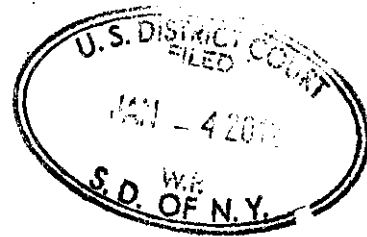


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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

RACHEL FRAULO and FRANK FRAULO,
as Conservator for Rachel Fraulo,

Plaintiffs,

- against -

30 EAST MAIN STREET, INC.;
THOMAS PAPA and JOHN DIGNAN

Defendants.

COMPLAINT

JURY TRIAL DEMANDED

12 CV 00053

JUDGE RAMOS

Plaintiffs Rachel Fraulo and Frank Fraulo as Conservator for Rachel Fraulo (collectively, "Plaintiffs"), by their attorneys, Yankwitt & McGuire, LLP, state the following for their Complaint against the above named defendants 30 East Main Street, Inc., ("East Main Street"), Thomas Papa ("Papa"), and John Dignan ("Dignan"), collectively, ("Defendants").

NATURE OF THE ACTION

1. This action seeks to recover the millions of dollars it will now take to care for plaintiff Rachel Fraulo, a once young, bright, and attractive graduate student who was struck down at the prime of her life as a result of Defendants' gross indifference to a drunken patron at their tavern, who left East Main Street in a drunken stupor and was in a horrible car accident in which plaintiff Rachel Fraulo suffered life-long debilitating injuries.

2. Defendants should be held liable under the New York Alcoholic Beverage Control Law because they sold alcoholic beverages to a visibly intoxicated person. In pertinent part,

New York Alcoholic Beverage Control Law § 65 states in pertinent part that “No person shall sell, deliver or give away . . . any alcoholic beverages to . . . [a]ny visibly intoxicated person.”

3. Defendants should also be held liable for damages under the New York General Obligations Law § 11-101(1), the Dram Shop Act, which creates a right of action for the recovery of actual and exemplary damages against a tavern such as East Main Street that sells liquor to an intoxicated person, when that person injures a third party such as Plaintiff.

PARTIES

4. Plaintiff Rachel Fraulo resides at 38 Silent Grove North, Westport, Connecticut 06880.

5. Plaintiff Frank Fraulo is Rachel Fraulo’s father and Conservator, and resides at 38 Silent Grove North, Westport, Connecticut 06880.

6. During all relevant times, defendant East Main Street was the owner and shareholder of O’Malley’s Bar and Restaurant, a tavern doing business at 30 East Main Street, Mount Kisco, New York 10549.

7. During all relevant times, defendant Thomas Papa (“Papa”) was the Chairman of East Main Street and had direct control of East Main Street.

8. On information and belief, defendant Papa resides at 120 Beverly Road, Mount Kisco, New York 10549.

9. On information and belief, during all relevant times and currently defendant John Dignan (“Dignan”) also had direct control of East Main Street.

10. On information and belief, defendant Dignan resides at 69 Bloomer Road, Brewster, New York 10509.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because Plaintiffs are citizens of the State of Connecticut, the individual Defendants are citizens of the State of New York, and defendant East Main Street is a New York corporation with its principal place of business in New York, and the amount of controversy exceeds SEVENTY-FIVE THOUSAND DOLLARS (\$75,000), exclusive of interests and costs.

12. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because the individual defendants reside in Westchester County, in the State of New York and defendant East Main Street's principal place of business is in Westchester County in New York State, and because a substantial part of the events or omissions giving rise to the claims occurred within this District.

FACTUAL ALLEGATIONS

13. At all times relevant to the Complaint, defendants Papa, Dignan, and East Main Street were the owners and operators of the business known as O'Malley's Bar and Restaurant located at 30 East Main Street in Mt. Kisco, New York (the "Tavern").

14. Amongst other things, the Tavern regularly sold alcoholic liquor to patrons.

15. During the evening of January 9, 2009, into the early morning hours of January 10, 2009, Defendants sold alcoholic beverages to Brian Vittorini ("Vittorini"), including after he had become visibly intoxicated. In particular, Defendants sold dozens of glasses of Jack Daniels with coca-cola to Vittorini, while he was visibly intoxicated.

16. Defendants, their agents, servants and employees totally disregarded and/or neglected the condition of their patrons, including Vittorini, throughout this time, and continued to sell alcoholic beverages to him despite his visibly intoxicated state.

17. Defendants, their agents, servants and employees continued to serve alcoholic beverages to Vittorini while he was already visibly intoxicated, and after they knew or should have known of his condition.

18. Defendants, their agents, servants and employees totally disregarded and/or neglected the condition of Vittorini throughout this time, and continued to sell alcoholic liquor to him the entire time he was there, until he left the premises, even though they knew, or certainly should have known, that he was intoxicated.

19. Defendants, their agents, servants and employees continued to sell alcoholic beverages to Vittorini until he had a blood alcohol content of more than twice the legal limit when he left the Tavern, and later drove the car that caused this motor vehicle collision.

20. As a consequence of Defendants' actions, Vittorini crashed his car, in which plaintiff Rachael Fraulo was a passenger, causing her many serious and debilitating injuries.

21. The intoxicated state of Vittorini was a substantial factor in the cause of the motor vehicle collision.

22. Shortly after the collision, Vittorini admitted to the police that he was intoxicated while operating his car, and that he had been drinking alcoholic beverages at "O'Malley's in Mt. Kisco."

23. Vittorini eventually pled guilty to the charges of Vehicular Assault in the First Degree and Driving While Intoxicated in the Westchester County Courthouse on August 5, 2009.

24. Vittorini admitted that on the early morning of January 10, 2009, he caused serious physical injury to Rachel Fraulo while he operated a motor vehicle in an intoxicated condition, and that at the time he had a blood alcohol content of point one eight (.18) —more than twice the legal limit.

25. At the time of his plea to these charges, Vittorini also admitted that his “intoxication that [he was] under occurred at a bar in Mt. Kisco ...O’Malley’s”.

26. As a result of this collision, Rachel Fraulo suffered severe physical injuries, many of which are permanent in nature. The injuries she suffered include, but are not limited to, the following: traumatic brain injury, head injury, requiring a hemicraniectomy, and several months later a reverse craniectomy, injury to both eyes, with permanent impairment to her vision, several bone fractures, injury to her neck, injury to her left ankle, and injury to her right hand.

27. As a result of these debilitating injuries, Rachel Fraulo was hospitalized for several months, and she incurred extensive medical expenses, and will incur extensive medical expenses in the future.

28. As a further result of these injuries, Rachel Fraulo lost time from work and lost earnings, and her earning capacity has been permanently and substantially reduced.

29. If not for this horrific incident, Rachel Fraulo would have earned a master’s degree approximately one month after the accident.

30. Now, due to Defendants’ negligence and violation of New York’s Dram Shop Act, Rachel Fraulo is unable to finish the requirements for her master degree, and unable to be gainfully employed in her chosen field of study, or chosen occupation. Indeed, she is now unable to be gainfully employed in any skilled or unskilled occupation.

31. As a further result of these injuries, Fraulo is no longer able to manage her own affairs. Therefore, on or about December 1, 2009, Frank Fraulo, (Rachel’s father) was duly appointed Conservator of the Estate & Person of Rachel Fraulo by the Court of Probate for the District of Westport, Connecticut.

32. As a further result of these injuries, Rachel Fraulo has experienced, and in the future will experience, pain and suffering and emotional distress.

33. As a further result of these injuries, Rachel Fraulo's ability to pursue and enjoy life's activities has been permanently reduced.

COUNT I

Violation of New York Dram Shop Law

34. Plaintiffs repeat and reallege each and every allegation contained in paragraphs 1 through 34 with the same force and effect as if set forth herein.

35. Defendants unlawfully sold alcoholic beverages to Brian Vittorini on the evening of January 9, into the early morning hours of January 10, 2009, in violation of Alcoholic Beverage Control Law § 65(2).

36. Defendants are liable to Plaintiffs because plaintiff Rachel Fraulo was injured by Brian Vittorini, an intoxicated person; Defendants sold liquor to him, and Defendants caused or contributed to such intoxication.

37. Defendants are responsible for all damages suffered by Rachel Fraulo, pursuant to General Obligations Law section 11-101.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court enter judgment in amount to be determined at trial for:

- (a) Plaintiff Rachel Fraulo's pain and suffering;
- (b) Plaintiff Rachel Fraulo's lost earning capacity;
- (c) Plaintiff Rachel Fraulo's past and future medical bills,
- (d) Plaintiff Rachel Fraulo's loss of enjoyment of life;

(e) The costs of this action; and

(f) Such other and further relief as the Court deems just and proper.

Dated: White Plains, New York
December 29, 2011

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