

COMMONWEALTH OF MASSACHUSETTS

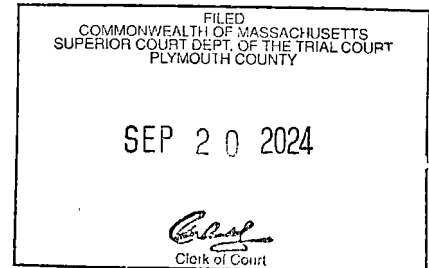
PLYMOUTH, ss.

SUPERIOR COURT DEPARTMENT
C.A. NO.: 2483CV00692

PAUL O'KEEFE, AS PERSONAL REPRESENTATIVE
OF THE ESTATE OF JOHN JOSEPH O'KEEFE III;
PAUL O'KEEFE, INDIVIDUALLY; JOHN O'KEEFE II;
MARGARET O'KEEFE; and MARGARET O'KEEFE AS
GRANDPARENT / GUARDIAN OF KAYLEY FURBUSH
Plaintiffs

v.

C&C HOSPITALITY, LLC d/b/a C.F. MCCARTHY'S;
G&S HOSPITALITY, LLC d/b/a C.F. MCCARTHY'S;
WATERFALL BAR & GRILL, LTD d/b/a WATERFALL
BAR & GRILL; and KAREN READ
Defendants.



AFFIDAVIT OF MARC DILLER, ESQ. PURSUANT TO G.L. c. 231 § 60J
IN SUPPORT OF THE PLAINTIFFS' COMPLAINT

I, Marc Diller, do hereby state under the penalties of perjury upon information and believe and/or with personal knowledge:

1. I am a licensed attorney in the Commonwealth of Massachusetts, and I represent the Estate of Officer John J. O'Keefe III and Officer O'Keefe's next of kin with regard to the above-captioned lawsuit.
2. The instant complaint was filed on August 26, 2024.
3. The Plaintiffs' Complaint is a dram shop lawsuit against Defendant Waterfall Bar & Grill, LTD (hereinafter "Waterfall"). The Plaintiffs allege that on the evening of January 28, 2022, Waterfall served alcoholic beverages to a visibly intoxicated patron, Defendant Karen A. Read (hereinafter "Read"). The Plaintiffs further allege that after being

overserved by Waterfall, Defendant Read drove her motor vehicle while intoxicated and struck Officer John J. O'Keefe, causing Officer O'Keefe's death.

4. In the criminal prosecution of this matter, the Commonwealth of Massachusetts has charged Defendant Read with second-degree murder, manslaughter while operating under the influence of alcohol, and leaving the scene of personal injury and death (hereinafter "the criminal matter"). [See Norfolk Superior Court Docket No. 2882CR0117].
5. The criminal matter remains unresolved due to the jury's inability to reach a unanimous consensus and Presiding Judge Beverly Cannone's mistrial declaration on July 1, 2024. Under the circumstances, some documents and information remain unavailable while the criminal matter remains unresolved. [See Norfolk Superior Court Docket No. 2882CR0117].
6. This affidavit is based upon information and belief from identifiable and reliable sources, including but not limited to expert and eyewitness testimony, video footage, hospital records, and other evidence presented throughout the criminal trial, and contains sufficient facts to raise a legitimate question of liability appropriate for judicial inquiry.
7. Waterfall is an independently owned restaurant business with a license to distribute, serve, and/or sell alcohol, located at 643 Washington Street in Canton, Massachusetts.
8. During the criminal trial, the Commonwealth produced evidence, including but not limited to witness testimony, video footage, point-of-sale receipts, and other documentation, substantiating the following:
 - a. Defendant Read and Officer John J. O'Keefe were patrons of Waterfall on the evening of January 28, 2022;

- b. Defendant Read and Officer O'Keefe arrived at Waterfall at or about 10:54 pm on January 28, 2022;
 - c. Defendant Read previously had consumed seven (7) intoxicating beverages between 8:58 pm and 10:29 pm on January 28, 2022;
 - d. At or about 10:54 pm on January 28, 2022, Waterfall allowed Defendant Read to bring an alcoholic beverage into the restaurant upon her arrival;
 - e. Upon her arrival at Waterfall at or about 10:54 pm on January 28, 2022, Defendant Read showed visible signs of intoxication;
 - f. Upon information and belief, between 10:54 and 11:54 pm on January 28, 2022, Waterfall served two (2) additional alcohol beverages to Defendant Read; AND
 - g. Upon information and belief, between approximately 12:10 am and 12:11 am on January 29, 2022, Defendant Read and Officer O'Keefe departed from Waterfall.
9. Upon information and belief, Defendant Read was showing visible signs of intoxication at relevant times prior to her last service by Waterfall, such that a person of ordinary produce would have refrained from serving alcoholic beverages to her under the same or similar circumstances.
10. During the criminal trial, the Commonwealth presented evidence, including but not limited to video footage, expert testimony, and hospital records, substantiating that between 12:11 am and 12:36 am on January 29, 2022, Defendant Read drove Officer O'Keefe to the residence of 34 Fairview Road in Canton, Massachusetts.
11. Upon information and belief, including but not limited to expert and eyewitness testimony and circumstantial evidence presented during the criminal trial, after Officer

O'Keefe exited Defendant Read's SUV in front of 34 Fairview Road in Canton, Massachusetts, Defendant Read drove her SUV and struck Officer O'Keefe.

12. Through further discovery, expert and eyewitness testimony, video footage, hospital records, and circumstantial evidence, Plaintiff's Counsel expects to show that as a result of being struck by Defendant Read's SUV, Officer O'Keefe was knocked down to the ground, suffered serious injuries, and died.
13. During the criminal trial, the Commonwealth presented evidence, including but not limited to video footage, expert testimony, and hospital records, substantiating the following:
 - a. On the morning of January 29, 2022, Defendant Read's blood alcohol content was measured at 93 mg/dl;
 - b. A serum conversion and retrograde extrapolation was performed on Defendant Read's blood, with results showing Read's blood alcohol content would have been between 0.13% and 0.29% when she struck Officer O'Keefe with her SUV; AND
 - c. When Defendant Read drove Officer O'Keefe between approximately 12:11 am and 12:36 am on January 29, 2022, she had a blood alcohol content exceeding the legal limit, was under the influence of alcohol, and was unfit to drive a motor vehicle safely.
14. Through further discovery, expert testimony, and eyewitness testimony, Plaintiffs' Counsel expects to show via serum conversion and retrograde extrapolation of Defendant Read's blood that, at the time of her last service by Waterfall on January 28, 2022, Defendant Read would have been showing visible signs of intoxication.

15. Through further discovery and expert testimony, it will become clear that at the times of Defendant Read's service, Waterfall should have recognized her visible signs of intoxication and refrained from serving her more alcoholic beverages.
16. It was reasonably foreseeable by Waterfall that Defendant Read would operate a motor vehicle while intoxicated. See Cimino v. Milford Keg, Inc., 385 Mass. 323 (1982).
17. The evidence will show that Waterfall's serving an intoxicated Defendant Read caused Officer O'Keefe's death within the scope of foreseeable risk.
18. Based on the foregoing, sufficient facts exist that raise a legitimate question of liability appropriate for judicial inquiry with respect to the Plaintiff's complaint against Waterfall.
19. The relevant complaint is not frivolous.

SWORN TO UNDER THE PENALTIES OF PERJURY AUGUST 30, 2024.

/s/ Marc Diller
Marc Diller, Esq.

Respectfully submitted,

The Plaintiff
John O'Keefe, III
By His Attorney,

/s/ Marc Diller
Marc Diller, Esq.
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DATED: 9/20/2024

CERTIFICATE OF SERVICE

I, Marc Diller, do certify that on this 20th day of September, 2024, I caused the foregoing document to be served via electronic filing with the Court and electronic mail upon the following counsel(s) of record:

John M. Dealy
jdealy@hassettdonnelly.com

/s/ Marc Diller
Marc Diller, Esq.