

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Karen Lorraine Alvarez,

C.A. No. 2022-CP-39-

Plaintiff,

SUMMONS

(Jury Trial Demanded)

v.

Frederick L. Davis, II, and Malcom
Greene,

Defendants.

TO: THE DEFENDANTS HEREIN:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer on the subscribers at their office, 1001 East Washington Street, (P.O. Box 2446, 29602), Greenville, South Carolina, 29601, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for relief demanded in the Complaint.

Respectfully Submitted,

s/ David R. Price, Jr.

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Date: October 5, 2022

Summons and Complaint

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STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Karen Lorraine Alvarez,

Plaintiff,

v.

Frederick L. Davis, II and Malcom
Greene,

Defendants.

COMPLAINT
(Jury Trial Demanded)

Plaintiff complains of the Defendant as follows:

1. Plaintiff Karen Alvarez, herein after referred to as “Plaintiff,” is a citizen and resident of Oconee County, South Carolina.
2. Upon information and belief, Defendant Frederick L. Davis, II, hereinafter referred to as “Defendant Davis”, is a citizen and resident of Pickens County, South Carolina.
3. Upon information and belief, Defendant Malcom Greene, hereinafter referred to as “Defendant Greene”, is a citizen and resident of Pickens County, South Carolina.
4. On or about July 21, 2021, Plaintiff was the operator of a mail delivery vehicle traveling south on U.S. Highway 123 in Clemson, South Carolina.
5. On or about July 21, 2021, Defendant Davis was the operator of a 2021 Dodge Charger traveling south on U.S. Highway 123.
6. Upon information and belief, on or about July 21, 2021, Defendant Greene was the operator of a Ford vehicle traveling south on U.S. Highway 123.
7. Prior to the collision, Defendant Greene and Defendant Davis were observed traveling in south on U.S. Highway 123, in close proximity and at a high rate of speed, weaving in and out of lanes, and the Defendants appeared to be racing their vehicles.

8. Electronic data retrieved from the airbag control module (ACM) of the vehicle driven by Defendant Davis, indicates that Defendant Davis was traveling at 115 miles per hour in a 55 mph zone when he first applied his brakes 2.8 seconds before he collided with the rear of Plaintiff's vehicle, causing Plaintiff's vehicle to turn on its right side and slide over the median and across the northbound lanes of U.S. Highway 123. A true and accurate copy of ACM data from Defendant Davis's vehicle is attached hereto as "**Exhibit A.**"

9. As a direct and proximate result of the collision, Plaintiff sustained serious, severe, and permanent injuries including fractures of her skull, spine, pelvis, rib, and clavicle, from which she continues to suffer, and upon information and belief, will continue to suffer in the future.

10. The Plaintiff reiterates and realleges the prior allegations of this Complaint as if repeated verbatim herein.

FOR A FIRST CAUSE OF ACTION
Negligence, Gross Negligence, Recklessness

11. The Plaintiff reiterates and realleges the prior allegations of this Complaint as if repeated verbatim herein.

12. The injuries and damages to Plaintiff were the result of the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and unlawful acts, delicts and omissions of the Defendants, to wit:

- a. In racing their vehicles on a public road;
- b. In grossly exceeding the speed limit;
- c. In driving recklessly;
- d. In failing to drive as nearly as practicable entirely within a single lane;
- e. In moving from a lane without ascertaining that such movement can be made with safety;

- f. In failing to pass at a safe distance;
- g. In driving to the right side of the roadway before safely clear of the overtaken vehicle;
- h. In failing to keep a proper lookout;
- i. In failing to properly utilize their brakes;
- j. In failing to exercise that degree of care which a reasonable and prudent person would have exercised under the same or similar circumstances;
- k. In failing to maintain proper control over their motor vehicle;
- l. In failing to take any evasive action, by any means, to keep from to keep from colliding with the rear Plaintiff vehicle;
- m. In driving the Defendants' vehicles too fast under the circumstances;
- n. In violating the laws, statutes, and ordinances of the State of South Carolina; and
- o. In failing to exercise the degree and caution that a reasonable prudent person would have executed under the circumstances then and there prevailing.

13. As a direct and proximate result of the willful, wanton, and reckless negligence *per se* of the Defendants, the Plaintiff suffered great physical harm and injury, all of which has caused and will continue to cause Plaintiff to undergo much physical pain and suffering and mental anguish and distress and has caused and will continue to cause Plaintiff to have to spend money for medical services. The Plaintiff has suffered permanent injury, lost wages, and loss of enjoyment of life, and has been otherwise damaged. In addition, Plaintiff is entitled to an award of punitive damages in an appropriate amount to deter the Defendants and others from engaging in such unlawful, reckless, and grossly negligent conduct in the future.

14. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants Frederick L. Davis, II and Malcom Greene, jointly and severally, for such an amount of actual and punitive damages as the tier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

FOR A SECOND CAUSE OF ACTION
Negligence *per se*/Gross Negligence *per se*/Recklessness

15. The Plaintiff reiterates and realleges the prior allegations of this Complaint as if repeated verbatim herein.

16. On or about July 21, 2021, there existed in the State of South Carolina a statute making it unlawful to race on public roads, S.C. Code § 56-5-1590.

17. S.C. Code § 56-5-1590 makes it “unlawful to engage in a motor vehicle race or contest for speed on any public road, street, or highway in this State.”

18. On or about July 21, 2021, there existed in the State of South Carolina a statute governing a driver’s speed on highways, S.C. Code Ann. § 56-5-1520.

19. S.C. Code Ann. § 56-5-1520 prohibits a driver from driving “at a speed greater than is reasonable and prudent under the conditions,” and requires that “[s]peed must be so controlled to avoid colliding with a person, vehicle, or other conveyance on or entering the highway,” and states that “a person shall not drive a vehicle on a highway at a speed in excess of [the] maximum limits” set forth by the statute or otherwise posted.

20. On or about July 21, 2021, there existed in the State of South Carolina a statute governing a driver of a vehicle’s duty to drive a speed that is reasonable and prudent, S.C. Code Ann. § 56-5-1520.

21. S.C. Code Ann. § 56-5-1520 states that “[a] person shall not drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing.”

22. On or about July 21, 2021, there existed in the State of South Carolina a statute governing a driver of a vehicle’s duty not to drive recklessly, S.C. Code Ann. § 56-5-2920.

23. S.C. Code Ann. § 56-5-2920 states that “[a]ny person who drives any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of person or property is guilty of reckless driving.”

24. Defendants Davis and Greene, on or about July 21, 2021, violated the above-referenced statutes by racing, by driving in excess of the speed limit by 60 miles per hour or more, by driving at speeds greater than reasonable and prudent, and by driving in such a manner as to indicate either a willful or wanton disregard for the safety of persons or property.

25. On or about July 21, 2021, there existed in the State of South Carolina a statute governing the rules whenever a roadway has been divided into two or more clearly marked lanes for traffic, S.C. Code § 56-5-1900.

26. S.C. Code § 56-5-1900 states that “[a] vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from the lane until the driver has first ascertained that such movement can be made with safety.”

27. On or about July 21, 2021, there existed in the State of South Carolina a statute governing the overtaking and passing of vehicles proceeding in the same direction, S.C. Code § 56-5-1840.

28. S.C. Code § 56-5-1840 states that “[t]he driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the roadway until safely clear of the overtaken vehicle.”

29. Defendant Davis, on or about July 21, 2021, violated the above-referenced statutes by failing to drive within a single lane, by moving from said Defendant’s lane before such movement could be made with safety, by attempting to pass the Plaintiff’s vehicle while not at a safe distance, and by attempting to drive again to the right side before he was safely clear of Plaintiff’s vehicle.

30. Defendants’ willful, wanton and reckless violation of the above-referenced statutes was the direct and proximate cause of the injuries and damages suffered by the Plaintiff.

31. As a direct and proximate result of the willful, wanton, and reckless negligence *per se* of the Defendants, the Plaintiff suffered great physical harm and injury, all of which has caused and will continue to cause Plaintiff to undergo much physical pain and suffering and mental anguish and distress and has caused and will continue to cause Plaintiff to have to spend money for medical services. The Plaintiff has suffered permanent injury, lost wages, and loss of enjoyment of life, and has been otherwise damaged. In addition, Plaintiff is entitled to an award of punitive damages in an appropriate amount to deter the Defendants and others from engaging in such unlawful, reckless, and grossly negligent conduct in the future.

32. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants Frederick L. Davis, II and Malcom Greene, jointly and severally, for such an amount of actual and punitive damages as the tier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

FOR A THIRD CAUSE OF ACTION
Strict Liability for Abnormally Dangerous Activities

33. The Plaintiff reiterates and realleges the prior allegations of this Complaint as if repeated verbatim herein.

34. An activity that is not of common usage and creates a foreseeable and highly significant risk of physical harm to others, even when they exercise reasonable care, constitutes an abnormally dangerous activity. Restatement (Third) of Torts § 20(b) (2009).

35. A person found by a court to have carried on an abnormally dangerous activity will be subject to strict liability for physical harm resulting from that activity. *Id.* § 20(a).

36. Strict liability for abnormally dangerous or “ultrahazardous” activities has been recognized in South Carolina. *See Sherr v. South Carolina Electric & Gas Company*, 180 F.Supp.3d 407 (D.S.C. 2016).

37. Plaintiff is informed and believes that racing, and/or operating a motor vehicle at high speeds that exceed the speed limit by approximately 60 mph is an abnormally dangerous activity.

38. Defendants’ conduct on January 21, 2021, was abnormally dangerous, was intrinsically dangerous, not a common activity, and one that created a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors.

39. As a direct and proximate result of the unlawful and abnormally dangerous activities of the Defendants, the Plaintiff suffered great physical harm and injury, all of which has caused and will continue to cause Plaintiff to undergo much physical pain and suffering and mental anguish and distress and has caused and will continue to cause Plaintiff to have to spend money for medical services. The Plaintiff has suffered permanent injury, lost wages, and loss of enjoyment of life, and has been otherwise damaged. In addition, Plaintiff is entitled to an award

of punitive damages in an appropriate amount to deter the Defendants and others from engaging in such unlawful, reckless, and grossly negligent conduct in the future.

40. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants Frederick L. Davis, II and Malcom Greene, jointly and severally, for such an amount of actual and punitive damages as the tier of fact may find, for the costs and disbursements of this action, and for such other and further relief as this Court may deem just and proper.

WHEREFORE, the Plaintiff demands a trial by jury pursuant to **Rule 38(b)** of the **South Carolina Rules of Civil Procedure (SCRPC)**, and Plaintiff prays for judgment against the Defendants Frederick L. Davis, II and Malcom Greene, jointly and severally, for actual and punitive damages in an amount to be determined by the jury, for the costs of this action, and for such other and further relief as this court may deem just and proper.

Respectfully Submitted,

s/ David R. Price, Jr.

David R. Price, Jr. (S.C. Bar # 75140)

Samuel B. Tooker (S.C. Bar # 78999)

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Date: October 5, 2022