

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION**

THE ESTATE of MARTHA MACKEY)
DEMONTPELLIER, by and through Andre P.)
DeMontpellier as Executor,)

Plaintiff,)

v.)

JEREMY CARPENTER, and)
CHICAMACOMICO BANKS FIRE)
DEPARTMENT, INC.,)

Defendants.)

**COMPLAINT
(Jury Trial Demanded)**

NOW COMES, Plaintiff, by and through counsel of record, complaining of the Defendants as follows:

PARTIES, JURISDICTION & VENUE

1. Martha Mackey DeMontpellier (hereinafter referred to as “Decedent”) was a citizen and resident of the independent city of Norfolk, Virginia. She died on September 14, 2019.

2. Plaintiff, Andre P. DeMontpellier, is the son of Decedent, Martha Mackey DeMontpellier, and is the duly appointed Executor of the Estate of Martha Mackey DeMontpellier.

3. Plaintiff Estate of Martha Mackey DeMontpellier resides, is domiciled and/or is located in Norfolk Circuit Court, in the Commonwealth of Virginia, under Court File No. 190001070.

4. Upon information and belief, Defendant, Jeremy Carpenter (hereinafter referred to at times as Defendant Carpenter) is a resident of Rodanthe, a town in Dare County, North Carolina.

5. Defendant Chicamacomico Banks Fire Department, Inc. (hereinafter at times “Defendant CBF”) was and is an incorporated entity operating in and around the towns of Rodanthe, Waves, and Salvo on Hatteras Island, with its principal place of business in Dare County, North Carolina.

6. Upon information and belief, Defendant Carpenter was at all times relevant herein acting as an agent, employee and/or servant of Defendant CBF. As such, Defendant CBF is liable, either directly and/or vicariously, under the principles of *respondeat superior*, agency, and/or corporate liability, and all conduct of Defendant Carpenter is imputed to his employer, being the named corporate Defendant herein.

7. Upon information and belief, Defendant CBF, their officers, directors, employees, and agents – including but not limited to Defendant Carpenter – were not governmental actors and are not entitled to any form of governmental or sovereign immunity in this matter. However, in the event the Court should later deem otherwise, Defendants have waived governmental immunity and sovereign immunity under state tort law, if any there be, by the purchase of liability insurance and/or by participation in a governmental risk pool, insuring Defendants any of its officers, agents and employees against liability for negligent or intentional damage to person or property, or against absolute liability to person or property caused by an act or omission of the Defendants or of any of their officers, agents or employees when acting within the scope of their authority and in the course of their employment. Subject matter jurisdiction is, therefore, appropriate and proper and any and all such governmental immunity and sovereign immunity is and has been fully waived.

8. This Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1332. This lawsuit is a civil action where the parties are citizens of different states, and in which Plaintiff seeks money damages in excess of \$75,000.00.

9. Venue is proper pursuant to 28 U.S.C. § 1391 as all Defendants are residents of North Carolina.

FACTS RELEVANT TO ALL CLAIMS

10. On September 14, 2019, the Decedent was vacationing at Rodanthe on Hatteras Island, North Carolina. She was staying at a beach bungalow located on West Corbina Drive in Rodanthe.

11. At some time prior to 1:45 p.m., the Decedent walked along the East Corbina Drive public beach access way to access and enjoy the public beach. The access way is a sand covered walkway that is wide, flat, with good visibility, and is maintained year-round for members of the public to use as a walking area to both access and leave the beach in the area.

12. Adults and children regularly use this East Corbina Drive beach access way to enter and leave the beach by foot.

13. In addition, adults and children commonly set up beach chairs, towels, blankets, and their other beach belongings, and then sit or lay down in the sand to enjoy the beach at or near the east end of the East Corbina beach access way. This is especially true during times when the ocean tide is high or recent storm activity has reduced the amount of dry beach sand available in which to set up. This area where the mouth of the access way begins to meet the dune line and beach sand, is a large, wide, and open space with good visibility in all directions.

14. The East Corbina beach access way is also used from time to time by trucks and all-terrain vehicles driven by members of Defendant Cbfd to patrol the beach front in the area.

15. At all times relevant, Defendants knew or should have known that members of the public regularly used the East Corbina Drive beach access way described above for walking.

16. At all times relevant, Defendants knew or should have known that members of the public commonly set up beach chairs, towels, blankets, and other beach belongings, and then sat or laid down to enjoy the beach at or near the east end of the East Corbina beach access way described above.

17. On September 14, 2019, at approximately 1:45 p.m., Defendant Carpenter drove a Chevrolet Silverado truck owned by Defendant Cbfd eastward down East Corbina Drive and onto the beach front.

18. At all times relevant to the matters alleged herein, Defendant Carpenter was working as an employee in the course and scope of this employment and/or agency with Defendant Cbfd.

19. Upon information and belief, as Defendant Carpenter drove the truck eastward along the sand of the East Corbina Drive beach access way toward the ocean, he saw the Decedent at or near that mouth of the beach access area. At all times relevant, the Decedent was wearing a bright colored bathing suit, she had a large brightly colored beach towel, and a large brightly colored beach tote bag.

20. Defendant Carpenter drove past the Decedent and her beach belongings as he entered the beach. He then turned his truck left and drove northward along the beach.

21. As Defendant Carpenter drove along the East Corbina Drive beach access way and then entered the beach on September 14, 2019, he saw and became aware that numerous other members of the public were also set up on the beach in the area with their belongings and enjoying the day.

22. The Decedent set up her beach belongings in an open and dry area of beach sand that was not in danger of the incoming waves getting her belongings wet. She spread out her large beach towel on the sand, she placed her large tote bag directly next to her, and she laid down on her towel to read and relax. The Decedent set up her belongings and laid down on her towel in an open area with good visibility available to any potential pedestrian or motor vehicle who may be approaching in the area.

23. At all times relevant to this action, it was a sunny day with good visibility.

24. At all times relevant on September 14, 2019, there were no signs, warnings, or other information posted in the area warning the Decedent not to set up or lay down in this area to enjoy

the beach, or otherwise warning or placing her on notice she might be in danger of being injured by any type of automobile in the area.

25. At all times relevant, the Decedent acted in a reasonable and prudent manner under the circumstances.

26. At approximately 2:33 p.m., Defendant Carpenter completed his activities northward along the beach and he turned around. He began driving his truck southward along the beach, back toward the East Corbina Drive access way.

27. Upon information and belief, at no time relevant to this action was Defendant Carpenter facing any type of emergency in the area when he was driving the truck.

28. Upon information and belief, at all times relevant to this action, Defendant Carpenter drove his truck at no more than five miles per hour.

29. Upon information and belief, at this time the Decedent was laying on her large beach towel, with her large beach tote bag next to her, on the beach sand in a large and open area near where the east end of the beach access way meets the beach front.

30. At all times relevant, the Decedent and her belongings were clearly visible to any pedestrian or motorist in the area who was keeping a proper lookout and paying proper attention.

31. At all times relevant, Defendants owed the Decedent, and all members of the public who were walking on and/or enjoying the beach in the area, a duty of reasonable care to avoid causing them injuries with any motor vehicles they chose to operate in the area.

32. At all times relevant, Defendants knew or should have known that if any member of the Defendant CBF, including but not limited to Defendant Carpenter, chose to drive a motor vehicle without keeping a proper lookout ahead of the vehicle, without paying proper attention, and/or otherwise in an unsafe manner, that the vehicle could cause serious injury or death to a beachgoer such as the Decedent.

33. At all times relevant, it was reasonably foreseeable that if any member of the Defendant CBF, including but not limited to Defendant Carpenter, chose to drive a motor vehicle

without keeping a proper lookout ahead of the vehicle, without paying proper attention, and/or otherwise in an unsafe manner, that the vehicle could cause serious injury or death to a beachgoer such as the Decedent.

34. At all times relevant, Defendant Carpenter knew or should have known as he was driving that the Decedent was laying down or was otherwise positioned there on the sand.

35. Had Defendant Carpenter simply kept a proper lookout ahead of his vehicle, had he paid proper attention while driving, or had he otherwise operated his truck in a safe and prudent manner, he would have easily been able to see the Decedent on the sand and had the clear opportunity and ability to avoid striking her or causing any injury to the Decedent with his truck.

36. However, as Defendant Carpenter approached the area where the Decedent was easily visible on the beach sand, he was not keeping a proper lookout ahead of his vehicle, he was not paying proper attention while driving, and was otherwise not operating his truck in a safe and prudent manner.

37. As Defendant Carpenter drove his truck toward the mouth of the East Corbina Drive access way, he ran over the Decedent's body with his truck. The Decedent's torso was severely injured by the crushing weight of Defendants' truck, causing a multitude of rib fractures and internal injuries to her abdomen and chest areas. The force of the impact and weight of the truck broke many of the Decedent's ribs and her sternum.

38. The truck, however, did not strike or impact the Decedent's head. As a result, upon information and belief, the Decedent consciously experienced excruciating physical pain and substantial mental suffering as she remained alive following impact. Because Decedent's brain was not damaged from the impact, she was still conscious, struggling to breath, and moaning in terrible pain and fear for many seconds. This continued even after Defendant Carpenter stopped his truck and exited the vehicle to see what he had just run over.

39. After consciously experiencing immense physical pain and mental suffering, the Decedent died on the beach sand as a direct result of her internal injuries.

40. At all times relevant, the Decedent was clearly visible, Defendant Carpenter should have seen her, and Defendant Carpenter would have had more than ample time to stop his truck and/or easily avoid striking the Decedent had he simply been keeping a proper lookout and paying proper attention as he drove along the beach sand.

41. At all times relevant, Defendant Carpenter, by traveling at no more than five miles per hour, was driving at such a slow speed that had he been keeping a proper lookout or paying proper attention, he would have had more than enough time to perceive, react, and come to a complete stop before he reached Decedent.

42. At all times relevant, the Decedent acted in a safe and reasonable manner under the circumstances and her conduct was in no way negligent or contributed to her injuries or death.

43. Defendant Carpenter's wrongful conduct as described herein, and imputed to Defendant CFBD, was the sole, direct, and proximate cause of the Decedent's injuries, conscious pain and suffering, and wrongful death.

FIRST CLAIM FOR RELIEF
Negligence of Defendant Jeremy Carpenter

44. The allegations contained in the foregoing paragraphs of the Complaint are realleged and incorporated by reference as if fully set forth herein.

45. At the time and place complained of, Defendant Carpenter was negligent and breached duties of care he owed to the Decedent in that he:

- a. Operated a motor vehicle and failed to keep and maintain a proper lookout;
- b. Operated a motor vehicle and failed to pay proper attention;
- c. Failed to exercise the degree of care which a reasonable and prudent person would have exercised in the operation of a motor vehicle under the same or similar circumstances;
- d. Failed to keep the motor vehicle he was operating under proper control;
- e. Failed to yield the right of way;

- f. Failed to exercise evasive measures to avoid a collision with persons or property;
- g. Failed to decrease the speed of his vehicle as necessary in order to avoid a collision and in order to avoid injury in violation of N.C. Gen. Stat. § 20-141;
- h. Drove in a careless and reckless manner in violation of N.C. Gen. Stat. § 20-140;
- i. Operated a vehicle carelessly and heedlessly, and with willful and wanton disregard of the rights and safety of others, in violation of N.C. Gen. Stat. § 20-140(a);
- j. Operated a vehicle without due caution and circumspection in a manner as to endanger or to be likely to endanger the personal property of others in violation of N.C. Gen. Stat. § 20-140(b);
- k. Failed to yield for persons on the beach;
- l. Unsafely moved his vehicle;
- m. Failed to appropriately utilize his brakes to avoid the collision;
- n. Failed to appropriately utilize his horn; and
- o. Was otherwise careless and negligent as will be proven through discovery of the evidence or at trial.

46. As a direct and proximate result of the negligence of Defendant Carpenter, the Decedent suffered conscious physical pain, mental suffering, loss of life, wrongful death damages, and other damages as may be proven at trial in excess of \$75,000.00.

SECOND CLAIM FOR RELIEF
Agency / Vicarious Liability of
Defendant Chicamacomico Banks Fire Department

47. The allegations contained in the foregoing paragraphs of the Complaint are re-alleged and incorporated by reference as if fully set forth herein.

48. Pursuant to N. C. Gen. Stat. § 20-71.1(a), Defendant Carpenter operated Defendant CBFD's vehicle with the authority, direction, consent, and knowledge of Defendant CBFD, the legal owner of the vehicle, in the very transaction out of which Plaintiff's injuries and causes of action arose, as described above.

49. Pursuant to N. C. Gen. Stat. § 20-71.1(b), Defendant Carpenter operated Defendant Cbfd's vehicle under the control of Defendant Cbfd, the registered owner, and did so for Defendant Cbfd's benefit, and within the course and scope of Defendant Carpenter's agency with Defendant Cbfd.

50. Upon information and belief, Defendant Carpenter was operating Defendant's Cbfd's vehicle with the actual or implied consent, knowledge, authorization, and permission of Defendant Cbfd in the course and scope of an employment and/or agency relationship.

51. The negligence of Defendant Carpenter, which is imputed to Defendant Cbfd, directly and proximately caused the injuries and damages suffered by the Plaintiff. Defendant Cbfd is liable in all respects for the conduct of and damages caused by Defendant Carpenter as alleged herein pursuant to the doctrines of *respondeat superior*, the principles of agency, and the laws of imputed liability.

WRONGFUL DEATH AGAINST ALL DEFENDANTS

52. The allegations contained in the foregoing paragraphs of the Complaint are re-alleged and incorporated by reference as if fully set forth herein.

53. Decedent Martha Mackey DeMontpellier died as a direct and proximate result of the Defendants' negligence, reckless conduct, and/or willful or wanton conduct as described above.

54. The beneficiaries of Martha Mackey DeMontpellier's estate, pursuant to N.C.G.S. § 28A-18-2, are entitled to recover all forms of damages therein listed, including, but not limited to, pain and suffering of the Decedent, reasonable funeral expenses, loss of society, companionship, love, and comfort of Martha Mackey DeMontpellier to her family, expenses incident to the injury resulting in death and punitive damages, in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00) to be proven at the trial of this action.

JOINT AND SEVERAL LIABILITY OF ALL DEFENDANTS

55. The allegations set forth in the preceding paragraphs are re-alleged and incorporated herein by reference.

56. The Defendants are jointly and severally liable to Plaintiff for all damages alleged herein since their negligent or wrongful acts and omissions, singularly or in combination, concurred or combined to produce, as a proximate cause, indivisible injuries to Plaintiff.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment of the Court as follows:

1. That Plaintiff have and recover from Defendants, jointly and severally, for all nominal and compensatory damages in excess of Seventy-Five Thousand (\$75,000.00) Dollars;
2. The Plaintiff have and recover from Defendants, jointly and severally, the costs of this action and reasonable attorney's fees to the fullest extent allowed by the laws of North Carolina and the United States;
3. That all issues of fact be tried by a jury; and
4. The Plaintiff be granted all other relief, both legal and equitable, which the Court deems just and proper.

This the 15th day of January, 2021.

ZAYTOUN BALLEW & TAYLOR, PLLC

/s/ Matthew D. Ballew

Matthew D. Ballew

N.C. State Bar No.: 39515

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

THE ESTATE of MARTHA MACKEY
DEMONTPELLIER, by and through Andre P.
DeMontpellier as Executor

Plaintiff(s)

v.

JEREMY CARPENTER, and
CHICAMACOMICO BANKS FIRE DEPARTMENT,
INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JEREMY CARPENTER
23210 Sudie Payne Road
Rodanthe, NC 27968

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Zaytoun Ballew & Taylor, PLLC
Robert E. Zaytoun, Esq.; Matthew D. Ballew, Esq.; John R. Taylor, Esq,
3130 Fairhill Drive, Suite 100; Raleigh, NC 27612 (Attorneys for Plaintiff)
Tharrington Smith, LLP
Wade M. Smith, Esq.; Melissa H. Hill, Esq.
150 Fayetteville Street, Suite 1800; Raleigh, NC 27601 (Attorneys for Plaintiff)

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

Eastern District of North Carolina

THE ESTATE of MARTHA MACKEY
DEMONTPELLIER, by and through Andre P.
DeMontpellier as Executor

Plaintiff(s)

v.

JEREMY CARPENTER, and
CHICAMACOMICO BANKS FIRE DEPARTMENT,
INC.

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CHICAMACOMICO BANKS FIRE DEPARTMENT, INC.
c/o Alex Samofal, Registered Agent
P. O. Box 125
Rodanthe, NC 27968

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are:

Zaytoun Ballew & Taylor, PLLC
Robert E. Zaytoun, Esq.; Matthew D. Ballew, Esq.; John R. Taylor, Esq,
3130 Fairhill Drive, Suite 100; Raleigh, NC 27612 (Attorneys for Plaintiff)
Tharrington Smith, LLP
Wade M. Smith, Esq.; Melissa H. Hill, Esq.
150 Fayetteville Street, Suite 1800; Raleigh, NC 27601 (Attorneys for Plaintiff)

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: