

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2022-CP-08-_____

Arnold Freeman, as Personal)
Representative of the Estate of Chad)
Freeman and the Estate of Andrea)
Freeman; and Robin Feiser, as Personal)
Representative of the Estate of Meredith)
Freeman,)

SUMMONS
(Jury Trial Demanded)

Plaintiffs,)

vs.)

Berkeley County,)

Defendant.)

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 15 Middle Atlantic Wharf, Charleston, South Carolina, 29401, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for a judgment by default and the relief demand in the Complaint.

THURMOND KIRCHNER & TIMBES, P.A.

s/ Christopher C. Romeo

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May 31, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO. 2022-CP-08-_____
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Arnold Freeman, as Personal	)	
Representative of the Estate of Chad	)	
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Freeman; and Robin Feiser, as Personal	)	
Representative of the Estate of Meredith	)	
Freeman,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
Berkeley County,	)	
	)	
Defendant.	)	

COMPLAINT
(Jury Trial Demanded)

Plaintiffs, by and through their undersigned counsel, complaining of the above-named Defendant, would respectfully show unto this Honorable Court the following:

PARTIES, JURISDICTION, AND VENUE

1. That the Plaintiff, Arnold Freeman, is the father of the decedent, Chad Freeman, and is the duly appointed and acting Personal Representative of the Estate of Chad Freeman, deceased; and resides in the County of Berkeley, State of South Carolina.
2. That the Plaintiff, Arnold Freeman, is the father-in-law of the decedent, Andrea Freeman, and is the duly appointed and acting Personal Representative of the Estate of Andrea Freeman, deceased.
3. That the Plaintiff, Robin Feiser, is the son-in-law of the decedent, Meredith Freeman, and is the duly appointed and acting Personal Representative of the Estate of Meredith Freeman, deceased; and resides in the County of Charleston, State of South Carolina.

4. That the Defendant Berkeley County (“Berkeley County”) is a political subdivision of the State of South Carolina and an entity subject to suit pursuant to S.C. Code Ann. §15-78-10 *et seq.* (“South Carolina Tort Claims Act” hereinafter “SCTCA”).
5. That, upon information and belief, Berkeley County is a governmental entity charged with the duties of: (1) issuing, denying, or revoking any permit, license, certificate of approval, or similar authority relating to road construction, landscape design and installation along roadways; (2) maintaining its roadways and medians on or around Nexton Parkway; and (3) keeping those public roadways, including the rights-of-way and intersections, reasonably safe for use and travel by the road users.
6. That, upon information and belief, at all times mentioned herein, Berkeley County acted by and through its employees and/or agents who themselves were acting within the course and scope of their official duties, employment and/or agency relationship.
7. That under the doctrine of respondeat superior, master/servant and principal/agent, Berkeley County is liable for the torts of its agents, servants and/or employees in the same manner and to the same extent as a private individual under like circumstances.
8. That, upon information and belief, at all times mentioned herein, Berkeley County had the right and/or power to direct and control the manner in which its agents, servants and/or employees performed work on, around, and with regard to Nexton Parkway in Berkeley County, South Carolina.
9. That this action is brought pursuant to the SCTCA.
10. That one or more separate and distinct events giving rise to this action took place in Berkeley County, South Carolina.

11. That this Court has jurisdiction over the parties and matters in controversy, and venue is proper in Berkeley County.

OCCURRENCES

12. The SCTCA is the predicate statutory authority for the number of caps to be imposed by any person or entity against a SCTCA entity.

13. In relevant part, regarding limitations of liability under the SCTCA, S.C. Code Ann. § 15-78-120, provides as follows:

- a. For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:
 - i. Except as provided in § 15-78-120(a)(3)¹, no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.
 - ii. Except as provided in § 15-78-120(a)(4)², the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

14. Under S.C. Code Ann. § 15-78-30: “Occurrence” is defined as “an unfolding sequence of events which proximately flow from a single act of negligence.”

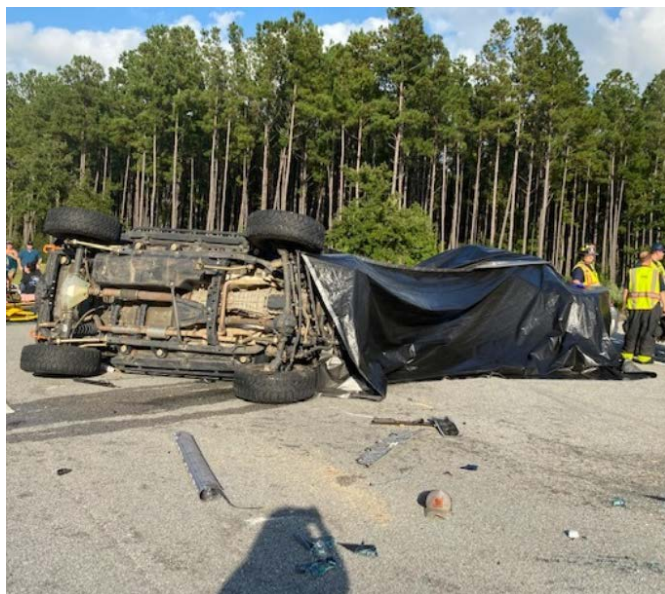
¹ The exception only applies to licensed physicians and dentists employed by a governmental entity and actions within the scope of his profession, which does not apply to this case.

² See Footnote 1.

15. Each act of negligence, gross negligence, recklessness, and/or willful and wanton conduct by any person employed by Berkeley County is an act or occurrence in regard to the SCTCA.
16. This claim is also commenced against Berkeley County for the separate and distinct actions or inactions of certain divisions or agencies which propound or promulgate policies and procedures to ensure safe roadways for the motoring public.
17. Upon information and belief, there are multiple separate and distinct acts of negligence by one or more divisions or agencies in this case, and each separate and distinct act of negligence (occurrence) can be stacked to create a number of different “caps” (ultimately depending on a jury’s decision).

FACTUAL ALLEGATIONS

18. Plaintiffs incorporate the foregoing paragraphs, except where inconsistent, as if fully restated herein verbatim.
19. That on or about October 11, 2020, decedents, traveling in the same vehicle, were proceeding to turn left from Nexton Parkway onto Brighton Park Boulevard (“the intersection”) in Berkeley County when a vehicle traveling from the opposite direction on Nexton Parkway collided with the decedents’ vehicle, ultimately causing the decedents’ deaths.



Photograph of the scene post-collision

20. That at the time there was no traffic light/signal or roundabout at the intersection, and there was a curve immediately prior to the intersection when traveling from the direction of I-26.
21. That vegetation in the median of Nexton Parkway interfered with traffic visibility and impaired standard sight distance at the intersection.



Photograph of the subject median

22. That these factors, independently and/or in combination, created a hazardous/dangerous condition, such that decedent driver, Chad Freeman, had an obstructed view of oncoming traffic and an inadequate sight distance.
23. That the view of the driver traveling from the opposite direction was also obstructed for the same reasons.
24. That, upon information and belief, Berkeley County allowed, and did not correct, the vegetation in the medians on Nexton Parkway, including the median near the subject intersection.
25. That, upon information and belief, Berkeley County is supposed to follow the standards and guidelines of the South Carolina Department of Transportation and other industry standards for maintaining safe roadways and preventing the existence of hazardous/dangerous conditions.

26. That, upon information and belief, the vegetation in the median on Nexton Parkway violated South Carolina Department of Transportation's standards and guidelines, as well as other industry standards.
27. That, upon information and belief, Berkeley County owns and maintains this area and knew or should have known of the hazardous/dangerous condition on Nexton Parkway prior to the time of decedents' collision on October 11, 2020.
28. That, upon information and belief, Berkeley County failed to remedy this condition within a reasonable time after having actual or constructive notice of this condition.
29. That the failures at this intersection posed a severe safety hazard to the motoring public, described as a "pray and go" situation, which Berkeley County was or should have been fully aware of, and failed to correct.

FOR A FIRST CAUSE OF ACTION
(Negligence/Gross Negligence)

30. Plaintiffs incorporate the foregoing paragraphs, except where inconsistent, as if fully restated herein verbatim.
31. That decedents were members of the motoring public and Nexton Parkway is a public roadway in Berkeley County.
32. That Berkeley County had a duty to ensure that Nexton Parkway was maintained in a safe and proper manner, and breached its duty to the decedents and was thereby negligent, grossly negligent, careless, reckless and acted in violation of the duties owed to the decedents in that it committed or omitted one or more of the following acts:
- a. In allowing vegetation, such as trees, shrubs, etc., in a location that interferes with roadway safety, traffic visibility, and impairs standard sight distance;

- b. In allowing the vegetation to exist in the medians on Nexton Parkway when Defendant knew or should have known that such vegetation presented a danger to the motoring public, specifically at the subject intersection;
- c. In failing to maintain the roadway to provide visibility of oncoming traffic and standard sight distance at the subject intersection;
- d. In allowing for an unreasonably dangerous intersection and road condition;
- e. In failing to use due diligence by regularly inspecting and/or maintaining roadsides and medians to discover the existence of vegetation that interfered with roadway safety, traffic visibility, and impaired standard sight distance;
- f. In failing to correct the unreasonably dangerous intersection and hazardous condition within a reasonable time after having notice of same and the opportunity to correct same;
- g. In failing to warn traveling motorists, including decedents, of the dangerous and hazardous conditions of the intersection;
- h. In failing to provide a traffic light/signal at the subject intersection;
- i. In failing to provide a traffic roundabout at the location;
- j. In failing to maintain the roadway and medians to avoid risk of injury to motorists;
- k. In failing to adhere to the appropriate standards concerning roadway safety, traffic visibility, sight distances, and roadside landscaping; and in failing to correct those problems when the Defendant knew or should have known of same and had the opportunity to correct same;
- l. In failing to provide reasonably safe conditions for public travel;
- m. In failing to act as a reasonable person or agency charged with the duty of inspecting and maintaining roadsides, medians, and roadways would have acted under the same or similar circumstances;
- n. In failing to act as a reasonable person or agency charged with the duty of permitting the construction of safe roadways would have acted under the same or similar circumstances;
- o. In failing to use the degree of care and caution that a reasonably prudent person or agency would have exercised under the conditions then and there existing;
- p. In failing to provide proper and necessary supervision and monitoring to ensure that its agents, servants and/or employees performed their duties in a proper manner;
- q. In hiring and retaining agents, servants and/or employees when it knew or should have known said individuals were unable to conduct themselves properly in the capacity of their employment;

- r. In violating the laws, statutes, regulations, and/or ordinances of the State of South Carolina;
 - s. In violating industry standards; and
 - t. In such other ways as the evidence may show.
33. Defendant's negligence, gross negligence, recklessness, willfulness, and wantonness was the direct and proximate cause of the decedents' fatal injuries and damages.

FOR A SECOND CAUSE OF ACTION
(Negligence – Wrongful Death)

34. Plaintiffs incorporate the foregoing paragraphs, except where inconsistent, as if fully restated herein verbatim.
35. As a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and departure from the standards of care by Defendant, the decedents suffered from fatal injuries which resulted in their deaths, as a result of which the decedents' statutory beneficiaries have lost the aid, comfort, support, society, and companionship of the decedents, and have suffered economic loss as well as severe and extreme emotional distress, anxiety, grief and sorrow, the likes of which no person should endure, for which the Plaintiffs are entitled to recover on behalf of the statutory beneficiaries, and actual and punitive damages pursuant to S.C. Code Ann § 15-51-10, *et seq.* (1976, as amended) in an amount to be determined by a jury at the trial of this action.

FOR A THIRD CAUSE OF ACTION
(Negligence – Survivorship)

36. Plaintiffs incorporate the foregoing paragraphs, except where inconsistent, as if fully restated herein verbatim.

37. The Plaintiffs are further informed and believe that as a direct and proximate result of the negligence, gross negligence, carelessness and recklessness of the Defendant, the decedents suffered fear, physical pain and suffering, mental and emotional distress, and anguish at the time before their deaths, for which the decedents' estates are entitled to an award of actual and punitive damages pursuant to S.C. Code Ann § 15-5-90 (1976, as amended) in an amount to be determined by a jury at the trial of this action.

WHEREFORE, Plaintiffs pray for judgment against Defendant in an amount to be determined by the trier of facts, for actual and punitive damages, for the costs of this action and for such other and further relief as this Honorable Court deems just and proper.

Respectfully submitted,

THURMOND KIRCHNER & TIMBES, P.A.

s/Christopher C. Romeo

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