

NORTH CAROLINA

ROWAN COUNTY

RONALD BARBER,
individually and as the personal representative of the Estate of
DOROTHY MILDRED CLEVELAND,

Plaintiff,

v.

THE CITADEL SALISBURY LLC,
ACCORDIUS HEALTH LLC,
THE PORTOPICCOLO GROUP LLC,
and SHERRI STOLTZFUS,

Defendants.

FILED IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

No. 22CVS326

2022 FEB 23 P 3:57

ROWAN CO., C.S.C.

COMPLAINT

By and through undersigned counsel, Plaintiff brings this action and alleges:

I. INTRODUCTION.

1. This case arises from Defendants' negligent and reckless disregard of the rights of Ms. Dorothy Mildred Cleveland and her family representative, Mr. Ronald Barber, while Ms. Cleveland was a resident at the Citadel nursing home in Salisbury, NC. Defendants had a duty to advise Mr. Barber of any significant changes in his aunt's condition. However, the facility breached this agreement when it failed to notify Mr. Barber of Ms. Cleveland's COVID-19 diagnosis and further failed to notify Mr. Barber of Ms. Cleveland's death on April 14, 2020. Mr. Barber did not learn of his aunt's death until the day after her death, when he received a call from the funeral home director who had already embalmed Ms. Cleveland's body. This caused shock, surprise and severe emotional distress to Mr. Barber, for which this action is brought.

II. PARTIES.

A. Plaintiff.

2. Plaintiff **Ronald Barber** is a citizen and resident of Salisbury, Rowan County, North Carolina. He is the adult nephew of the decedent, his aunt, Dorothy Mildred Cleveland. Ms. Cleveland was a resident at The Citadel Salisbury nursing home located at 710 Julian Road, Salisbury, Rowan County NC at the time of her death. Mr. Barber was duly appointed the Executor for the Estate of his aunt pursuant to Letters Testamentary issued by the Clerk of Superior Court for Rowan County on April 22, 2020.

B. Defendants.

3. Defendant **The Citadel Salisbury LLC**, d/b/a The Citadel at Salisbury, The Citadel Salisbury, or the Citadel, is a limited liability company organized under North Carolina law, with a principal place of business at 710 Julian Road, Salisbury, NC 28147. It may be served with process at the 710 Julian Road address; at c/o registered agent, Corporate Creations Network, Inc., 15720 Brixham Hill Avenue #300, Charlotte, NC 28277; or at 440 Sylvan Ave., Suite 240, Englewood Cliffs, NJ 07632.

4. The Citadel Salisbury holds a license with the State of North Carolina, Department of Health and Human Services, Division of Health Services Regulation (“NC DHSR”) to operate as a for-profit combination Skilled Nursing Facility (“SNF”) and Adult Care Home (“ACH”) (the “Facility”). The Facility has a total of 160 SNF beds and 20 ACH beds. It holds North Carolina license number NH0441, NPI number 1144868092, and provider number #345115. The sole members and owners of The Citadel Salisbury as an LLC are Defendants Simcha Hyman and Naftali Zanziper, who are individuals who reside in New Jersey.

5. Defendant **Accordius Health LLC** (“Accordius”) is a limited liability company organized under the laws of the State of New York, with its principal office located at 440 Sylvan

Avenue, Suite 240, Englewood Cliffs, NJ 07632. It may be served with process at c/o registered agent, Corporate Creations Network, Inc., 15720 Brixham Hill Avenue #300, Charlotte, NC 28277, or, at its office address at 440 Sylvan Ave, Ste. 240, Englewood Cliffs, NJ 07632. The sole members of Accordius are Simcha Hyman and Naftali Zanziper. Accordius provides management services to the Facility. During the pertinent times, Accordius was directly and materially involved in managing and staffing the Facility. Accordius employed facility administrator Sherri Stoltzfus. Due to its direct role in managing and staffing the Facility, Accordius is jointly and severally liable for the negligence wrongful death claim herein.

6. Defendant **The Portopiccolo Group LLC** (“Portopiccolo”) is a limited liability company organized under New Jersey law. It may be served with process at 440 Sylvan Ave., Suite 240, Englewood Cliffs, NJ 07632; or at 200 Boulevard of the Americas, Suite 105, Lakewood NJ 08701. The sole members of Portopiccolo are Simcha Hyman and Naftali Zanziper. Portopiccolo provides “back-office services” to the Facility and was directly involved in relevant aspects of Facility ownership and operation. During the pertinent times, Portopiccolo was directly and materially involved in making decisions and controlling operations of the Facility. Due to its direct role in all aspects of Facility operations, Portopiccolo is jointly and severally liable for claims alleged herein.

7. Defendant **Sherri Stoltzfus** is an individual who on information and belief maintains a permanent place of residence in Mooresville, Iredell County, North Carolina. She may be served with process at 243 Collingswood Road, Mooresville NC 28117. During some or all of the pertinent times, Ms. Stoltzfus was the licensed Administrator at the Facility.

III. JURISDICTION AND VENUE.

8. This Court has jurisdiction over the parties as they have all had substantial contacts with the State of North Carolina and otherwise meet the criteria for personal jurisdiction.

9. The Court has jurisdiction over the subject matter, in that these are state law claims, the Plaintiffs and one of the Defendants are citizens of North Carolina, and the amount in controversy exceeds the sum of \$25,000, exclusive of interest and costs. Among other things, Defendant Ms. Stoltzfus is a citizen and resident of North Carolina, who at the time of Ms. Cleveland's death was the Administrator of the Citadel Salisbury Facility. *See* North Carolina General Statutes, Chapter 90, Medicine and Allied Occupations, Article 20, Nursing Home Administrator Act, Board Rules, Chapter 37, Board of Nursing Home Administrators; N.C.G.S. § 90-275.1, *et seq.* (Nursing Home Administrator Act); 21 NCAC 37A .0101, *et seq.*

10. Venue is proper in this Court.

VI. BACKGROUND FACTS.

11. Plaintiff Ronald Barber is the Executor for the Estate of the decedent, his aunt, Dorothy Mildred Cleveland (hereinafter "Ms. Cleveland"). Mr. Barber is a lifelong resident of Salisbury, Rowan County, where he resides with his wife and other family members.

12. Ms. Cleveland was first admitted to the Citadel Salisbury skilled nursing facility on January 2, 2019. Prior to admission to the facility, Ms. Cleveland was living alone at her home in Salisbury where she had resided for over thirty years. During this time, Mr. Barber was Ms. Cleveland's primary care giver and responsibly party. They were extremely close.

13. Due to ongoing medical conditions that limited her mobility, in January 2019, Mr. Barber and his wife made the decision to move Ms. Cleveland into the Citadel skilled nursing facility so that she could receive daily medical care.

14. When Ms. Cleveland was admitted to the Citadel on January 2, 2019, Mr. Barber completed a “Resident Representative Designation” form and provided the facility with a Power of Attorney document which confirmed his authority to act on his aunt’s behalf. Thereafter, Mr. Barber signed the facility’s admission agreement and acknowledged receipt of the facility’s admission packet, which included a document labeled, “Information and rights for patients and residents.”

15. The resident rights document provided, among other things, that Mr. Barber, as Ms. Cleveland’s surrogate decision maker, would be notified by the facility of any changes in Ms. Cleveland’s condition.

16. On March 26, 2020, Ms. Cleveland was transported to the emergency department with rectal bleeding and pain in her left hip. She was subsequently admitted to the hospital for a gastrointestinal hemorrhage. Thereafter, hospital staff advised Mr. Barber that upon discharge from the hospital, Ms. Cleveland would need hospice care. Mr. Barber then began looking into local hospice facilities that Ms. Cleveland could be transferred to upon discharge from the hospital.

17. Before Ms. Cleveland’s discharge from the hospital, Mr. Barber was contacted by the Citadel Salisbury and was told that Ms. Cleveland could be readmitted to the Citadel facility for hospice care, as it had its own in-house hospice program with rooms set aside for hospice residents. The hospice care was provided by Trellis Hospice Company.

18. Under the impression that Ms. Cleveland would be admitted into a separate wing of the facility designated for hospice care, Mr. Barber agreed to readmit Ms. Cleveland to the Citadel Salisbury on March 31, 2020, after she was discharged from the hospital.

19. As subsequent events would reveal, when Ms. Cleveland was readmitted to the Citadel Salisbury for hospice care, she was admitted into the same room that she previously

occupied, on the general population hall, with the same roommate. Ms. Cleveland was not admitted into her own private room for quarantine in accordance with the applicable CDC Guidance at the time, nor was she admitted into a designated room for hospice patients.

20. Due to restrictions on visitation that were in effect at the time, Mr. Barber was not aware of the fact that Ms. Cleveland was actually readmitted into the same room in the facility, with the same roommate— rather than a different room set aside for hospice residents.

21. On April 10, 2020, the Rowan County Health Department conducted a mass COVID-19 swab testing of the Citadel Salisbury residents. The results revealed that the vast majority of all residents at the facility, including Ms. Cleveland, were positive for COVID-19.

22. Upon learning of the COVID outbreak at the Citadel facility through local news outlets, Mr. Barber called the facility several times seeking an update on his aunt's condition. Unfortunately, he was unable to obtain any information.

23. When the facility failed to provide any information on his aunt's condition, Mr. Barber contacted Trellis hospice in hopes of getting an answer regarding his aunt's condition. However, Trellis hospice informed Mr. Barber that due to infection control protocols, Trellis was no longer permitted to enter the facility to provide Ms. Cleveland with the daily hospice care she needed. Rather, Trellis was only permitted to visit the Citadel facility to provide hospice treatment every 14 days.

24. Upon learning that hospice was not providing daily services to his aunt, Mr. Barber became even more concerned about Ms. Cleveland's health and wellbeing.

25. On or about April 12, 2020, Mr. Barber received a call from a representative of the Citadel. The representative informed Mr. Barber that the facility had one positive case of COVID-19, and that the positive resident had been removed from the facility and transported to the local

hospital. The Citadel representative did not provide any information regarding the health status of Ms. Cleveland, nor did they share any information regarding the health status of employees working at the facility.

26. On April 14, 2020, Ms. Cleveland was found without a heartbeat and respirations at approximately 12:00 pm. Nursing progress notes from this day indicate that Hospice and the funeral home were notified of the death, and the funeral home retrieved Ms. Cleveland's body from the facility at approximately 1:30 pm.

27. The facility had a duty to keep Mr. Barber informed with respect to any changes in Ms. Cleveland's condition.¹ The facility failed to uphold this duty when it neglected to notify Mr. Barber of any of the changes in Ms. Cleveland's condition after she was readmitted to the facility under hospice care on March 31, 2020.

28. Mr. Barber was never notified by the facility that Ms. Cleveland was tested for COVID-19, or that her test result came back positive for COVID-19, nor was he ever informed that his aunt passed away from COVID-19.

29. Mr. Barber was not told of his aunt's death when it occurred on April 14, 2020. Rather, it was not until April 15, 2020 that Mr. Barber learned of his aunt's death when he received a call from James Alexander, the Director for Noble and Kelsey funeral home, who had already retrieved Ms. Cleveland's body and transported it to the funeral home.

30. Mr. Alexander shared with Mr. Barber that this instance was the first time in his thirty-two years in the funeral business that he was the first person to inform a family member that their loved one had died, and the family was not already aware that the death had occurred.

¹ See 42 C.F.R. § 483.10(g)(14)-(15).

31. Upon information and belief, Noble and Kelsey funeral home had already embalmed Ms. Cleveland's body at the time that Mr. Barber learned of her death.

32. Mr. Barber was distraught and suffered severe mental anguish when he learned that the Citadel had contacted Noble and Kelsey funeral home to remove and transport Ms. Cleveland's body to the funeral home without Mr. Barber's knowledge or consent.

33. Despite Mr. Barber's designation as Ms. Cleveland's legal representative and closest relative, the Citadel facility, while obligated to do so, never informed Mr. Barber of his aunt's death or the cause of her death, nor did the facility seek permission to have Ms. Cleveland's body transported to the funeral home.^{2 3}

34. Had Mr. Barber been informed by the facility of his aunt's declining health status before her death, he would have requested an end-of-life compassionate care visit so that he could visit with Ms. Cleveland before her death. The facility's failure to notify Mr. Barber of the changes in Ms. Cleveland's condition meant that Ms. Cleveland had to die in the facility alone, without her closest family member by her side.⁴

35. On or about April 22, 2020, Noble and Kelsey Funeral Home provided Mr. Barber with Ms. Cleveland's death certificate. Among the causes of death listed was "tested positive for COVID-19" with an onset period of three days prior to death.

² In a Statement of Deficiencies dated May 21, 2020, the Citadel facility was cited by North Carolina Division of Health Service Regulation ("NCDHSR") surveyors for noncompliance with 42 C.F.R. § 483.10(g), which requires the facility to notify of changes in residents' condition. Survey report available at <https://info.ncdhhs.gov/dhsr/facilities/nh/2020/20200623-923354.pdf>. (On information and belief, findings pertaining to Resident #2 concern Ms. Cleveland, *see* pages 6 – 10).

³ When interviewed by state surveyors regarding the facility's failure to notify Mr. Barber of his aunt's death, facility administrator, Sherri Stoltzfus, admitted that it was the responsibility of the facility to notify responsible parties of any changes to a resident's condition, including death. *See id.* at 10.

⁴ Despite restrictions on nursing home visitation during the public health emergency, CMS made it very clear in guidance documents that nursing facilities must allow end-of-life "compassionate care" visits by family members for residents that are nearing death. *See* CMS Guidance dated March 13, 2020, <https://www.cms.gov/files/document/qso-20-14-nh-revised.pdf>.

36. The facility had a duty to notify Mr. Barber of his aunt's positive COVID-19 diagnosis at the time in which it was confirmed, which upon information and belief was three days prior to her death. The facility also had a duty to notify Mr. Barber of his aunt's death, which constitutes a significant change in condition pursuant to 42 C.F.R. § 483.10(g).

37. Furthermore, the Citadel knowingly concealed the fact that Ms. Cleveland had tested positive for COVID-19 from Mr. Alexander, the director for Noble and Kelsey funeral home, when the facility called to have Mr. Alexander retrieve her body from the facility.

38. North Carolina law recognizes that the next of kin has a quasi-property right in the body – not property in the commercial sense but a right of possession for the purpose of burial – and that there arises out of this relationship to the body an emotional interest which should be protected and which others have a duty not to injure intentionally or negligently. *See Parker v. Quinn-McGowen Co.*, 262 N.C. 560, 561, 138 S.E.2d 214, 215 (1964).

39. It is generally recognized that the surviving spouse, if there is one, or the next of kin of a deceased, is entitled to immediate possession of the body, in the same condition in which it was at the time of death, for the purposes of arranging for final disposition of the remains. *See, e.g., Floyd v. Atlantic Coast Line Ry. Co.*, 167 N.C. 55, 83 S.E. 12 (1914); *Parker v. Quinn-McGowen Co.*, 262 N.C. 560, 138 S.E.2d 214 (1964) (citing *Bonaparte v. Fraternal Funeral Home*, 206 N.C. 652, 175 S.E.137 (1934)). The rights of one legally entitled to its custody are violated if another unlawfully withholds the dead body from him. *Parker*, 262 N.C. at 562, 138 S.E.2d at 216 (citing *Bonaparte*).

40. It is well established in North Carolina that “[t]he person entitled to possession of a body may recover damages for mental suffering caused by negligent or intentional mishandling or mutilation of the body.” *Dumouchelle v. Duke Univ.*, 69 N.C. App. 471, 474, 317 S.E.2d100,

103 (1984) (citing *Parker*, 262 N.C. 560, 138 S.E.2d 214 (1964)). If the defendant's conduct was willful or wanton, actually malicious, or grossly negligent, punitive damages may also be recovered. *Id.* At 474, 317 S.E.2d at 102-03 (internal citations omitted).

CLAIMS FOR RELIEF

COUNT ONE – BREACH OF CONTRACT

41. All above paragraphs 1 through 40 are incorporated by reference.

42. This claim is brought against The Citadel Salisbury, LLC as a contracting party.

43. During the pertinent times, The Citadel Salisbury, LLC had an enforceable contract with the plaintiff's decedent, Ms. Cleveland.

44. During the pertinent times, Ronald Barber, as Ms. Cleveland's designated resident representative, had the right to exercise Ms. Cleveland's rights to the extent those rights were delegated to him.⁵

45. During the pertinent times, The Citadel Salisbury, LLC breached its contract with decedent by failing to notify her responsible party of any changes in her condition, including her death.

46. Defendant Citadel Salisbury LLC, in failing to notify Ms. Cleveland's responsible party of her changes in condition, denied Plaintiff the opportunity for an end-of-life visit with his beloved aunt.

47. As a direct and proximate result of Defendant's breach of contract, Plaintiff was injured and suffered mental anguish.

48. Plaintiff has satisfied any applicable conditions precedent to suit.

⁵ See 42 C.F.R. § 483.10(b)(3)(i).

49. Accordingly, Defendants should be ordered to pay damages for breach of contract in an amount in excess of \$25,000.

COUNT TWO – NEGLIGENT MISHANDLING OF CORPSE

50. All above paragraphs 1 through 49 are incorporated by reference.

51. Defendants during the pertinent times jointly and severally owed a duty to act with due care with regard to the Plaintiff and Ms. Cleveland.

52. Plaintiff Ronald Barber was the next of kin of Ms. Dorothy Cleveland and as such had the right to direct the handling of his aunt's body upon her death.

53. Defendants knew or should have known that Mr. Barber was Ms. Cleveland's next of kin.

54. Defendants had a duty to notify and seek instruction from Mr. Barber before taking any action with respect to Ms. Cleveland's dead body.

55. Defendants during the pertinent times violated and breached their duty of care with regard to the Plaintiff and Ms. Cleveland by failing to notify Mr. Barber of his aunt's death and failing to obtain his consent prior to transporting Ms. Cleveland's body to the funeral home.

56. During the pertinent times, Defendants failed to comply with applicable federal regulations which require immediate notification to the resident representative upon a significant change in the resident's status.⁶

57. Defendant's breach of duty constituted and rose to the level of being gross negligence, recklessness and intentional misconduct.

58. As a direct, proximate, and foreseeable result of defendants' negligence, Mr. Barber has suffered deep emotional pain and suffering and mental anguish.

⁶ See 42 C.F.R. § 483.10(g)(14).

59. As a direct and proximate result of Defendants' breach of duty, the Plaintiff was damaged in an amount in excess of \$25,000.

COUNT FOUR – NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS

60. All above paragraphs 1 through 59 are incorporated by reference.

61. This claim is brought individually by Plaintiff.

62. The Defendants had a duty to act with due care with regard to the Plaintiff. They breached their duty of care, thereby proximately causing actual injury to the Plaintiff. Whereby, the Plaintiff has suffered damages.⁷

63. Defendants negligently engaged in conduct when it was reasonably foreseeable that such conduct would cause Mr. Barber to suffer severe emotional distress and mental anguish. It was foreseeable to defendants that the mishandling of Ms. Cleveland's body, by way of transporting it before notifying the family of her death, would cause severe and disabling emotional distress to her next of kin.

64. "A standard of conduct established by a safety statute must be followed."⁸ "A person's failure to do so is negligence in and of itself." *Id.*

65. Here, the Plaintiff suffered and continues to suffer severe emotional distress as a direct and proximate result of the Defendants' violation of standards and laws meant to safeguard the rights of residents under their care and ensure prompt and truthful communications with family representatives.

66. Despite having received multiple calls from Plaintiff inquiring about Ms. Cleveland's condition, Defendants did not even call Plaintiff to notify him of his aunt's death prior to having her body transported to the funeral home.

⁷ See N.C.P.I.—Civil 102.84, Negligence—Infliction of Severe Emotional Distress (02/2020).

⁸ N.C.P.I.—Civil 102.84.

67. Defendants' blatant disregard for Plaintiff's rights is intolerable and inhumane, most especially because Plaintiff only learned of his aunt's death the next day when the funeral home director called to inform him that he had Ms. Cleveland's body. Defendants' failure to act in a civilized manner is shocking and beyond all bounds of human decency.

68. As a direct and proximate result of Defendants' breaches of their duty of care with regard to the Plaintiff, the Plaintiff was denied his rights and suffered severe emotional distress. Plaintiff did not suffer mere temporary fright or anxiety, disappointment or regret.

69. The family sponsor Plaintiff is entitled to recover for severe emotional distress due to Plaintiff's reasonable concerns for another person, to wit, for Plaintiff's aunt, Ms. Cleveland, at the Citadel Salisbury. The severe emotional distress Plaintiff suffered was a reasonably foreseeable result of, and was in fact caused by, the Defendants' negligent, reckless and intentional misconduct.

70. As a direct and proximate result of Defendants' causing of Plaintiff to suffer from severe emotional distress, Plaintiff is entitled to recover damages in excess of \$25,000.

COUNT FIVE — PUNITIVE DAMAGES

71. All above paragraphs 1 through 70 are incorporated by reference.

72. Defendants' conduct gives rise to one or more aggravating factors under the punitive damages statute, N.C.G.S. 1D-1 *et seq.*

73. Defendants' actions and conduct described above were outrageous, willful and wanton and were the result of the conscious and intentional disregard of and indifference to the rights and safety of others, which Defendants knew or should have known was reasonably likely to result in injury, damage and other harm.

74. Defendants' conduct was outrageous, willful and wanton in that they:

- a. Defendants knew they had a duty to notify Mr. Barber of any significant changes in Ms. Cleveland's condition. Defendants knowingly breached this duty by withholding information regarding the true state of affairs at the Citadel from Mr. Barber, namely, the status of the COVID-19 outbreak and the subsequent death of his beloved aunt.
- b. By concealing information regarding the true state of affairs at the facility, Defendants denied Mr. Barber an opportunity to have an end-of-life visit to say his final goodbyes to his aunt. She instead died alone, without her family by her side.
- c. Defendants blatantly disregarded Mr. Barber's legal right to control the disposition of Ms. Cleveland's body upon her death.

75. Because of Defendants' egregious misconduct warranting punitive damages, the Plaintiff is entitled to an award of punitive damages in excess of \$25,000.

JURY DEMAND

Plaintiff requests a trial by jury of all claims herein so triable.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff respectfully asks this Court to:

- A. Find the Defendants jointly and severally liable on all counts and award the Plaintiff any and all damages for wrongful death, for negligent, grossly negligent and reckless conduct, and otherwise all compensatory and actual damages allowed by law;
- B. Award Plaintiff all compensable or reimbursable costs and expenses;
- C. Award the Plaintiff pre-judgment and post-judgment interest, to the extent allowable by law; and
- D. Award such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted this the 23 day of February, 2022.



Mona Lisa Wallace, N.C. State Bar No. 9021

John Hughes, N.C. State Bar No. 22126

Olivia B. Smith, N.C. State Bar No. 58375

Wallace & Graham, P.A.

525 N. Main Street

Salisbury, NC 28144

Phone: 704-633-5244

Fax: 704-633-9434

Email: mwallace@wallacegraham.com

jhughes@wallacegraham.com

osmith@wallacegraham.com