

PARTIES

2. Plaintiff Cheryl King is a Texas citizen residing in Travis County, Texas.
3. Plaintiff Bobby King is a Texas citizen residing in Dallas County, Texas.
4. Defendant the Honorable Thomas R. Phillips is a Texas resident and may be served with process by personal service at 1403 Main Street, Bastrop, Texas 78602.
5. Defendant Marilyn B. Phillips is a Texas resident and may be served with process by personal service at 1403 Main Street, Bastrop, Texas 78602.
6. Defendant Daniel A. Phillips is a Texas resident and may be served with process by personal service at 7002 Scenic Brook Drive, Austin, Texas 78736.
7. Defendant Scott Halbert, as Trustee of the Halbert Revocable Trust d/b/a Country Corner, is an individual residing in Texas and may be served with process by personal service at 1360 Highway 71 West, Unit J, Bastrop, Texas 78602-4012.
8. Defendant Glenda Halbert, as Trustee of the Halbert Revocable Trust d/b/a Country Corner, is an individual residing in Texas and may be served with process by personal service at 1360 Highway 71 West, Unit J, Bastrop, Texas 78602-4012.
9. The Halberts are collectively referred to as the "Country Corner".
10. Defendant Point Horizon Properties, LLC is a company licensed to do business in the state of Texas and can be served with process by certified mail, return receipt requested to its registered agent, Stephanie N. Griego, 117 Stallion Way, Liberty Hill, Texas 78642.
11. Defendant Kiego, LLC is a company licensed to do business in the state of Texas and can be served with process by certified mail, return receipt requested to its registered agent, Christopher J. Griego, 117 Stallion Way, Liberty Hill, Texas 78642.
12. Point Horizon Properties, LLC and Kiego, LLC are collectively referred to

herein as the "Beverage Barn".

VENUE AND JURISDICTION

13. Venue and jurisdiction are proper in Bastrop County, Texas because all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in Bastrop County, Texas, and Plaintiffs seek recovery in excess of the jurisdictional minimums of this Court.

SUMMARY OF THE CASE

14. This is a claim for negligence and statutory liability under Section 2.02(c) of the Alcoholic Beverage Code for the wrongful death of Audrey King, a minor child, who was killed in a drunk driving accident. Audrey died because of the wrongful acts, carelessness, and neglect of Defendants in providing her and other kids alcoholic beverages without any regard for Audrey's safety or the welfare of others.

FACTUAL BACKGROUND

15. On March 30, 2009, several Bastrop county minors purchased alcoholic beverages from the Beverage Barn and Country Corner convenience stores. The stores sold several cases of beer to the minors, who were obviously intoxicated, without requesting identification or any proof of their legal age to purchase alcohol. The minors then proceeded to the Phillips home where they and other minors, along with Audrey, were allowed to consume mass quantities of alcohol over several hours.

16. Although it was the first time Audrey had been there, the Phillips' house was well known in the Bastrop community as the location of frequent underage drinking parties. The Phillips' son, Daniel, was popular among the kids in Bastrop and was known as a "partier". Daniel frequently hosted parties at the Phillips' house, where minors were allowed to drink alcohol. The parties were often so raucous that the

Bastrop police had to be called to the Phillips home to break them up. Due to the boisterous nature of these parties and their frequent troubles with Daniel, Mr. and Mrs. Phillips were very much aware that their son and other Bastrop kids were regularly getting drunk at their house.

17. Audrey and her girlfriends – Amanda Marek, Katie Pritchett, and Anna Garcia – attended one such party at the Phillips home on the night of March 30. During the party, Daniel encouraged, and at times pressured, Audrey to drink large amounts of alcohol. At one point, Audrey consumed an entire can of beer in one shot through a “beer bong”. Mr. and Mrs. Phillips were home during the party and were well aware that minors were getting drunk in their back yard. The kids made no effort to conceal the beer or the fact that they were drinking because Daniel and his friends were frequently allowed to hang out and get drunk at the Phillips’ house. But when this particular party became too loud, Mrs. Phillips forced Audrey and the other kids to leave in the middle of night, even though they had been drinking for hours and were clearly intoxicated.

18. When Mrs. Phillips addressed Daniel and the other kids at the party, there were empty beer cans and bottles, empty beer boxes, coolers, and beer bongs strewn around the area immediately proximate to where she was standing. Many of the kids were standing around holding cans of beer while Mrs. Phillips confronted Daniel about the party being too loud. Mrs. Phillips yelled at Daniel, “I am sick of these kids partying here all of the time.” And with that she forced all of them into their cars and into the night.

19. Audrey and her friends had no intention of leaving the Phillips home that night and had previously agreed to sleep there rather than drive drunk. But that didn’t

stop Mrs. Phillips from throwing them out without warning and with no choice but to drive under the influence. Within minutes of being forced to leave, Audrey was killed when the car she was riding in skidded off the road and slammed into a tree. Audrey's tragic death was caused by the carelessness of the Phillips and by the convenience stores that sold these Bastrop kids the beer.

CAUSES OF ACTION

Wrongful Death

20. Plaintiffs assert a claim under Civil Practice & Remedies Code §71.002 for the wrongful death of their minor child, Audrey King. The wrongful acts, neglect, and carelessness of Defendants proximately caused Audrey severe injuries resulting in her death. In turn, Plaintiffs have suffered the irreparable loss of Audrey's companionship, society, and services, for which they bring this suit.

Survival Action

21. Pursuant to Civil Practice & Remedies Code §71.021, Plaintiffs, as representatives of the Estate of Audrey King, assert Audrey's own claims against Defendants. The wrongful acts, neglect, and carelessness of Defendants proximately caused Audrey severe injuries resulting in her death. Plaintiffs, as representatives of the Estate of Audrey King, are entitled to recover from Defendants damages for Audrey's injuries.

Violations of the Alcoholic Beverage Code

22. Plaintiffs, individually and as representatives of the Estate of Audrey King, assert a claim against Thomas and Marilyn Phillips under Section 2.02(c) of the Alcoholic Beverage Code. The Phillips knowingly allowed Audrey to be served or provided alcoholic beverages, which contributed directly to her injury and death.

23. Plaintiffs assert a claim against the Country Corner and Beverage Barn under Section 2.02(b) of the Alcoholic Beverage Code for selling alcoholic beverages to obviously intoxicated minors, which proximately caused Audrey's injury and death.

Negligence and Gross Negligence

24. Audrey was killed as a direct and proximate result of the negligence of the Thomas, Marilyn, and Daniel Phillips for allowing Audrey to drink alcoholic beverages at their home and then essentially forcing Audrey and others to drive drunk. Their negligence contributed directly to Audrey's injury and death.

25. The acts and omissions of the Phillips, when viewed objectively from the standpoint of the Phillips, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. The Phillips had actual, subjective awareness of the risk but proceeded with a conscious indifference to the rights, safety, and welfare of others.

Negligence Per Se

26. The Phillips violated certain provisions of the Alcoholic Beverage Code. Plaintiffs belong to the class of persons the Alcoholic Beverage Code was designed to protect and their injuries were the type the Code was enacted to prevent. The Phillips' violations of the Code caused Plaintiffs' injuries.

DEMAND FOR JURY TRIAL

27. Plaintiffs demand trial by jury and tender the applicable fee.

REQUEST FOR DISCLOSURE

28. All Defendants are hereby requested to provide the information required by Rule 194.2(a)-(l) of the Texas Rule of Civil Procedure. These responses are due 50 days from the date of service of citation.

REQUEST FOR RELIEF

Plaintiffs request that Defendants be cited to appear and answer and that Plaintiffs have judgment against Defendants, jointly and severally, for the following:

- a. actual economic damages within the jurisdictional limits of the court;
- b. actual non-economic damages for past and future personal injury, pain and suffering, loss of companionship, loss of society, loss of services, mental anguish, and emotional distress within the jurisdictional limits of the court;
- c. exemplary damages under Civil Practice & Remedies Code §41.001 *et seq.*;
- d. pre-judgment and post-judgment interest as allowed by law;
- e. costs of suit; and
- f. all other relief in law or in equity to which Plaintiffs may be justly entitled.

Respectfully submitted,

FAUBUS & SCARBOROUGH LLP

By: Dax O. Faubus / HLR

Dax O. Faubus

State Bar Number: 24010019

Harry L. Scarborough

State Bar Number: 24027838

1010 Lamar, Suite 1020

Houston, Texas 77002

(713) 222-6400 Main

(713) 222-7240 Fax

*Attorneys for Plaintiffs, Cheryl King and
Bobby King, Individually and as
Representatives of the Estate of Audrey King*