvis had at least one shot of alcohol. Upon information and belief, the shot was provided by Zodiac.

13. Late in the evening of January 7, into the early morning of January 8, upon information and belief, Forrest and Jarvis got into a minor verbal altercation.

14. After the minor verbal altercation, Forrest walked away from Jarvis and outside onto the patio at Zodiac.

15. At approximately 12:04am on January 8, 2016, without provocation, Jarvis followed Forrest onto the patio and struck Forrest repeatedly in the head with his fists.

16. Approximately 19 seconds after being initially struck by Jarvis, Forrest collapsed to the ground.

17. Forrest never hit nor attempted to hit Jarvis during the attack.

18. Jarvis did not reasonably fear for his personal safety immediately before or during the attack.

19. Jarvis fled from the scene after his attack of Forrest.

20. Forrest was declared dead at 12:46am on January 8, 2016.

21. An autopsy was performed. In the death certificate, the Medical Examiner lists Forrest’s cause of death as traumatic subarachnid hemorrhage and brain swelling due to or as a consequence of craniocerebral blunt force trauma.

22. Jarvis was arrested by the Akron Police Department on January 8, 2016 and eventually pled guilty to involuntary manslaughter. Jarvis is currently serving a four-year prison sentence at an Ohio correctional facility.

23. Zodiac had a history of violent activity. In the twenty-four months preceding Jarvis's unprovoked attack on Forrest, there were at least four other incidents of violence involving both employees/agents of Zodiac and patrons of Zodiac.

COUNT I – BATTERY
(As to Defendant Jarvis)

24. Plaintiff re-alleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

25. Jarvis intended to harmfully and offensively contact Forrest when he struck him repeatedly in the head.

26. Jarvis in fact harmfully and offensively contacted Forrest when he struck him repeatedly in the head.

27. Forrest did not expressly or impliedly consent to the harmful and offensive contact.

28. As a direct and proximate result of Jarvis's battery, Forrest suffered bodily injury, pain and discomfort, emotional distress and anxiety, suffered a loss of enjoyment of life, an inability to perform usual activities, an increased risk of harm, fatal injuries, and incurred medical bills and ambulance bills for the treatment of his fatal injuries.

COUNT II – ASSAULT
(As to Defendant Jarvis)

29. Plaintiff re-alleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

30. Jarvis intentionally attempted to harm and offensively touch Forrest when he struck him repeatedly in the head.

31. Jarvis did not have authority or consent to harm and offensively touch Forrest.

32. Jarvis's actions reasonably placed Forrest in fear and apprehension of this contact.

33. As a direct and proximate result of Jarvis's assault, Forrest suffered bodily injury, pain and discomfort, emotional distress and anxiety, suffered a loss of enjoyment of life, an inability to perform usual activities, an increased risk of harm, fatal injuries, and incurred medical bills and ambulance bills for the treatment of his fatal injuries.

COUNT III – STATUTORY NEGLIGENCE

(As to Defendants Zodiac, Bertison, & Masiella)

34. Plaintiff re-alleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

35. Defendants Zodiac, Bertison, and Masiella, by and through their employees and agents, pursuant to *Ohio Revised Code* §§ 4101.11 and 4101.12, had a duty to furnish a safe place of business for Forrest and had a duty to do anything reasonably necessary to protect the life, health, safety, and welfare of Forrest.

36. This duty included, but is not limited to, furnishing reasonable safety procedures to protect the patrons and frequenters of Zodiac Club.

37. In breach of their duty owed to Forrest, Defendants Zodiac, Bertison, and Masiella's negligent, reckless, willful, and/or wanton misconduct, by and through their employees and agents, directly and proximately caused Forrest's death on January 8, 2016. Such breach includes but is not limited to, providing employees and agents alcohol while working at Zodiac, failing to prevent the violent criminal actions inflicted on Forrest, and failing to enact, implement, and enforce reasonable safety procedures to protect patrons.

38. In addition, based on the knowledge of Defendants Zodiac, Bertison, and Massiella, by and through their agents and employees, criminal activity on January 8, 2016 was reasonably foreseeable.

39. As a direct and proximate result of Defendants Zodiac, Bertison, and Masiella's negligence, Forrest suffered bodily injury, pain and discomfort, emotional distress and anxiety, suffered a loss of enjoyment of life, an inability to perform usual activities, an increased risk of harm, fatal injuries, and incurred medical bills and ambulance bills for the treatment of his fatal injuries.

COUNT IV – PREMISES LIABILITY
(As to Defendants Zodiac, Bertison, & Masiella)

40. Plaintiff re-alleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

41. At all relevant times, Forrest was the business invitee of Defendants Zodiac, Bertison, and Masiella.

42. Defendants Zodiac, Bertison, and Masiella, by and through their employees and agents, owed Forrest a duty of care to prevent foreseeable criminal acts of third parties. Based on the knowledge of Defendants Zodiac, Bertison, and Massiella, by and through their agents and employees, criminal activity at Zodiac Club was reasonably foreseeable on January 8, 2016.

43. Defendants Masiella, Bertison, and Zodiac, by and through their employees and agents, breached its duty owed to Forrest by, including but not limited to, providing employees and agents alcohol while working at Zodiac, failing to prevent the violent criminal actions inflicted on Forrest, and failing to enact, implement, and enforce reasonable safety procedures to protect patrons.

44. As a direct and proximate result of Defendants Zodiac, Bertison, and Masiella's negligence, Forrest suffered bodily injury, pain and discomfort, emotional distress and anxiety, suffered a loss of enjoyment of life, an inability to perform usual activities, an increased risk of harm, fatal injuries, and incurred medical bills and ambulance bills for the treatment of his fatal injuries.

COUNT V – WRONGFUL DEATH OF FORREST H. RYAN
(As to all Defendants)

45. Plaintiff re-alleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

46. This claim is brought by Plaintiff pursuant to *Ohio Revised Code* § 2125.02 for the benefit of the heirs and surviving next of kin of Forrest H. Ryan, including, but not limited to, daughter Samantha A. Ryan, son Cooper D. Ryan, and *in loco* son Brenden E. Horinger.

47. As a direct and proximate result of Defendants' intentional acts, statutory negligence, and common law negligence discussed in Counts I through IV, Plaintiff Stacy L. Horinger-Ryan, as Administratrix for the Estate of Forrest H. Ryan, has suffered damages including funeral and burial expenses.

48. Additionally, as a direct and proximate result of Defendants' intentional and negligent acts causing the wrongful death of Forrest H. Ryan, the beneficiaries of Forrest H. Ryan have suffered damages pursuant to Ohio law including being deprived of the decedent's support, maintenance, services, society, companionship, consortium, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, education, loss of prospective inheritance, and have further suffered mental anguish and emotional distress.

COUNT VI – PUNITIVE DAMAGES

(As to all Defendants)

49. Plaintiff re-alleges the preceding paragraphs of this Complaint as if fully restated and incorporated herein.

50. Defendants' conduct as set forth above was particularly egregious, reckless, willful, wanton, and/or malicious, entitling Plaintiff to an award of punitive damages and attorney fees on all counts alleged above.

WHEREFORE, as to Counts I through VI, Plaintiff, Stacy L. Horinger-Ryan, as Administratrix for the Estate of Forrest H. Ryan, respectfully prays for judgment of this Honorable Court against Defendants, Zodiac Club, Bertison Enterprises L.L.C., Clara Ann Masiella, and Robert T. Jarvis, jointly and severally, in an amount in excess of \$25,000.00, plus punitive damages, attorneys' fees, interest, costs of this action, and any further relief this Court may deem just and equitable.

DATED: January 6, 2017

Respectfully submitted,

TZANGAS | PLAKAS | MANNOS | LTD/s/ Megan J. Frantz Oldham

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