

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH COUNTY
FLORIDA

CARLOS PELICO LOPEZ, as Personal Representative
of the Estate of Y.A.P., a minor child, deceased,

CASE NO: 50-2017-CA-002941-XXXX-
MB

Plaintiff,

v.

HERITAGE SQUARE AGENCY, a Florida joint
business association; HOWE, INC., a Florida
corporation; YORKTOWN ASSOCIATION, INC., a
Florida corporation; GEORGETOWN ASSOCIATION,
INC.; a Florida corporation; and JAMESTOWN
ASSOCIATION, INC., a Florida corporation,

Defendants.

SECOND AMENDED COMPLAINT

COMES NOW, Plaintiff Carlos Pelico Lopez, as Personal Representative of the Estate of Y.A.P., a deceased minor, and brings this lawsuit against Defendants Heritage Square Agency, Howe, Inc., Yorktown Association, Inc., Georgetown Association, Inc., and Jamestown Association, Inc. and alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. This is an action for damages in excess of fifteen thousand dollars, exclusive of attorneys' fees, interest, and costs.
2. At all times material hereto, Plaintiff Carlos Pelico Lopez was and is a resident of Palm Beach County, Florida.

3. At all times material hereto, Plaintiff is and has been the duly appointed Personal Representative of the Estate of Y.A.P., deceased minor, having so been appointed by the Circuit Court in and for Palm Beach County, Florida. (Order attached hereto as Exhibit A).

4. At all times material hereto Plaintiff Carlos Pelico Lopez and his wife Estella Pelico Chun are and were the natural, biological parents of their now deceased minor daughter, Y.A.P.

5. At all times material hereto, Defendant Yorktown Association, Inc. was and is a Florida corporation with its principle address located at 1500 Gateway Boulevard, Suite 220, Boynton Beach, Florida, and its registered agent located at 777 South Flagler Drive, West Tower, Suite 800, West Palm Beach, Florida.

6. At all times material hereto, Defendant Yorktown Association, Inc. was and is an owner and or operator of the swimming pool at 1500 Presidential Way, West Palm Beach, Florida.

7. At all times material hereto, Defendant Jamestown Association, Inc. was and is a Florida corporation with its principle address located at 1500 Gateway Boulevard, Suite 220, Boynton Beach, Florida, and its registered agent located at 250 South Australian Avenue, 5th Floor, West Palm Beach, Florida.

8. At all times material hereto, Defendant Jamestown Association, Inc. was and is an owner and or operator of the swimming pool at 1500 Presidential Way, West Palm Beach, Florida.

9. At all times material hereto, Defendant Georgetown Association, Inc. was and is a Florida corporation with its principle address located at 1630 Embassy Drive, West Palm Beach, Florida, and its registered agent located at 3307 Northlake Boulevard, Suite 107, Palm Beach Gardens, Florida.

10. At all times material hereto, Defendant Georgetown Association, Inc. was and is an owner and or operator of the swimming pool at 1500 Presidential Way, West Palm Beach, Florida.

11. At all times material hereto, Defendant Howe, Inc. was and is a Florida corporation with its principle address and registered agent located at 1500 Gateway Boulevard, Suite 220, Boynton Beach, Florida.

12. At all times material hereto, Defendant Howe, Inc. was and is the property manager for 1500 Presidential Way, West Palm Beach, Florida.

13. At all times material hereto, Defendant Heritage Square Agency was and is a Florida joint business affair between Defendants Yorktown Association, Inc., Jamestown Association, Inc., and Defendant Georgetown Association, Inc., with its principle address located at 1500 Gateway Boulevard, Suite 220, Boynton Beach, Florida, and its registered agent located at 777 South Flagler Drive, West Tower, Suite 800, West Palm Beach, Florida.

14. At all times material hereto, Defendant Heritage Square Agency was and is an owner and or operator of the swimming pool at 1500 Presidential Way, West Palm Beach, Florida.

15. Venue is proper in Palm Beach County, Florida.

16. All conditions precedent to bringing this action have been met or waived.

GENERAL ALLEGATIONS

17. From 2005-2014, there were an average of 3,536 fatal unintentional drownings annually in the United States — about ten deaths per day. About one in five people who die from drowning are children 14 and younger. For every child who dies from drowning, another five receive emergency department care for nonfatal submersion injuries.¹

18. At all times material hereto, the Defendants' swimming pool was a Class C Public Swimming Pool.

19. At all times material hereto, the subject pool was an unsupervised pool and not staffed with life guards or attendants.

20. At all times material hereto, the Defendants had no person that could view activity or hear activity at the subject pool.

21. At all times material hereto, the subject pool did not have a keyed-entry type system that required a physical key, keycard, or combination type system for access.

22. At all times material hereto, the subject pool did not have a secondary lock system to prevent access during times the pool was closed.

23. At all times material hereto, the subject pool's lifeline/safety rope float was not installed. The police investigation into Y.A.P.'s death shows that for reasons unknown it was in a closet.

24. At all times material hereto, and as confirmed by the State of Florida, Department of Health, during a routine inspection on or about October 19, 2016, the subject pool's water

level was too high, it had algae, its main drain was not visible, it was not skimming, its water was not circulating, and/or it did not have a backflow prevention device amongst other noted deficiencies.

25. At all times material hereto, Defendants did nothing and had no protocol in place to prevent access to the subject pool area during bad weather.

26. On or about September 30, 2016, Y.A.P. and two minors were playing in the pool area at 1500 Presidential Way, West Palm Beach, Florida.

27. At or about that time, Y.A.P. and the two minors accessed the subject pool area via a non-self-closing, non-self-latching, unlocked access gate.

28. At or about that time, there was rain, lightning, and/or thunder.

29. At or about that time, and in the course of playing with her friends, i.e., the two minors, Y.A.P. suffered a drowning injury.

30. On or about October 1, 2016, Y.A.P. died due the injuries she suffered on or about September 30, 2016, at 1500 Presidential Way, West Palm Beach, Florida.

31. Prior to her death, resident(s) at 1500 Presidential Way, West Palm Beach, Florida and/or other person(s) reported to Defendants Howe, Inc., Yorktown Association, Inc., Georgetown Association, Inc., Jamestown Association, Inc. and/or Heritage Square Agency that unaccompanied minors were playing the pool area and that this was a safety concern.

COUNT I: NEGLIGENCE AGAINST YORKTOWN ASSOCIATION, INC.

32. Plaintiff incorporates paragraphs 1 – 31, above, as if fully set forth herein.

33. Defendant Yorktown Association, Inc. had a duty to operate, maintain, and/or service the subject pool area in a reasonably safe manner.

34. Defendant Yorktown Association, Inc. breached that duty in one or more of the following ways:

- a. By failing to maintain and/or service the pool and/or pool area;
- b. By failing to supervise the pool;
- c. By failing to have any person that could view or hear activity at the pool;
- d. By failing to control access to the pool via a keyed-entry type system;
- e. By failing to control access to the pool via a secondary lock system;
- f. By failing to provide safety equipment;
- g. By failing to prevent access to the pool during bad weather; and/or
- h. By failing to control access to the pool, especially after complaints by resident(s) or other person(s) that unsupervised children used the pool.

35. Defendant Yorktown Association, Inc. is liable for the acts and/or omissions of its employees, agents, and/or apparent agents via *respondent superior*.

36. As a direct and proximate cause of Defendant Yorktown Association, Inc.'s breaches of its duty to operate the subject pool area in a reasonably safe manner, the minor child, Y.A.P., suffered a drowning injury and ultimately died.

37. Defendant Yorktown Association, Inc. is responsible for the damages set forth below:

a. Carlos Pelico Lopez and Estella Pelico Chun, as the surviving parents, underwent and continue to undergo mental pain and suffering.

b. The Estate of Y.A.P. has incurred funeral and medical expenses due to the decedent's injury and death.

WHEREFORE, Carlos Pelico Lopez, as Personal Representative of the Estate of Y.A.P., demands judgment for compensatory damages against Defendant Yorktown Association, Inc., and for whatever relief this Court deems proper.

COUNT II – NEGLIGENCE AGAINST GEORGETOWN ASSOCIATION, INC.

38. Plaintiff incorporates paragraphs 1 – 31, above, as if fully set forth herein.

39. Defendant Georgetown Association, Inc. had a duty to operate, maintain, and/or service the subject pool area in a reasonably safe manner.

40. Defendant Georgetown Association, Inc. breached that duty in one or more of the following ways:

- a. By failing to maintain and/or service the pool and/or pool area;
- b. By failing to supervise the pool;
- c. By failing to have any person that could view or hear activity at the pool;
- d. By failing to control access to the pool via a keyed-entry type system;
- e. By failing to control access to the pool via a secondary lock system;
- f. By failing to provide safety equipment;
- g. By failing to prevent access to the pool during bad weather; and/or

h. By failing to control access to the pool, especially after complaints by resident(s) or other person(s) that unsupervised children used the pool.

41. Defendant Georgetown Association, Inc. is liable for the acts and/or omissions of its employees, agents, and/or apparent agents via *respondent superior*.

42. As a direct and proximate cause of Defendant Georgetown Association, Inc.'s breaches of its duty to operate the subject pool area in a reasonably safe manner, the minor child, Y.A.P., suffered a drowning injury and ultimately died.

43. Defendant Georgetown Association, Inc. is responsible for the damages set forth below:

a. Carlos Pelico Lopez and Estella Pelico Chun, as the surviving parents, underwent and continue to undergo mental pain and suffering.

b. The Estate of Y.A.P. has incurred funeral and medical expenses due to the decedent's injury and death.

WHEREFORE, Carlos Pelico Lopez, as Personal Representative of the Estate of Y.A.P., demands judgment for compensatory damages against Defendant Georgetown Association, Inc., and for whatever relief this Court deems proper.

COUNT III: NEGLIGENCE AGAINST JAMESTOWN ASSOCIATION, INC.

44. Plaintiff incorporates paragraphs 1 – 31 above, as if fully set forth herein.

45. Defendant Jamestown Association, Inc. had a duty to operate, maintain, and/or service the subject pool area in a reasonably safe manner.

46. Defendant Jamestown Association, Inc. breached that duty in one or more of the following ways:

- a. By failing to maintain and/or service the pool and/or pool area;
- b. By failing to supervise the pool;
- c. By failing to have any person that could view or hear activity at the pool;
- d. By failing to control access to the pool via a keyed-entry type system;
- e. By failing to control access to the pool via a secondary lock system;
- f. By failing to provide safety equipment;
- g. By failing to prevent access to the pool during bad weather; and/or
- h. By failing to control access to the pool, especially after complaints by resident(s) or other person(s) that unsupervised children used the pool.

47. Defendant Jamestown Association, Inc. is liable for the acts and/or omissions of its employees, agents, and/or apparent agents via *respondent superior*.

48. As a direct and proximate cause of Defendant Jamestown Association, Inc.'s breaches of its duty to operate the subject pool area in a reasonably safe manner, the minor child, Y.A.P., suffered a drowning injury and ultimately died.

49. Defendant Jamestown Association, Inc. is responsible for the damages set forth below:

- a. Carlos Pelico Lopez and Estella Pelico Chun, as the surviving parents, underwent and continue to undergo mental pain and suffering.

b. The Estate of Y.A.P. has incurred funeral and medical expenses due to the decedent's injury and death.

WHEREFORE, Carlos Pelico Lopez, as Personal Representative of the Estate of Y.A.P., demands judgment for compensatory damages against Defendant Jamestown Association, Inc., and for whatever relief this Court deems proper.

COUNT IV: NEGLIGENCE AGAINST HOWE, INC.

50. Plaintiff incorporates paragraphs 1 – 31, above, as if fully set forth herein.

51. Defendant Howe, Inc. had a duty to operate, maintain, and/or service the subject pool area in a reasonably safe manner.

52. Defendant Howe, Inc. breached that duty in one or more of the following ways:

- a. By failing to maintain and/or service the pool and/or pool area;
- b. By failing to supervise the pool;
- c. By failing to have any person that could view or hear activity at the pool;
- d. By failing to control access to the pool via a keyed-entry type system;
- e. By failing to control access to the pool via a secondary lock system;
- f. By failing to provide safety equipment;
- g. By failing to prevent access to the pool during bad weather; and/or
- h. By failing to control access to the pool, especially after complaints by resident(s) or other person(s) that unsupervised children used the pool.

53. Defendant Howe, Inc. is liable for the acts and/or omissions of its employees, agents, and/or apparent agents via *respondent superior*.

54. As a direct and proximate cause of Defendant Howe, Inc.'s breaches of its duty to operate the subject pool area in a reasonably safe manner, the minor child, Y.A.P., suffered a drowning injury and ultimately died.

55. Defendant Howe, Inc. is responsible for the damages set forth below:

a. Carlos Pelico Lopez and Estella Pelico Chun, as the surviving parents, underwent and continue to undergo mental pain and suffering.

b. The Estate of Y.A.P. has incurred funeral and medical expenses due to the decedent's injury and death.

WHEREFORE, Carlos Pelico Lopez, as Personal Representative of the Estate of Y.A.P., demands judgment for compensatory damages against Defendant Howe, Inc., and for whatever relief this Court deems proper.

COUNT V: NEGLIGENCE AGAINST HERITAGE SQUARE AGENCY

56. Plaintiff incorporates paragraphs 1 – 31, above, as if fully set forth herein.

57. Defendant Heritage Square Agency had a duty to operate, maintain, and/or service the subject pool area in a reasonably safe manner.

58. Defendant Heritage Square Agency breached that duty in one or more of the following ways:

- a. By failing to maintain and/or service the pool and/or pool area;
- b. By failing to supervise the pool;
- c. By failing to have any person that could view or hear activity at the pool;
- d. By failing to control access to the pool via a keyed-entry type system;

- e. By failing to control access to the pool via a secondary lock system;
- f. By failing to provide safety equipment;
- g. By failing to prevent access to the pool during bad weather; and/or
- h. By failing to control access to the pool, especially after complaints by resident(s) or other person(s) that unsupervised children used the pool.

59. Defendant Heritage Square Agency is liable for the acts and/or omissions of its employees, agents, and/or apparent agents via *respondent superior*.

60. As a direct and proximate cause of Defendant Heritage Square Agency's breaches of its duty to operate the subject pool area in a reasonably safe manner, the minor child, Y.A.P., suffered a drowning injury and ultimately died.

61. Defendant Heritage Square Agency. is responsible for the damages set forth below:

- a. Carlos Pelico Lopez and Estella Pelico Chun, as the surviving parents, underwent and continue to undergo mental pain and suffering.
- b. The Estate of Y.A.P. has incurred funeral and medical expenses due to the decedent's injury and death.

WHEREFORE, Carlos Pelico Lopez, as Personal Representative of the Estate of Y.A.P., demands judgment for compensatory damages against Defendant Heritage Square Agency and for whatever relief this Court deems proper.

DEMAND FOR JURY TRIAL

The Plaintiff demands a jury trial on all issues so triable as a matter of right.

Respectfully submitted,

/s Adam J. Langino, Esq.
ADAM J. LANGINO, ESQ.
Florida Bar No.: 0031368
alangino@cohenmilstein.com
Cohen Milstein Sellers & Toll, PLLC
2925 PGA Boulevard, Suite 200
Palm Beach Gardens, FL 33410
(561) 515-1400