

IN THE STATE COURT OF FULTON COUNTY

STATE OF GEORGIA

STEPHEN XXXX, INDIVIDUALLY; *
JUSTIN XXXX, A MINOR BY AND *
THROUGH HIS NEXT FRIEND AND *
NATURAL PARENT, STEPHEN *
XXXX; LINDSEY XXXX, A *
MINOR BY AND THROUGH HER NEXT *
FRIEND AND NATURAL *
PARENT, STEPHEN XXXX; and *
TAMMY XXXX, INDIVIDUALLY, *

Plaintiffs,

v.

SUN HUNG KAI HOLDING INC., d/b/a *
UNITED FOOD SERVICE; *
CHEUNG KONG HOLDING, INC., d/b/a *
UNITED FOOD SERVICE; VICTOR *
GUO, a/k/a XIN GUO, a/k/a *
VICTOR KWOK; JIN ZHANG YANG and *
RICARDO MARTINEZ HERNANDEZ, *

Defendants.

CIVIL ACTION NO.: _____

COMPLAINT

COME NOW Plaintiffs in the above-styled action and hereby show the Court the following:

PARTIES, JURISDICTION, AND VENUE

•

Plaintiffs are residents of Georgia. Stephen XXXX brings his claims individually and as the father of his minor children, Justin XXXX and Lindsey XXXX. Plaintiffs Justin XXXX and Lindsey XXXX, minors, bring their claims by and through their Next Friend and Natural Parent, Stephen XXXX. Tammy XXXX brings her claims individually.

2.

Defendant Sun Hung Kai Holding Inc., d/b/a United Food Service (hereinafter “SHKH”) is a domestic corporation organized under the laws of the State of Georgia with its principal business address located at 1121 Oakleigh Drive, East Point, Georgia 30344. Defendant SHKH

maintains a registered agent for service of process in Henry County, Georgia, Ching Ling Kwok, who may be served with legal process at 142 Augusta Drive, McDonough, Georgia 30253.

3.

Defendant Cheung Kong Holding, Inc., d/b/a United Food Service (hereinafter “CKH”) is a domestic corporation organized under the laws of the State of Georgia with its principal business address located at 301 Cash Memorial Boulevard, Forest Park, Georgia 30297. Defendant CKH maintains a registered agent for service of process in Fulton County, Georgia, Xin C. Guo, who may be served with legal process at 4365 Fulton Industrial Boulevard, Atlanta, Georgia 30336.

4.

Defendant Victor Guo, a/k/a Xin Guo, a/k/a Victor Kwok (hereinafter “Guo”) is a resident of Fulton County, Georgia with a last known address of 9520 Old Southwick Pass, Alpharetta, Georgia 30022, where he may be served with legal process.

5.

Defendant Jin Zhang Yang (hereinafter “Yang”) is a resident of Gwinnett County, Georgia with a last known address of 820 Minor Creek Way, NW, Lilburn, Georgia 30047-8027, where he may be served with legal process.

6.

Defendant Ricardo Martinez Hernandez (hereinafter “Hernandez”) is a resident of Fulton County, Georgia with a last known address of 2901 Silvan Road, Atlanta, Georgia 30344, where he may be served with legal process.

7.

On December 14, 2011, in Rabun County, Georgia, Defendant Hernandez was driving south on Highway 441 in a vehicle owned by Defendant Yang and operated by Defendants SHKH, CKH, Guo and/or Yang. Defendant Hernandez lost control of the subject vehicle, crossed the centerline and struck the vehicle occupied by Plaintiffs, causing serious injuries to Plaintiffs. At the time of the collision, Defendant Hernandez was acting in the course and scope of his employment for, and under the direction of, Defendants SHKH, CKH, Guo and/or Yang.

8.

The claims asserted by Plaintiffs against Defendants in this civil action arise out of the collision described in the preceding paragraph.

9.

Defendant SHKH is subject to the jurisdiction of this Court because it is a domestic corporation organized and doing business in this State.

10.

Venue is proper in this Court with respect to Defendant SHKH, because venue is proper with respect to a joint tortfeasor in this case.

11.

Defendant CKH is subject to the jurisdiction of this Court, because it is a domestic corporation organized and doing business in this State.

12.

Venue is proper in this Court with respect to Defendant CKH, because it maintains a registered agent for service of process in Fulton County, Georgia.

13.

Defendant Guo is subject to the jurisdiction of this Court, because he is a resident of the State of Georgia.

14.

Venue is proper in this Court with respect to Defendant Guo, because he is a resident of Fulton County, Georgia.

15.

Defendant Yang is subject to the jurisdiction of this Court, because he is a resident of the State of Georgia.

16.

Venue is proper in this Court with respect to Defendant Yang, because venue is proper with respect to a joint tortfeasor in this case.

17.

Defendant Hernandez is subject to jurisdiction in this Court, because he is a resident of the State of Georgia and because he committed a tort in this State.

18.

Venue is proper in this Court with respect to Defendant Hernandez, because he is a resident of Fulton County, Georgia.

OPERATIVE FACTS

19.

On the afternoon of December 14, 2011, Defendant Hernandez was driving a vehicle owned by Defendant Yang.

20.

Defendant SHKH does business under the trade name, United Food Service.

21.

Defendant CKH also does business under the trade name, United Food Service.

22.

Defendants SHKH, CKH, Guo, and Yang operated United Food Service as a joint venture.

23.

The vehicle driven by Defendant Hernandez was operated by and for the benefit of Defendant SHKH, d/b/a United Food Service.

24.

At the time of the collision, Defendant Hernandez was acting in the course and scope of his employment with Defendant SHKH, d/b/a United Food Service.

25.

At the time of the collision, Defendant Hernandez was driving the subject vehicle with the permission of Defendant SHKH, d/b/a United Food Service.

26.

The vehicle driven by Defendant Hernandez was operated by and for the benefit of Defendant CKH, d/b/a United Food Service.

27.

At the time of the collision, Defendant Hernandez was acting in the course and scope of his employment with Defendant CKH, d/b/a United Food Service.

28.

At the time of the collision, Defendant Hernandez was driving the subject vehicle with the permission of Defendant CKH, d/b/a United Food Service.

29.

The vehicle driven by Defendant Hernandez was operated by and for the benefit of Defendant Guo.

30.

At the time of the collision, Defendant Hernandez was acting in the course and scope of his employment with Defendant Guo.

31.

At the time of the collision, Defendant Hernandez was driving the subject vehicle with the permission of Defendant Guo.

32.

The vehicle driven by Defendant Hernandez was operated by and for the benefit of Defendant Yang.

33.

At the time of the collision, Defendant Hernandez was acting in the course and scope of his employment with Defendant Yang.

34.

At the time of the collision, Defendant Hernandez was driving the subject vehicle with the permission of Defendant Yang.

35.

At the time of the collision Defendant Guo was Defendant Hernandez's supervisor.

36.

At the time of the collision Defendant Guo was an employee of Defendant SHKH, d/b/a United Food Service.

37.

At the time of the collision Defendant Guo was an employee of Defendant CKH, d/b/a United Food Service.

38.

Defendant Guo authorized Defendant Hernandez to drive the subject vehicle on the day of the wreck.

39.

Just prior to the collision, Defendant Hernandez lost control of the subject vehicle, crossed the center line and struck the XXXX vehicle.

40.

Defendant is solely at fault for the wreck and the XXXX Plaintiffs did nothing to cause or contribute to the wreck or their injuries.

41.

Defendant SHKH, d/b/a United Food Service negligently entrusted the subject vehicle to Defendant Hernandez.

42.

Defendant CKH, d/b/a United Food Service negligently entrusted the subject vehicle to Defendant Hernandez.

43.

Defendant Guo negligently entrusted the subject vehicle to Defendant Hernandez.

44.

Defendant Yang negligently entrusted the subject vehicle to Defendant Hernandez.

45.

As a direct and proximate result of Defendants' negligence, Plaintiffs were severely injured.

46.

As a result, Plaintiffs suffered and will continue to suffer serious and painful injuries, both physical and mental.

47.

As a result of the collision, Plaintiffs have incurred past medical expenses and will likely incur future medical expenses. Plaintiffs Stephen XXXX and Tammy XXXX continue to be disabled from their work and labor, have sustained a loss of income, and their physical health and quality of life have been significantly impaired.

LIABILITY OF THE DEFENDANTS

48.

Defendant SHKH, d/b/a/ United Food Service is liable for the following tortious acts and omissions, including but not limited to the following:

- (a) *Respondeat Superior* for the tortious acts and omissions of its agents and employees, including Defendant Hernandez; and
- (b) Negligent entrustment, hiring, retention, training, and supervision of its employees, including Defendant Hernandez.

49.

Defendant CKH, d/b/a/ United Food Service is liable for the following tortious acts and omissions, including but not limited to the following:

- (a) *Respondeat Superior* for the tortious acts and omissions of its agents and employees, including Defendant Hernandez; and
- (b) Negligent entrustment, hiring, retention, training, and supervision of its employees, including Defendant Hernandez.

50.

Defendant Guo is liable for the following tortious acts and omissions, including but not limited to the following:

- (a) *Respondeat Superior* for the tortious acts and omissions of his agents and employees, including Defendant Hernandez; and
- (b) Negligent entrustment, hiring, retention, training, and supervision of his

employees, including Defendant Hernandez.

51.

Defendant Yang is liable for the following tortious acts and omissions, including but not limited to the following:

- (a) *Respondeat Superior* for the tortuous acts and omissions of his agents and employees, including Defendant Hernandez; and
- (b) Negligent entrustment, hiring, retention, training, and supervision of his employees, including Defendant Hernandez.

52.

Defendant Hernandez is liable for the following tortious acts and omissions, which include, but are not necessarily limited to, the following:

- (a) Violating O.C.G.A. §§ 40-6-40-6-180, 40-6-40 and 40-6-48 with such violations, and others, amounting to negligence per se;
- (b) Failing to operate the subject vehicle in a safe and prudent manner, thereby placing the lives and well-being of the motoring public in general and Plaintiffs, in particular, in grave danger;
- (c) Failing to keep the subject vehicle under control so as to avoid striking other vehicles; and
- (d) Failing to keep a proper lookout for other vehicles so as to avoid a collision.

53.

The conduct of each of the Defendants, individually and in concert with each other, proximately caused the collision and resulting damages and the Defendants are liable for such damages caused jointly and severally.

DAMAGES CLAIMED

54.

As a result of the above-described collision, Plaintiffs sustained serious and painful injuries to their minds and bodies and continue to suffer mentally and physically. Plaintiffs Stephen XXXX and Tammy XXXX likewise have incurred medical bills and lost income, and will continue to lose income and benefits in the future as a result of the collision. Plaintiff Stephen XXXX, as the natural father of Justin XXXX and Lindsey XXXX, is responsible for their care and medical bills and has incurred and will incur medical bills and other losses until his minor children reach the age of majority. Justin XXXX and Lindsey XXXX will suffer lost income and medical bills after they reach the age of majority, for which they are responsible.

55.

Plaintiffs claim general damages for all elements of the mental and physical suffering they endured, endure, and will endure in the future, as defined by Georgia law and to be determined by the enlightened conscience of a fair and impartial jury.

56.

Plaintiffs Stephen XXXX and Tammy XXXX claim as special damages their lost earnings, income and other benefits they have incurred and will incur in the future because of this collision.

57.

Plaintiffs Stephen XXXX and Tammy XXXX also claim as special damages their past and future medical expenses they have incurred and will incur as a result of the injuries they sustained, in such amounts as the jury deems to be the reasonable value of those services.

58.

Plaintiff Stephen XXXX claims special damages for the medical and other necessary expenses incurred, and to be incurred, in the care and treatment of his minor children, Justin XXXX and Lindsey XXXX, until they reach the age of majority for the injuries they sustained as a result of the tortious misconduct of Defendants.

59.

Plaintiff Stephen XXXX also claims general damages for the loss of services of his minor children, Justin XXXX and Lindsey XXXX, in an amount to be determined by the enlightened conscience of a fair and impartial jury.

60.

Plaintiffs Justin XXXX and Lindsey XXXX, by and through their Next Friend and Natural Parent, Stephen XXXX, claim special damages for their lost wages, medical and other necessary expenses to be incurred after they reach the age of majority.

61.

Plaintiffs seek punitive damages against Defendants, because Defendants actions and/or failures to act demonstrate wantonness or that entire want of care which would raise a presumption of conscious indifference to consequences for the safety of others, entitling Plaintiffs to recover punitive damages in accordance with O.C.G.A. § 51-12-5.1 to punish, penalize, and deter Defendants from future similar conduct.

PRAYER FOR RELIEF

62.

WHEREFORE Plaintiffs pray for the following relief:

- (a) That summons issue requiring the Defendants to appear as provided by law to answer this Complaint;
- (b) That the Plaintiffs have a trial by jury;
- (c) That Plaintiffs have and recover all damages for all losses compensable under Georgia law as set forth above;
- (d) That all costs be cast against the Defendants; and
- (e) For such other and further relief as the Court shall deem just and appropriate.

This 27th day of December, 2011.

Respectfully submitted,

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