

IN THE CIRCUIT COURT COLE COUNTY, MISSOURI
AT JEFFERSON CITY

ROSS SCHRIMPF, and
TERESA SCHRIMPF
Plaintiffs,
v.
F & F DEVELOPMENT, LLC,
HORIZON COMPANY, LLC, and
KYLE RIMEL
Defendants.

Case No.: _____

PLAINTIFFS' PETITION FOR DAMAGES

COME NOW Plaintiffs Ross Schrimpf and Teresa Schrimpf, by and through their attorneys of record, and for their claims and causes of action against Defendants F & F Development, LLC, Horizon Company, LLC, and Kyle Rimel hereby state as follows:

GENERAL ALLEGATIONS

- 1. Plaintiffs Ross Schrimpf and Teresa Schrimpf are the surviving parents of Jacob Schrimpf. No other class one heirs survive him.
2. Defendant F & F Development, LLC (hereinafter "F & F") is a Missouri for profit limited liability corporation organized under the laws of the State of Missouri. F & F can be served summons on its registered agent, John Sheehan, by the Cole County Sheriff's Department at 221 Bolivar Street, Ste. 400, Jefferson City, MO 65101.
3. F & F specializes in owning, operating, leasing and maintaining real estate.
4. Defendant Horizon Company, LLC (hereinafter "Horizon") is a Missouri for profit limited liability corporation organized under the laws of the State of Missouri. Horizon

can be served summons on its registered agent, John Sheehan, by the Cole County Sheriff's Department at 221 Bolivar Street, Ste. 400, Jefferson City, MO 65101.

5. Defendant Horizon specializes in commercial construction.

6. Defendant Kyle Rimel (hereinafter "Rimel") is a Missouri resident. Rimel can be served summons by the Lincoln County Sheriff's Department at his residence 200 Maple Street, Elsberry, MO 63343.

7. Venue is proper in Cole County as the location where Plaintiff was first injured by the tortious acts and/or omissions of Defendants.

8. In January, 2020, a Courtyard by Marriott was being constructed in the 500 Block of Missouri Boulevard in Jefferson City, Missouri.

9. This property was owned and controlled by F & F.

10. Schrimpf Landscaping was a subcontractor on the building site, hired to erect a retaining wall out of stone blocks, which ranged in size and weight.

11. Jacob Schrimpf was employed as a laborer for Schrimpf Landscaping.

12. Rimel was an employee of Schrimpf Landscaping and foreman in charge of the retaining wall project.

13. Prior to construction of the retaining wall, F & F and/or Horizon made the decision to use Rosetta brand blocks.

14. F & F and/or Horizon designed the wall and provided the plans to the owner of Schrimpf Landscaping, Steve Schrimpf.

15. The wall plans and the Rosetta Outcropping Collection Installation Manual ("Manual") was given to the project foreman, Rimel.

16. The Manual provides, “For safety reasons, do not stack wall stones more than two feet high before backfilling.”

17. On January 28, 2020, Jacob Schrimpf was instructed to get between the partially erected wall and the earth and spread the backfill material.

18. The block wall collapsed inward on top of Jacob Schrimpf, burying him. Jacob Schrimpf died of asphyxiation at the project site.

COUNT I – PREMISES LIABILITY
(As to F & F)

19. Plaintiffs incorporate by reference paragraphs 1-18 as if fully set forth herein.

20. As the owner of the property, F & F had a duty to use ordinary care to prevent injury to invitees, including Jacob Schrimpf.

21. F & F retained possession and control of the property throughout the course of the project.

22. F & F, by and through its agents and/or employees, had substantial involvement in overseeing the construction project and exercised control over the details of the manner in which work was done.

23. F & F knew or could have known that the stone blocks were being stacked at an unsafe height without the necessary backfill to secure the wall.

24. Defendant F & F, by and through its agents and/or employees, knew or could have known of this dangerous condition and that such condition was not reasonably safe.

25. F & F breached its duty of care to Jacob Schrimpf insofar as it permitted dangerous conditions to exist at the work site, presenting an unreasonable risk of harm to their employees, contractors and agents, including Jacob Schrimpf.

26. Defendant F & F was negligent in one or more of the following ways:

(a) Failed to use ordinary care to remedy, barricade, guard against or warn about the dangerous condition presented by the unstable and unsecured stone blocks;

(b) Failed to carefully inspect the premises to look for the dangerous condition presented by the unstable and unsecured stone blocks;

(c) Allowed the unstable and unsecured stone blocks to remain on the premises where workers would be present.

27. Defendant F & F's negligent actions and choices as set forth in the preceding paragraph directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries that resulted in his death.

28. Defendant F & F's negligence directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries, including, multiple abrasions and contusions, rib fractures, and asphyxiation. Jacob Schrimpf experienced conscious and severe pain, distress, anguish, loss of function and suffering until his death. Claims for said injuries and damages survive him through his Class One heirs, pre RSMO section 537.090.

29. As a direct result of the loss of their son, Plaintiffs Ross and Teresa Schrimpf lost companionship, comfort, care, emotional support, guidance and counsel and suffered pecuniary losses.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant F & F for compensatory damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

COUNT II – PREMISES LIABILITY
(As against Horizon)

30. Plaintiffs incorporate by reference paragraphs 1-18 above as if set forth wholly herein.

31. As the owner of the property, Horizon had a duty to use reasonable and ordinary care to prevent injury to invitees, including Jacob Schrimpf.

32. Horizon retained or shared in the possession and control of the property throughout the course of the project.

33. Horizon, by and through its agents and/or employees, had substantial involvement in overseeing the construction project and exercised or shared control over the details of the manner in which work was done.

34. Horizon knew or could have known that the stone blocks were being stacked at an unsafe height without the necessary backfill to secure the wall.

35. Defendant Horizon, by and through its agents and/or employees, knew or could have known of this dangerous condition and knew that such condition was not reasonably safe.

36. Horizon breached its duty of care to Jacob Schrimpf insofar as it permitted dangerous conditions to exist at the work site, presenting an unreasonable risk of harm to their employees, contractors and agents, including Jacob Schrimpf.

37. Defendant Horizon was negligent in one or more of the following ways:

(a) Failed to use ordinary care to remedy, barricade, guard against or warn about the dangerous condition presented by the unstable and unsecured stone blocks;

(b) Failed to carefully inspect the premises to look for the dangerous condition presented by the unstable and unsecured stone blocks;

(c) Allowed the unstable and unsecured retaining stone blocks to remain on the premises where workers would be present.

38. Defendant Horizon's negligent actions and choices as set forth in the preceding paragraph directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries that resulted in his death.

39. Defendant Horizon's negligence directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries, including, multiple abrasions and contusions, rib fractures, and asphyxiation. Jacob Schrimpf experienced conscious and severe pain, distress, anguish, loss of function and suffering until his death. Claims for said injuries and damages survive him through his Class One heirs, pre RSMO section 537.090.

40. As a direct result of the loss of their son, Plaintiffs Ross and Teresa Schrimpf lost companionship, comfort, care, emotional support, guidance and counsel and suffered pecuniary losses.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant Horizon for compensatory damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

COUNT III – INHERENTLY DANGEROUS ACTIVITY

(As to F & F)

41. Plaintiffs incorporate by reference paragraphs 1 through 29 as if fully set forth herein.

42. The retaining wall project was inherently dangerous either alone or in combination with each other, in one, more or all of the following particulars:

(a) The method, manner, and means of construction of the retaining wall required

that workers be located between the massive stone blocks and the earth in order to shore up the stones;

(b) The method, manner and means of construction of the retaining wall required a level of advanced skill and competency which was lacking in the landscape subcontractor;

(c) The method, manner and means of construction of the retaining wall required a degree of experience which was sorely lacking in the landscape subcontractor;

(d) The dangers of the method, manner and means of construction of the retaining wall required skilled safety engineering supervision which was not present nor provided for by those who owned or controlled the premises;

(e) The safe construction of the retaining wall with the concrete stone blocks required ongoing and onsite engineering analysis which the landscape subcontractor was incompetent to provide;

(f) The design of the stone concrete blocks used in the retaining wall, required by those who owned or controlled the premises at the time of construction, was inherently unsafe in that the center of gravity of the wall continued to shift back towards the earth, yet the directions given specifically provided for unprotected workers to be between the concrete stones and the earth;

(g) The means, manner and method of construction of the retaining wall was inherently unsafe in that there was no method provided for securing the wall during construction from the front of the wall;

(h) The concrete stones required the use of a special adaptor added to the

fronthauler in order to properly and safely place the concrete stones, the adaptor was provided by the stonemaker, but the training and testing of the operator of the fronthauler was not provided nor provided for.

43. Defendant F & F's negligent actions and choices as set forth in the preceding paragraph directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries that resulted in his death.

44. Defendant F & F's negligence directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries, including, multiple abrasions and contusions, rib fractures, and asphyxiation. Jacob Schrimpf experienced conscious and severe pain, distress, anguish, loss of function and suffering until his death. Claims for said injuries and damages survive him through his Class One heirs, pre RSMO section 537.090.

45. As a direct result of the loss of their son, Plaintiffs Ross and Teresa Schrimpf lost companionship, comfort, care, emotional support, guidance and counsel and suffered pecuniary losses.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant F & F for compensatory damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

COUNT IV – NEGLIGENT HIRING
(As to F & F)

46. Plaintiffs incorporate by reference paragraphs 1 through 29 and 41 through 45 as if fully set forth herein.

47. F & F, by and through its agents and/or employees, had a duty to exercise reasonable care in hiring a skilled and competent independent contractor to construct the stone retaining wall.

48. F & F breached its duty in one, more or all of the following particulars:

(a) Hired a subcontractor that did not possess the skill necessary for constructing a large stone retaining wall;

(b) Hired a subcontractor that lacked the requisite level of competency for constructing a large stone retaining wall;

(c) Hired a subcontractor that lacked the degree of experience needed for constructing a stone retaining wall.

49. Defendant F & F's negligent actions and choices as set forth in the preceding paragraphs directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries that resulted in his death.

50. Defendant F & F's negligence directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries, including, multiple abrasions and contusions, rib fractures, and asphyxiation. Jacob Schrimpf experienced conscious and severe pain, distress, anguish, loss of function and suffering until his death. Claims for said injuries and damages survive him through his Class One heirs, pre RSMO section 537.090.

51. As a direct result of the loss of their son, Plaintiffs Ross and Teresa Schrimpf lost companionship, comfort, care, emotional support, guidance and counsel and suffered pecuniary losses.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant F & F for compensatory damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

COUNT V – INHERENTLY DANGEROUS ACTIVITY

(As against Horizon)

52. Plaintiffs incorporate by reference paragraphs 1 through 18 and 30 through 40 as if fully set forth herein.

53. The retaining wall project was inherently dangerous either alone or in combination with each other, in one, more or all of the following particulars:

(a) The method, manner, and means of construction of the retaining wall required that workers be located between the massive stone blocks and the earth in order to shore up the stones;

(b) The method, manner and means of construction of the retaining wall required a level of advanced skill and competency which was lacking in the landscape subcontractor;

(c) The method, manner and means of construction of the retaining wall required a degree of experience which was sorely lacking in the landscape subcontractor;

(d) The dangers of the method, manner and means of construction of the retaining wall required skilled safety engineering supervision which was not present nor provided for by those who owned or controlled the premises;

(e) The safe construction of the retaining wall with the concrete stone blocks required ongoing and onsite engineering analysis which the landscape subcontractor was incompetent to provide;

(f) The design of the stone concrete blocks used in the retaining wall, required by those who owned or controlled the premises at the time of construction, was inherently unsafe in that the center of gravity of the wall continued to shift back towards the earth, yet the directions

given specifically provided for unprotected workers to be between the concrete stones and the earth;

(g) The means, manner and method of construction of the retaining wall was inherently unsafe in that there was no method provided for securing the wall during construction from the front of the wall;

(h) The concrete stones required the use of a special adaptor added to the fronthauler in order to properly and safely place the concrete stones, the adaptor was provided by the stonemaker, but the training and testing of the operator of the fronthauler was not provided nor provided for.

54. Defendant Horizon's negligent actions and choices as set forth in the preceding paragraphs directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries that resulted in his death.

55. Defendant Horizon's negligence directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries, including, multiple abrasions and contusions, rib fractures, and asphyxiation. Jacob Schrimpf experienced conscious and severe pain, distress, anguish, loss of function and suffering until his death. Claims for said injuries and damages survive him through his Class One heirs, pre RSMO section 537.090.

56. As a direct result of the loss of their son, Plaintiffs Ross and Teresa Schrimpf lost companionship, comfort, care, emotional support, guidance and counsel and suffered pecuniary losses.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant Horizon for compensatory damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

COUNT VI – NEGLIGENT HIRING
(As to Horizon)

57. Plaintiffs incorporate by reference paragraphs 1 through 18, 30 through 40 and 52 through 56 as if fully set forth herein.

58. Horizon by and through its agents and/or employees, had a duty to exercise reasonable care in hiring a skilled and competent independent contractor to construct the stone retaining wall.

59. Horizon breached its duty in one, more or all of the following particulars:

(a) Hired a subcontractor that did not possess the skill necessary for constructing a large stone retaining wall;

(b) Hired a subcontractor that lacked the requisite level of competency for constructing a large stone retaining wall;

(c) Hired a subcontractor that lacked the degree of experience needed for constructing a stone retaining wall.

60. Defendant Horizon's negligent actions and choices as set forth in the preceding paragraphs directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries that resulted in his death.

61. Defendant Horizon's negligence directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries, including, multiple abrasions and contusions, rib fractures, and asphyxiation. Jacob Schrimpf experienced conscious and severe pain, distress, anguish, loss of function and suffering until his death. Claims for said injuries and damages survive him through his Class One heirs, pre RSMO section 537.090.

62. As a direct result of the loss of their son, Plaintiffs Ross and Teresa Schrimpf lost companionship, comfort, care, emotional support, guidance and counsel and suffered pecuniary losses.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant Horizon for compensatory damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

COUNT VII – GENERAL NEGLIGENCE
(As to Defendant Rimel)

63. Plaintiffs incorporate by reference paragraphs 1 through 18 above as if set forth wholly herein.

64. Rimel owed Jacob Schrimpf a personal duty of care, separate and distinct from his employer’s duty.

65. Rimel knew that stacking multiple rows of stone blocks without back fill was unsafe in that the wall would be unstable and at risk for collapsing.

66. Despite knowing of the danger, Rimel instructed the workers to stack blocks multiple feet high before securing the stone block wall with back fill.

67. On the aforementioned date, Rimel instructed Jacob Schrimpf to stand at an area of the wall that did not have the proper amount of back fill necessary to stabilize the stacked stone blocks.

68. Rimel breached his duty of care by purposefully disregarding the installation instructions and instructing Jacob Schrimpf to work in an unsafe and unstable area that created an increased risk of injury to him.

69. Defendant Rimel was negligent in one or more of the following ways:

- (a) Failed to follow the manufacturer's installation instructions;
- (b) Represented to the workers that the method of building the wall was safe;
- (c) Represented to Jacob Schrimpf and other workers that standing behind the unstable wall was safe;
- (d) Failed to secure the wall.

70. Defendant Rimal's affirmative negligent acts caused or contributed to cause Jacob Schrimpf to suffer catastrophic injuries that resulted in his death. Said affirmative negligent acts purposely and dangerously caused or increased the risk of injury.

71. Defendant Rimel's negligence directly caused or directly contributed to cause Jacob Schrimpf to suffer catastrophic injuries, including, multiple abrasions and contusions, rib fractures, and asphyxiation. Jacob Schrimpf experienced conscious and severe pain, distress, anguish, loss of function and suffering until his death. Claims for said injuries and damages survive him through his Class One heirs, pre RSMO section 537.090.

72. As a direct result of the loss of their son, Plaintiffs Ross and Teresa Schrimpf lost companionship, comfort, care, emotional support, guidance and counsel and suffered pecuniary losses.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant Rimel for compensatory damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

COUNT VIII – AGGRAVATING DAMAGES
(As to all Defendants)

73. Plaintiff incorporates by reference paragraphs 1 through 72 above as if set forth wholly herein.

74. Defendants' conduct as set forth herein was in conscious disregard or reckless indifference for the safety of others, including decedent Jacob Schrimpf in that defendants jointly and severally knowingly and consciously exposed Jacob Schrimpf to dangerous work activities, despite knowing that it would markedly increase the risk of injury or even death.

75. Defendants' conduct as set forth herein meets the requisite criteria for clear and convincing evidence of aggravating circumstances surrounding the injury and death of Jacob Schrimpf, thereby justifying a claim for aggravating damages, purposed to deter further such conduct.

WHEREFORE, Plaintiffs Ross and Teresa Schrimpf pray for judgment against Defendant Rimel for aggravating damages, jointly and severally, that are fair and reasonable, and for all such other damages permitted by law, and for their costs incurred herein.

Respectfully submitted,

/s/ Roger Johnson

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**JURY TRIAL DEMANDED
ATTORNEY'S LIEN CLAIMED**