

IN THE CIRCUIT COURT OF MILLER COUNTY, ARKANSAS  
CIVIL DIVISION

FILED

FRANKLIN A. POFF, JR. AS THE ADMINISTRATOR OF THE  
ESTATE OF JOSH BISHOP

2014 OCT -1 P 3: 38  
PLAINTIFF

VS.

CAUSE NO.

MARY PANKEY, CIRCUIT CLERK  
BY *UB* DEPUTY

*46CV-14-261-3*

CHUBBY CHEEKS, LLC,  
ALLEN ROGERS, LANE ROGERS  
AND SAMMIE TOWNES

DEFENDANTS

**PLAINTIFF'S ORIGINAL COMPLAINT AND  
DEMAND FOR TRIAL BY JURY**

COMES NOW, Plaintiff, Franklin A. Poff, Jr, as the Administrator of the Estate of Josh Bishop, and for his Original Complaint against Defendants, Chubby Cheeks, LLC, Allen Rogers, Lane Rogers and Sammie Townes, would show unto the Court as follows:

**I.**

**PARTIES**

1. Franklin A. Poff, Jr., was appointed the Administrator of the Estate of Josh Bishop by the Miller County Circuit Court in Cause No. 46-PR-14-71-3. Josh Bishop was a resident of Miller County, Arkansas, at the time of his death. Josh Bishop was 28 years old at the time of his death, with the date of birth of May 1, 1985. Plaintiff brings this action pursuant to the authority provided under Ark. Code Ann. 16-62-101 and Ark. Code Ann. 16-62-102.

2. Chubby Cheeks, LLC, is an Arkansas Limited Liability Company authorized to transact business in the State of Arkansas (hereinafter sometimes referred to as "Chubby Cheeks"). Chubby Cheeks may be served with Summons and Complaint upon its registered agent for service of process with the State of Arkansas, Allen E. Rogers, Jr., 720 Realtor Road, Texarkana, Arkansas 71854.

3. Defendant Allen Rogers is a resident of Texarkana, Bowie County, Texas.

4. Defendant Lane Rogers is a resident of Texarkana, Miller County, Arkansas.

5. Defendant Sammie Townes's residence is currently unknown.

## II.

### JURISDICTION AND VENUE

6. The present Court has jurisdiction over the subject matter and parties in this case. The amount in controversy exceeds the minimum amount required for subject matter jurisdiction of this Court.

7. Venue is proper in this Court as Miller County was the residence of Josh Bishop on all occasions relevant to these causes of action under ACA 16-55-213. Furthermore, a substantial part of the events or omissions giving rise to Plaintiff's claim occurred within Miller County, Arkansas. ACA 16-55-213.

## III.

### FACTS

8. During the late afternoon or early evening of January 25, 2014, Josh Bishop and Wesley Attaway were in the Chubby Cheeks Liquor Store located at 820 Realtor Road, Texarkana, Arkansas. It has been alleged that Josh Bishop while in the Chubby Cheeks Liquor Store took a bottle of wine out of the store without paying for it. Neither Josh Bishop nor Wesley Attaway confronted any personnel at the Chubby Cheeks Liquor Store on this occasion, neither were armed with any weapons of any kind, and no conflict occurred between Mr. Bishop, Mr. Attaway, and any representatives of the Chubby Cheeks Liquor Store while Mr. Attaway and Mr. Bishop were in the store.

9. Mr. Attaway and Mr. Bishop left the store that evening on foot, and walked in a southern direction on Garland Avenue, ending up in a wooded section off of Garland Avenue where they sat and visited with one another.

10. Sometime later that evening, while Mr. Attaway and Mr. Bishop were in the wooded area or leaving the wooded area to continue their travels on Garland Avenue by foot, Allen Rogers,

Lane Rogers and Sammie Townes, drove up in a motor vehicle and accosted Mr. Attaway and Mr. Bishop. At all times relevant to the claims and allegations asserted in this Complaint, Allen Rogers, Lane Rogers and Sammie Townes were agents and/or employees of Chubby Cheeks and were acting within the course and scope, direction, knowledge and permission of Chubby Cheeks.

11. Allen Rogers, Lane Rogers and Sammie Townes exited the vehicle and confronted Mr. Attaway and Mr. Rogers. One or more of the 3 individuals from Chubby Cheeks pulled a gun on Mr. Attaway and Mr. Bishop, fired shots around them, and instructed them to get on their knees. At no time during this confrontation did Josh Bishop or Wesley Attaway initiate aggressive action towards Allen Rogers, Lane Rogers and/or Sammie Townes. Josh Bishop and Wesley Attaway were unarmed, without any weapon of any kind.

12. After getting on their knees as instructed by Allen Rogers, Lane Rogers and Sammie Townes, Wesley Attaway and Josh Bishop were then handcuffed by one or more of the Chubby Cheeks representatives, Allen Rogers, Lane Rogers and/or Sammie Townes.

13. After handcuffing Mr. Attaway and Mr. Bishop into helpless positions, each of the three Chubby Cheeks representatives took turns physically assaulting Mr. Attaway and Mr. Bishop; such vicious attacks included hitting them in the face with a hammer or mallet, and/or striking them with their hands, and/or kicking them, and/or hitting them and slamming Mr. Josh Bishop's face into the paved roadway. Mr. Attaway and Mr. Bishop both suffered injuries to their head. Mr. Bishop suffered multiple fractures of his jaw and a number of his teeth were knocked out by the physical assault by these three individuals upon him.

14. Luckily, a citizen in the area heard the gunshots and called the police who responded to the scene. The Texarkana, Arkansas Police Department arrived to break up the continued beating of Mr. Attaway and Mr. Bishop. No weapons were found on Mr. Attaway or Mr. Bishop by the Texarkana Arkansas Police Department, because they had none. Mr. Attaway and Mr. Bishop

were badly injured and bleeding and handcuffed when the Texarkana, Arkansas Police Department arrived. An ambulance was called to the scene and transported Mr. Bishop to St. Michael Hospital in Texarkana, Texas for treatment of his injuries.

15. However, upon arrival at St. Michael Hospital in Texarkana, Texas, it was decided by Mr. Bishop's medical provider to send him to the University of Arkansas for Medical Sciences Hospital (UAMS) in Little Rock, Arkansas for further treatment. Upon arrival, Mr. Bishop underwent surgery to set his jaw and treat his injuries. His jaw was wired shut by the doctors who treated him on this evening.

16. Mr. Bishop was thereafter released from UAMS Hospital in Little Rock, Arkansas, and returned to Texarkana. However, shortly thereafter he suffered additional difficulties and complications from the injuries suffered on the evening of January 25, 2014, and was required to be readmitted to UAMS Hospital in Little Rock, Arkansas, for further medical care on February 20 2014.

17. During the entirety of this time until his death, Mr. Josh Bishop endured extreme pain and suffering and mental anguish from the injuries he experienced on the evening of January 25, 2014. Upon dismissal from UAMS on the second occasion in February 2014, Mr. Bishop was prescribed liquid hydrocodone by his physicians due to the excruciating pain he was experiencing and used the hydrocodone prescribed by his doctors in an attempt to minimize and treat the severe pain he was experiencing from the events of January 25, 2014. Tragically, on the evening of February 22nd or the early morning hours of February 23rd, 2014, Mr. Bishop died in Bentonville, Benton County, Arkansas.

18. The death of Mr. Bishop was the sole and proximate result of the injuries caused to him by Allen Rogers, Lane Rogers, Sammie Townes and Chubby Cheeks on the date of January 25, 2014.

IV.  
CAUSES OF ACTION

A. **Negligence**

19. Plaintiff incorporates by reference the allegations in paragraphs 1-18 above. The actions of Allen Rogers, Lane Rogers, Sammie Townes and Chubby Cheeks were negligent on the date of January 25, 2014, in that they failed to act as a reasonably careful person would have acted under the same or similar circumstances, and/or took actions that a reasonably careful person would not have taken under the circumstances these Defendants faced on this occasion. Such negligence occurred on the premises of Chubby Cheeks Liquor Store on this occasion, as this was the location where Lane Rogers, Allen Rogers and Sammie Townes made the decision to leave the premises to find Mr. Bishop and Mr. Attaway. The leaving of the premises in pursuit of Mr. Attaway and Mr. Bishop was negligent, as it was the failure to act the way a reasonably careful liquor store owner, agent or individual person would have done under the same circumstances. All actions and inactions of Allen Rogers, Lane Rogers, and Sammie Townes throughout the remainder of the evening of January 25, 2014, as pled further below, were the continuous negligent actions and inactions, unbroken by any new or independent cause, from the original negligent act of their leaving the store that evening, that lead to the injuries and resulting death of Josh Bishop as pled below.

20. Defendants, Allen Rogers, Lane Rogers and Sammie Townes, were negligent after leaving the store in the manner in which they pursued Mr. Bishop and Mr. Attaway. Plaintiff does not agree, content or consent that Wesley Attaway and/or Josh Bishop acted aggressively or violently towards Allen Rogers, Lane Rogers or Sammie Townes on this evening in question when confronted by Allen Rogers, Lane Rogers, and Sammie Townes. However, in the event it is alleged by Allen Rogers, Lane Rogers, and Sammie Townes allege that Wesley Attaway and/or Josh Bishop ever acted aggressively or violently towards Allen Rogers, Lane Rogers, and Sammie Townes that

evening, it is the position of Plaintiff that Defendants Allen Rogers, Lane Rogers and Sammie Townes were negligent in the manner in which they responded to Wesley Attaway and Josh Bishop when they came upon them on Garland Avenue. Such negligence includes the failure of these 3 Defendants to recognize that Wesley Attaway nor Josh Bishop presented any physical threat of harm to Defendants Allen Rogers, Lane Rogers or Sammie Townes, as well as the failure by these 3 Defendants to respond reasonably to any alleged perceived threats of Wesley Attaway and/or Josh Bishop. Instead these Defendants used excessive force when so responding as asserted above. Such actions were not what a reasonably careful person would do, or alternatively were what a reasonably careful person would not do, under the same or similar circumstances. It is alleged that Sammie Townes was a private security guard retained by Defendant Chubby Cheeks, and his actions on this date as a security guard were negligent at the minimum when he participated in meeting with Wesley Attaway and Josh Bishop on the evening of January 25, 2014.

21. Chubby Cheeks is responsible for all the negligent actions and inactions of Allen Rogers, Lane Rogers and Sammie Townes plead above, under the doctrines of respondeat superior and agency. Furthermore, such actions and inactions of Allen Rogers, Lane Rogers, and Sammie Townes are imputed to Chubby Cheeks under section 1.80 of Title 1, Subtitle G, of the Arkansas Alcohol Beverage Control Board Regulations.

22. With incorporation of the allegations above, Chubby Cheeks was also independently negligent in its failure to train the three individuals, Allen Rogers, Lane Rogers, and Sammie Townes, in the proper method of dealing with alleged thefts from the store of the type that was alleged to have been committed by Wesley Attaway and Josh Bishop on the evening of January 25, 2014, including the failure to insure that its employees and agents knew, or should have known that said agents and employees of Chubby Cheeks are not to pursue alleged thieves or to use excessive

force upon them if and when found, but rather to contact local law enforcement officials to settle any dispute.

23. With incorporation of the allegations above, Chubby Cheeks is also liable for the actions of Allen Rogers, Lane Rogers and Sammie Townes for Chubby Cheek's negligent hiring, supervision and retention of Allen Rogers, Lane Rogers and Sammie Townes. Plaintiff would show that Allen Rogers, Lane Rogers and/or Sammie Townes had violent and/or criminal propensities which Chubby Cheeks knew or should have known existed and which Chubby Cheeks should have acted upon to prevent the hiring and retention of said individuals, and/or allowance of them to be in the store on the night at issue, who had a propensity to take the actions that were taken against Josh Bishop on the night of January 25, 2014. Chubby Cheeks had a duty to the public to make sure that they adequately supervised the three Defendants once they were retained as agents of Chubby Cheeks, based upon their violent and/or criminal propensities. Finally, Chubby Cheeks had the duty to terminate the three Defendants from their agency relationship with Chubby Cheeks, at least in the role of dealing with the public, due to such violent and criminal propensities. If Chubby Cheeks had not retained Allen Rogers, Lane Rogers and Sammie Townes as the agents and/or employees of Chubby Cheeks, or had adequately supervised them knowing their violent and criminal tendencies, or had terminated them, the injuries and death of Mr. Bishop would never have occurred.

24. All negligent actions and inactions of Defendants as pled above were the sole and proximate cause of the injuries suffered by Josh Bishop on the date of January 24, 2014, and his subsequent death.

**B. Tort of Outrage**

25. Plaintiff incorporates by reference the information contained in Paragraphs 1 – 24 above. Pleading further and in the alternative, Plaintiff asserts as follows:

26. The actions and inactions of Defendants set out above were willful and wanton; the Defendants acted with extreme and outrageous conduct towards Josh Bishop on the night in question. Defendants intended to inflict emotional distress and physical injury upon Josh Bishop, or acted in reckless disregard of his right to be free from such an ultimately fatal beating, and knew or should have known in light of the circumstances presented that night that their conduct would naturally and probably result in emotional distress and bodily harm to Josh Bishop, yet they continued with such conduct towards Josh Bishop in reckless disregard to the consequences. The conduct of the Defendants was so outrageous in character, and so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized society. The actions of Defendants were the cause of Josh Bishop's emotional distress, physical injuries and subsequent death.

**C. Battery**

27. Plaintiff incorporates by reference the information contained in Paragraphs 1 – 26 above. Pleading further and in the alternative, the actions of Defendants cited above support a cause of action for battery. Defendants committed the acts of violence towards Josh Bishop with the intent to injure him.

**D. False Imprisonment**

28. Plaintiff incorporates by reference the information contained in Paragraphs 1 – 27 above. Pleading further and in the alternative, Defendants falsely imprisoned Josh Bishop by placed him into handcuffs before mercilessly beating him and causing him physical injury and death. Josh Bishop suffered damages as a result of said false imprisonment.

29. All actions of the Defendants, Allen Rogers, Lane Rogers and Sammie Townes, were undertaken with the knowledge and approval of Chubby Cheeks, and therefore Chubby Cheeks is vicariously responsible for such actions and the damages caused to the Estate of Josh Bishop,



pursuant to Section 1.80 of Title 1 Subtitle G, of the Arkansas Alcohol Beverage Control Board Regulations, as well as under the doctrine of Respondeat Superior, agency and as joint venturers.

**V.**

**DAMAGES**

30. Plaintiff incorporates by reference Paragraphs 1-29 above. The Actions and inactions of all Defendants as set out above caused damage to Josh Bishop and his Estate, as follows. Plaintiff seeks to recover the following damages:

- a. Pain and suffering of Josh Bishop from the moment of the physical injury caused by the Defendants against him until his death.
- b. Mental Anguish of Josh Bishop from the moment of the physical injury caused by Defendants against him until his death.
- c. Medical expenses incurred by Josh Bishop for treatment of the injuries suffered by him as a result of the physical injury caused by Defendants.
- d. Damages for Josh Bishop's Loss of Life under ACA 16-62-101.
- e. Mental Anguish of the Heirs of Josh Bishop as allowed under ACA 16-62-102.

**VI.**

**PUNITIVE DAMAGES**

31. Plaintiff incorporates by reference Paragraphs 1-30 above. The actions and inactions of Defendants, Allen Rogers, Lane Rogers and Sammie Townes, as well as their employer, Chubby Cheeks, amounted to behavior which warrants the assessment of punitive damages against all four defendants, individually and collectively, for behavior undertaken on the evening of January 25, 2014 against Josh Bishop. Defendants knew or should have known in light of the surrounding circumstances that their conduct would naturally and probably result in the injury and death of Josh Bishop, and they continued such conduct with malice and in reckless disregard of the consequences

from which malice may be inferred. Alternatively, the Defendants intentionally pursued a course of conduct for the purpose of causing injury to Josh Bishop. Plaintiff requests the trier of fact to determine the amount of punitive damages to be assessed against the Defendants.

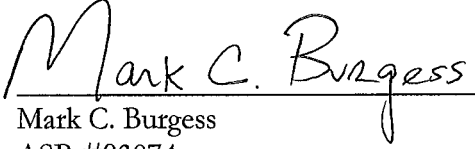
**VII.**

**DEMAND FOR TRIAL BY JURY**

32. Plaintiff herewith demands a trial by jury of all issues of fact herein.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that upon citation hereof, that Plaintiff receive a judgment against Defendants, individually and severally, for all damages for which Plaintiff will show itself justly entitled, and will seek all such other and further relief which Plaintiff shall show itself justly entitled, whether at law or at equity.

Respectfully submitted,  
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