

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.

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.

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

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

### **GENERAL ALLEGATIONS**

15. 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.<sup>1</sup>

16. At all times material hereto, the Defendant Yorktown Association, Inc.'s swimming pool was a Class C Public Swimming Pool.

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

18. At all times material hereto, the Defendant Yorktown Association, Inc. had no person that could view activity or hear activity at the subject pool.

19. 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.

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

21. 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.

22. 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.

23. At all times material hereto, Defendant Yorktown Association, Inc. did nothing and had no protocol in place to prevent access to the subject pool area during bad weather.

24. 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.

25. 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.

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

27. 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.

28. 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.

29. 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., and/or Jamestown Association, Inc. that unaccompanied minors were playing the pool area and that this was a safety concern.

**COUNT I: NEGLIGENCE AGAINST YORKTOWN ASSOCIATION, INC.**

30. Plaintiff incorporates paragraphs 1 – 29, above, as if fully set forth herein.

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

32. 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.

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

34. 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.

35. 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.**

36. Plaintiff incorporates paragraphs 1 – 29, above, as if fully set forth herein.

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

38. 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.

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

40. 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.

41. 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.**

42. Plaintiff incorporates paragraphs 1 – 29, above, as if fully set forth herein.

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

44. 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.

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

46. 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.

47. 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.**

1. Plaintiff incorporates paragraphs 1 – 29, above, as if fully set forth herein.
2. Defendant Howe, Inc. had a duty to operate, maintain, and/or service the subject pool area in a reasonably safe manner.
3. 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.

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

5. 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.

6. 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.

**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.  
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Cohen Milstein Sellers & Toll, PLLC  
2925 PGA Boulevard, Suite 200  
Palm Beach Gardens, FL 33410  
(561) 515-1400

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27 day of April, 2017, I electronically filed a true and correct copy of the foregoing via the Florida Courts E-Filing Portal with the Clerk of the Court and served upon those listed below via the Florida Courts E-Filing Portal:

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By: /s Adam J. Langino, Esq.  
ADAM J. LANGINO, ESQ.  
Florida Bar No.: 0031368  
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL  
CIRCUIT FOR PALM BEACH COUNTY, FLORIDA

PROBATE DIVISION  
Case No.: 502017CP000602XXXXNB  
Div.: IJ

In re the estate of:

YOSELIN A. PELICO,

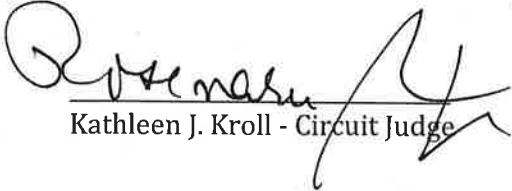
Deceased.

**ORDER APPOINTING PERSONAL REPRESENTATIVE**

On the petition of CARLOS PELICO LOPEZ for administration of the estate of YOSELIN A. PELICO, deceased, the court finding that the decedent died on October 1, 2016, and that CARLOS PELICO LOPEZ is entitled to appointment as personal representative by reason of being the person selected by a majority in interest of the heirs pursuant to F.S. §733.301(1)(b)2; and is qualified to be personal representative, it is

ADJUDGED that CARLOS PELICO LOPEZ is appointed personal representative of the estate of the decedent, and that upon taking the prescribed oath, filing the designation of resident agent, and entering into a bond in the sum of \$ 0.00, Letters of Administration shall be issued.

**DONE AND ORDERED** in Palm Beach County, State of Florida all on this the 16 day of Feb, 2017.

  
Kathleen J. Kroll - Circuit Judge

Copies to:

Robert W. Tribuiani, Attorney for Petitioner, Tribuiani Law Firm, 3300 PGA Blvd., Suite 520, Palm Beach Gardens, FL 33410, E-mail: Robert@TribuianiLaw.com, Tel. 561-383-3895, Cell 561-676-4049.

Pursuant to Florida Bar Form P-3.0450

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STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office with redactions, if any as required by law.

THIS 16 DAY OF Feb, 2017

SHARON R. BOCK  
CLERK & COMPTROLLER

By Angela Berdel  
DEPUTY CLERK

**EXHIBIT A**