

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

D. STEPHAN SCHNEIDER and DONNA)
L. SCHNEIDER, as parents and next friends)
of ASHTON L. SCHNEIDER, a minor)
child,)

Plaintiffs,)

v.)

USA POOLS OF GEORGIA, INC., USA)
POOLS CONSTRUCTION, INC., USA)
POOLS OF DALLAS, INC., USA POOLS)
OF HOUSTON, INC., USA POOLS OF)
NEW YORK, INC., USA POOLS OF)
NORTH CAROLINA, INC., USA POOLS)
OF PENNSYLVANIA, INC., USA POOLS)
OF TENNESSEE, INC., CHAPEL HILLS)
COMMUNITY ASSOCIATION, INC.,)
JOHN DOE CORPORATION (1), JOHN)
DOE CORPORATION (2), PREMIER)
ASSOCIATION MANAGEMENT,)
STEPHANI R. CLARK, individually and)
via vicarious liability, ROBERT V. LEGG,)
individually, and TROY A. LEGG,)
individually,)

Defendants.)
_____)

CIVIL ACTION
FILE NUMBER _____

COMPLAINT FOR DAMAGES

COME NOW D. Stephan Schneider and Donna L. Schneider as parents, natural guardians and next friend of Ashton L. Schneider, a minor child (hereinafter "Plaintiffs"), Plaintiffs in the above-styled action, and files this Complaint for Damages against the above-named Defendants. In support of this action, Plaintiffs aver as follows:

PARTIES, JURISDICTION, AND VENUE

1.

Plaintiff Ashton L. Schneider is a minor child bringing this action for damages against above-named Defendants through D. Stephan Schneider and Donna L. Schneider, her parents, natural guardians and next friend.

2.

Defendant USA Pools of Georgia, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

3.

Defendant USA Pools Construction, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

4.

Defendant USA Pools of Dallas, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

5.

Defendant USA Pools of Houston, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

6.

Defendant USA Pools of New York, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

7.

Defendant USA Pools of North Carolina, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

8.

Defendant USA Pools of Pennsylvania, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

9.

Defendant USA Pools of Tennessee, Inc. is a Georgia Corporation with its principal place of business in Fulton County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

10.

Defendant Chapel Hills Community Association, Inc. is a Georgia Corporation with its principal place of business in Douglas County, Georgia. Said Defendant is subject to the

jurisdiction of this Court, venue is proper, and it may be served with the Summons and Complaint as allowed by law.

11.

Defendant John Doe Corporation (1) is an unknown corporation to Plaintiff at this time. Said Defendant will be identified upon discovery and served with Summons and Complaint as allowed by law.

12.

Defendant John Doe Corporation (2) is an unknown corporation to Plaintiff at this time. Said Defendant will be identified upon discovery and served with the Summons and Complaint as allowed by law.

13.

Defendant Premier Association Management is the management arm of Defendant Chapel Hills Community Association, Inc. and its principal place of business is in Douglas County, Georgia. Said Defendant is subject to the jurisdiction of this Court, venue is proper, and it may be served with Summons and Complaint as allowed by law.

14.

Defendant Stephani R. Clark is a resident of Fulton County, Georgia and is subject to the jurisdiction of this Court, venue is proper, and she may be served with the Summons and Complaint as allowed by law.

15.

Defendant Robert V. Legg is a resident of Cherokee County, Georgia and is subject to the jurisdiction of this Court, venue is proper, and he may be served with the Summons and Complaint as allowed by law.

16.

Defendant Troy A. Legg is a resident of Gwinnett County, Georgia and is subject to the jurisdiction of this Court, venue is proper, and he may be served with the Summons and Complaint as allowed by law.

FACTUAL BACKGROUND

17.

Plaintiffs repeat, reallege, and incorporate by reference, the allegations of Paragraphs 1 through 16 of this Complaint as if repeated herein as Paragraph 17.

18.

Defendant Chapel Hills Community Association, Inc. is responsible for the supervision of Chapel Hills Community Homeowners Association located in Douglasville, Georgia. Defendant Premier Association Management is the property management arm of Defendant Chapel Hills Community Association, Inc.

19.

Defendants Chapel Hills Community Association, Inc. and Premier Association Management hired Defendants USA Pools of Georgia, Inc.; USA Pools Construction, Inc.; USA Pools of Dallas, Inc.; USA Pools of Houston, Inc.; USA Pools of New York, Inc.; USA Pools of North Carolina, Inc.; USA Pools of Pennsylvania, Inc.; and USA Pools of Tennessee, Inc. (hereinafter collectively "USA Pools") to oversee the safety, maintenance and supervision of the pools located in the Chapel Hills Community Subdivision.

20.

Defendants Chapel Hills Community Association, Inc. and Premier Association Management did not provide lifeguard stands or require Defendant USA Pools to employ at

least two lifeguard personnel at each pool location while the pool was open for the community.

21.

Defendants Robert V. Legg and Troy A. Legg intentionally acted on the behalf of Defendant USA Pools when they materially misrepresented to Defendants Chapel Hills Community Association, Inc. and Premier Association Management that Defendant USA Pools was a qualified pool management company with sufficient insurance to indemnify itself in the case of negligence, property damage, or some other insurable event.

22.

Defendant USA Pools has no insurance to insulate the homeowners, itself, and Defendants Chapel Hills Community Association, Inc. and Premier Association Management from any claim arising out of an insurable event.

23.

Defendants Robert V. Legg and Troy A. Legg intentionally misrepresented Defendant USA Pools when they averred to Defendants Chapel Hills Community Association, Inc. and Premier Association Management that Defendant USA Pools had properly trained and qualified lifeguards to protect the members of the Chapel Hills Community Homeowners Association.

24.

Defendants Chapel Hills Community Association, Inc. and Premier Association Management did not independently verify this information and did not monitor, supervise or otherwise oversee the management of the pool operations by Defendant USA Pools, but Defendants Chapel Hills Community Association, Inc. and Premier Association Management did materially rely upon Defendants Robert V. Legg and Troy A. Legg's misrepresentations

when making the decision to hire Defendant USA Pools as the swimming pool management agency.

25.

On July 29, 2007, at approximately 3:45 p.m., Ashton L. Schneider, a minor child of seven years old, who was using the Rosemont swimming pool in the Chapel Hills Community Subdivision, drowned.

26.

Defendant Stephani R. Clark was the lifeguard on duty at the Rosemont swimming pool in the Chapel Hills Community Subdivision. Defendant Stephani A. Clark was working in the line and scope of her employment at the time of the incident.

27.

Defendant Stephani R. Clark was not in a position to observe Ashton L. Schneider in the pool or to see the bottom of the pool because Defendant Stephani R. Clark was monitoring the door for persons entering and leaving the pool and otherwise not paying attention to the children and other persons swimming in the pool.

28.

Defendant Stephani R. Clark did not witness Aston L. Schneider's submersion, and Defendant Stephani R. Clark was not responsible for any lifesaving efforts because Defendants Chapel Hills Community Association, Inc. and Premier Association Management failed to provide Defendant Stephani R. Clark with a lifeguard platform to observe the pool and protect the safety of the swimmers.

29.

Defendant USA Pools failed to properly train and supervise Defendant Stephani R. Clark in proper lifeguarding protocols and lifesaving techniques.

30.

Defendant Stephani R. Clark failed to act and did not provide any lifesaving techniques because she was not paying attention and could not see the pool from her vantage point.

31.

Defendant Stephani R. Clark also failed to employ proper post drowning lifesaving techniques after she became aware of the incident because she was improperly trained and supervised by Defendant USA Pools.

32.

Defendants Chapel Hills Community Association, Inc. and Premier Association Management, Defendant USA Pools and its employee, Defendant Stephani R. Clark, negligently caused and contributed to the drowning of Ashton L. Schneider.

33.

In failing to maintain a safe pool, Defendants were negligent in at least the following particulars:

(a) failing to exercise ordinary and reasonable care in supervising the swimming pool for the homeowners and guests;

(b) failing to keep appropriate and adequate life saving equipment as required by code and reasonable care at the swimming pool;

(c) failing to provide the lifeguard on duty with a clear vantage point of the pool so that a person who went below the surface could be seen and rescued;

(d) failing to have more than one lifeguard on duty at the swimming pool so that one lifeguard could monitor the swimmers and the other could be responsible for entry into the pool premises; and

(e) failing to comply with applicable laws and regulations and safety standards in maintaining a safe premises and swimming pool.

COUNT ONE

(Negligence Against All Defendants)

34.

Plaintiffs repeat, reallege, and incorporates by reference, the allegations of Paragraphs 1 through 33 of this Complaint as if repeated herein as Paragraph 34.

35.

Defendants owed Ashton L. Schneider a duty to reasonably protect the homeowners and guests at the Rosemont swimming pool in the Chapel Hills Community Subdivision.

36.

All Defendants breached that duty by failing to provide a reasonably safe premises by having lifeguard stands or chairs with a clear vantage point of the pool and by failing to have properly trained and staffed lifeguard personnel on the premises.

37.

As a direct and proximate result of the negligence of all Defendants, Ashton L. Schneider suffered a near fatal drowning on June 29, 2007 causing her permanent neuropsychological impairments, cognitive deficits and neurological injury.

38.

As a direct and proximate result of all Defendants' negligent and wrongful conduct, Plaintiffs are entitled to an award of damages for future medical and psychological care once Ashton L. Schneider reaches the age of majority, pain and suffering, emotional anguish, and all other general and special damages available under Georgia law in an amount to be

determined by a jury of her peers all in excess of Five Million Dollars (\$5,000,000.00) against each of the Defendants.

COUNT TWO

(Negligence Against USA Pools)

39.

Plaintiffs repeat, reallege, and incorporate by reference, the allegations of Paragraphs 1 through 37 of this Complaint as if repeated herein as Paragraph 38.

40.

Defendant USA Pools owed Ashton L. Schneider a duty to reasonably protect the homeowners and guests at the Rosemont swimming pool in the Chapel Hills Community Subdivision.

41.

Defendant USA Pools breached that duty to Ashton L. Schneider.

42.

Defendant USA Pools is vicariously liable to Plaintiffs for the negligence of Defendant Stephanie R. Clark because Defendant Stephanie R. Clark was acting in the line and scope of her employment with Defendant USA Pools at the time of the incident.

43.

Defendant USA Pools is also independently liable to Plaintiffs for the negligent hiring, retention, supervision and training of Defendant Stephanie R. Clark at the time of the incident.

44.

As a direct and proximate result of the negligence of Defendant USA Pools, Ashton L. Schneider drowned causing her permanent neuropsychological impairments, cognitive deficits and neurological injury.

45.

As a direct and proximate result of Defendant USA Pool's negligent and wrongful conduct, Plaintiffs are entitled to an award of damages for future medical and psychological care once Ashton L. Schneider reaches the age of majority, pain and suffering, emotional anguish, and all other general and special damages available under Georgia law in an amount to be determined by a jury of her peers all in excess of Five Million Dollars (\$5,000,000.00) against each of the Defendant USA Pools.

COUNT THREE

(Negligence Against Defendants Chapel Hills Community Association, Inc. and Premier Association Management)

46.

Plaintiffs repeat, reallege, and incorporate by reference, the allegations of Paragraphs 1 through 45 of this Complaint as if repeated herein as Paragraph 46.

47.

Defendants Chapel Hills Community Association, Inc. and Premier Association Management owed Ashton L. Schneider a duty to reasonably protect the homeowners and guests at the Rosemont swimming pool in the Chapel Hills Community Subdivision.

48.

Defendants Chapel Hills Community Association, Inc. and Premier Association Management breached that duty to Ashton L. Schneider.

49.

Specifically, Defendants Chapel Hills Community Association, Inc. and Premier Association Management failed to provide lifeguard chairs, appropriate lifesaving devices and require Defendant USA Pools to employ proper staffing levels to safely and reasonable perform their duties to the invitees to the Rosemont swimming pool.

50.

As a direct and proximate result of the negligence of Defendants Chapel Hills Community Association, Inc. and Premier Association Management, Ashton L. Schneider drowned causing her permanent neuropsychological impairments, cognitive deficits and neurological injury.

51.

As a direct and proximate result of Defendants Chapel Hills Community Association, Inc. and Premier Association Management's negligent and wrongful conduct, Plaintiffs are entitled to an award of damages for future medical and psychological care once Ashton L. Schneider reaches the age of majority, pain and suffering, emotional anguish, and all other general and special damages available under Georgia law in an amount to be determined by a jury of her peers all in excess of Five Million Dollars (\$5,000,000.00) against Defendants Chapel Hills Community Association, Inc. and Premier Association Management.

COUNT FOUR

(Negligence Against Defendant Stephani R. Clark)

52.

Plaintiffs repeat, reallege, and incorporates by reference, the allegations of Paragraphs 1 through 50 of this Complaint as if repeated herein as Paragraph 51.

53.

Defendant Stephani R. Clark owed Ashton L. Schneider a duty to reasonably protect the homeowners and guests at the Rosemont swimming pool in the Chapel Hills Community Subdivision.

54.

Defendant Stephani R. Clark breached that duty to Ashton L. Schneider.

55.

As a direct and proximate result of the negligence of Defendant Stephani R. Clark, Ashton L. Schneider drowned causing her permanent neuropsychological impairments, cognitive deficits and neurological injury.

56.

As a direct and proximate result of Defendant Stephani R. Clark's negligent and wrongful conduct, Plaintiffs are entitled to an award of damages for future medical and psychological care once Ashton L. Schneider reaches the age of majority, pain and suffering, emotional anguish, and all other general and special damages available under Georgia law in an amount to be determined by a jury of her peers all in excess of Five Million Dollars (\$5,000,000.00) against Defendant Stephani R. Clark.

COUNT FIVE

(Fraud Against Defendants Robert V. Legg and Troy A. Legg)

57.

Plaintiffs repeat, reallege, and incorporates by reference, the allegations of Paragraphs 1 through 56 of this Complaint as if repeated herein as Paragraph 57.

58.

Defendants Robert V. Legg and Troy A. Legg intentionally and willfully misrepresented that their corporations, Defendant USA Pools, were a qualified pool management company with sufficient insurance to protect the public and Chapel Hills Community Homeowners Association from liability arising out of an insurable event.

59.

Defendants Robert V. Legg and Troy A. Legg intentionally and willfully provided Defendants Chapel Hills Community Association, Inc. and Premier Association Management with false proof of insurance to obtain the contract to provide pool services to Chapel Hills Community Subdivision.

60.

Defendants Robert V. Legg and Troy A. Legg intentionally and willfully misrepresented to the public at large and continue to misrepresent to the public at large that Defendant USA Pools carries Five Million Dollars (\$5,000,000.00) of combined insurance coverage extending a total of Fifteen Million Dollars (\$15,000,000.00) in liability insurance to the entities, cities, municipalities or otherwise that engage their services for pool management and maintenance.

61.

Defendants Robert V. Legg and Troy A. Legg knew their misrepresentations were false but willfully made them in order to induce the members of the Chapel Hills Community Homeowners Association, of which Plaintiffs are a member, to rely upon said inducements.

62.

Plaintiffs, as members of the Chapel Hills Community Homeowners Association, and Defendants Chapel Hills Community Association, Inc. and Premier Association Management

reasonably relied upon these inducements to their detriment because Defendant USA Pools has no insurance that covers them for insurable events arising out of their duties as a pool management service.

63.

As a direct and proximate result of Defendants Robert V. Legg and Troy A. Legg's intentional and willful misrepresentations, Plaintiffs are entitled to an award of damages for future medical and psychological care once Ashton L. Schneider reaches the age of majority, pain and suffering, emotional anguish, and all other general and special damages available under Georgia law in an amount to be determined by a jury of her peers all in excess of Five Million Dollars (\$5,000,000.00) against Defendants Robert V. Legg and Troy A. Legg, individually.

COUNT SIX

(Piercing Corporate Veil of Defendant USA Pools)

64.

Plaintiffs repeat, reallege, and incorporates by reference, the allegations of Paragraphs 1 through 63 of this Complaint as if repeated herein as Paragraph 64.

65.

Defendants Robert V. Legg and Troy A. Legg are the officers, directors and the members of the board of Defendant USA Pools.

66.

Defendants Robert V. Legg and Troy A. Legg allowed a collection of pool management and construction entities to operate without insurance.

67.

Defendants Robert V. Legg and Troy A. Legg also allowed Defendant USA Pools to be undercapitalized, and they have participated in - or at least have imputable knowledge of - actions to keep USA Pools undercapitalized and to acquire assets, dispose of assets, obscure income and commingle funds in order to prevent Plaintiffs or any other person, city, municipality or entity from satisfying any judgment.

68.

Where officers of a corporation “over-extend [their] privilege in the use of a corporate entity in order to defeat justice, perpetuate fraud or to evade contractual or tort responsibility,” Georgia law authorizes the piercing of the corporate veil to attach liability to those officers. Jenkins v. Judith Sans Intl., 175 Ga. App. 171, 332 S.E.2d 687 (1985).

69.

Based on that principle, Plaintiffs are entitled to pierce the corporate veil of Defendant USA Pools and enforce the judgment entered against Defendant USA Pools in this case against the officers of Defendant USA Pools, Defendants Robert V. Legg and Troy A. Legg, in their individual capacity.

COUNT SEVEN

(Punitive Damages Against Defendants Robert V. Legg and Troy A. Legg)

70.

Plaintiffs repeat, reallege, and incorporates by reference, the allegations of Paragraphs 1 through 69 of this Complaint as if repeated herein as Paragraph 70.

71.

The conduct of Defendants Robert V. Legg and Troy A. Legg in purposefully and intentionally misrepresenting to the Plaintiffs and Defendants Chapel Hills Community

Association, Inc. and Premier Association Management that Defendant USA Pools had adequate insurance to manage the swimming pools in the Chapel Hills Community Subdivision showed willful misconduct, malice, fraud, wantonness, oppression, or that entire want of care that would raise the presumption of conscious indifference to the consequences entitling the Plaintiffs to recover punitive damages pursuant to O.C.G.A. § 51-13-5.1.

72.

Plaintiffs are entitled to recovery against Defendants Robert V. Legg and Troy A. Legg for their wrongful conduct such punitive damages that will punish and deter similar conduct, all in an amount to be determined by a jury of Plaintiffs' peers, in an amount in excess of Ten Million Dollars (\$10,000,000.00).

WHEREFORE, Plaintiffs pray for the following:

- (a) That service of process issue upon the Defendants as provided by law;
- (b) That Plaintiffs recover from Defendants general and special damages in an amount to be determined by a jury of her peers all in excess of Five Million Dollars (\$5,000,000.00);
- (c) That Plaintiffs pierce the corporate veil of Defendant USA Pools and recover their judgment against same from Defendants Robert V. Legg and Troy A. Legg, individually;
- (d) That Plaintiffs recover against Defendants Robert V. Legg and Troy A. Legg for their wrongful conduct such punitive damages that will punish and deter similar conduct, all in an amount to be determined by a jury of Plaintiffs' peers, in an amount in excess of Ten Million Dollars (\$10,000,000.00); and
- (e) That Plaintiffs have such other and further relief as this Honorable Court deems just and proper under the circumstances.

This 14th day of November, 2011.

Respectfully submitted,

JASON T. SCHNEIDER, P.C.

/s/ Jason T. Schneider
JASON T. SCHNEIDER
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ROBERT M. HAMMERS, JR.
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