

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

RITA MARIE TOMASIEWICZ and)
WILLIAM R. TOMASIEWICZ,)
Individually and as Surviving Parents)
of ANTONIA M. TOMASIEWICZ,)
Deceased,)

Plaintiffs,)

vs.)

No. 03C1926

HYE S. KING; SUNG H. HONG;)
MICHELLE INCANNELLA;)
ARIRANG, INC.; ARIRANG NEW,)
INC.; AMBIANCE; M.S. EL-CHAER,)
INC. d/b/a AMBIANCE; MARZOUK)
EL CHAER; TERRY E. HUDSON; and)
ROGER SMITHERMAN,)

JURY DEMAND

Defendants.)

SECOND AMENDED COMPLAINT

1. Plaintiffs Rita Marie Tomasiewicz and William R. Tomasiewicz are the parents of Antonia M. Tomasiewicz, who died in a fatal motor vehicle collision on or about July 27, 2002. Plaintiffs are citizens and residents of Waterbury, Connecticut.

2. Defendant Hye S. King is a citizen and resident of Antioch, Davidson County, Tennessee. She may be served with process at 2929 Old Franklin Road, No. 1012, Antioch, Tennessee 37013.

3. Defendant Sung H. Hong is a citizen and resident of Franklin, Williamson County, Tennessee. Defendant Sung H. Hong may be served with process at 25107 Clarktower Drive, Franklin, Tennessee 37067. Defendant Sung H. Hong was the owner or co-owner of the Arirang Restaurant.

4. Defendant Michelle Incannella is a citizen and resident of Franklin, Williamson County, Tennessee. Defendant Michelle Incannella may be served with

process at 206 Stillcreek Drive, Franklin, Tennessee 37064. Defendant Michelle Incannella was the co-owner of the Arirang Restaurant.

5. Defendant Arirang, Inc. is a Tennessee corporation, corporate identification No. 0207909. Plaintiffs aver that Defendants Hong and Incannella were the alter-egos of Defendant Arirang, Inc. and co-owned and co-operated the Arirang Restaurant located at 1719 West End Avenue on or about July 26 and July 27, 2002. This restaurant/bar served alcoholic beverages to Defendant Hye S. King when she was in an intoxicated and impaired state. The principal place of business of Arirang, Inc. is or was 1719 West End Avenue, Suite 111, Nashville, Tennessee 37203. Defendant Arirang, Inc. may be served by service on its registered agent for service of process, Edwin S. Pyle, 2525 West End Avenue, No. 1500, Nashville, Tennessee 37203.

6. Defendant Arirang New, Inc. is a Tennessee corporation. Plaintiffs aver that Defendants Hong and Incannella were the alter-egos of Arirang New, Inc. and co-owned and/or co-operated the Arirang Restaurant located at 1719 West End Avenue on or about July 26 and July 27, 2002. This restaurant/bar served alcoholic beverages to Defendant Hye S. King when she was in an intoxicated and impaired state. Upon information and belief, the corporation was formed on March 22, 2001. The principal place of business of Arirang New, Inc. is or was 1719 West End Avenue, Suite 111, Nashville, Tennessee 37203. Defendant Arirang New, Inc. may be served by service on its registered agent for service: Sung H. Hong, 25107 Clarktower Drive, Franklin, Tennessee 37067.

7. Defendant Ambiance is a business that was owned, operated and controlled by Defendant M.S. El-Chaer, Inc. and/or Marzouk El Chaer.

8. Defendant M.S. El-Chaer, Inc. is a Tennessee corporation which owned and operated the Ambiance bar located at 1719 West End Avenue in Nashville,

Tennessee. Defendant M.S. El-Chaer, Inc. may be served with process by service on its registered agent, Marzouk El Chaer, 109 S.E. Spring Dale Road, Mt. Juliet, Tennessee 37122. M.S. El-Chaer, Inc. entered into a lease with the Mid-Town Plaza and obtained a license to sell alcoholic beverages on these premises. Plaintiffs aver that M.S. El-Chaer, Inc. was dominated, owned and controlled as an alter-ego by Marzouk El Chaer. He may be served with process at 467 Riverchase Court, Pegram, TN 37143-2346.

9. Defendant Terry E. Hudson is a citizen and resident of Davidson County, Tennessee and may be served at 2208 White Avenue, Nashville, Tennessee 37204.

10. Defendant Roger M. Smitherman is a citizen and resident of Davidson County, Tennessee and may be served at 3344 Riverway Drive, Old Hickory, Tennessee, 37213.

FACTUAL BACKGROUND

11. The answer of M.S. El-Chaer, Inc. alleges that the Ambiance Bar was owned and operated at the time of the occurrence in question by Defendants Terry E. Hudson and Roger M. Smitherman. As to the truth of these allegations, Plaintiffs asked these Defendants pursuant to T.C.A. § 20-1-119.

12. Plaintiffs further aver that these Defendants who permissibly operated under a liquor license, acts of negligence, misrepresentation and/or fraud.

13. Plaintiffs further aver that Defendant M.S. El-Chaer, Inc., Markzouk El Chaer admitted Defendants permitted Smitherman and Hudson to own and operate the restaurant without adequate insurance and/or lawful liquor license; therefore, Defendants are permitting a nuisance to exist on these premises.

14. On or about July 26, 2002, Defendant Hye S. King and a friend, Joung Yu (a resident of Lavergne, Tennessee) entered the premises of the Arirang Restaurant on West End Avenue in Nashville, Tennessee. They were patrons who participated in a

“party” at which large quantities of alcoholic beverages were consumed. Plaintiffs aver that the Arirang bar served and sold alcoholic beverages to Defendant Hye S. King to the point of intoxication and thereafter and, therefore, violated T.C.A. § 57-10-102 by selling alcoholic beverages to an obviously intoxicated person (Hye S. King) who then caused personal injury or death as a direct result of consumption of alcoholic beverages or beer so sold. Plaintiffs aver that the actions of the Defendants were beyond a reasonable doubt the proximate cause of the death of Antonia Tomasiewicz.

15. Plaintiffs further aver that the Defendants voluntarily undertook a duty of care and violated a common law duty of reasonable care. Specifically, after Hye King and her companion, Joung Yu, had consumed large quantities of alcoholic beverages at Arirang and at the Ambiance nightclub, Ms. King and Ms. Yu were in an inebriated state and were assisted to their car by Defendant(s)', actually physically carrying Ms. King and/or Ms. Yu. Thus, Defendants provided substantial assistance in undertaking of a duty of care for the operation of the motor vehicle driven by Ms. King. Thus, in addition to selling alcoholic beverages to a person already intoxicated (a liability producing event under T.C.A. § 57-10-102), the Defendants voluntarily undertook a duty of care and acted unreasonably in assisting Ms. King and her passenger to the car to permit driving while intoxicated. Plaintiffs further aver that Defendants enabled, assisted and unreasonably permitted Ms. King to leave the premises and drive intoxicated.

16. On or about July 27, 2002, at approximately 3:13 a.m., Antonia Tomasiewicz was in her disabled vehicle, on the side of the road off of the interstate at the intersection of I-40 East and I-65 South at the division or split. Ms. Tomasiewicz' white four-door Nissan Altima was completely off the road in an area or zone of safety. In negligent, grossly negligent or reckless fashion, Defendant Hye S. King drove her

vehicle off of the interstate at great force and speed crashing into the rear of the Tomasiewicz vehicle. Ms. King was driving a 1997 Cadillac, four door, vehicle identification No. W06VR52R9VR13523. The actions of the inebriated Ms. King driving her vehicle directly and proximately caused the death of Antonia Tomasiewicz.

17. The acts and omissions of Hye S. King were willful, wanton, reckless and justify the award of punitive damages.

18. Defendant Hye S. King failed to maintain a proper lookout, failed to maintain proper control, failed to maintain a reasonable and safe rate of speed. Her acts were in all things negligent, grossly negligent and/or reckless. She was driving while intoxicated and failed to follow the recognized standard of reasonable care for a driver under the circumstances. Her acts and conduct constitute negligence *per se* in violation of T.C.A. § 55-10-408 and § 55-10-205.

19. As a direct and proximate cause of the acts and omissions of Defendants, Plaintiffs' decedent, Antonia Tomasiewicz, suffered a wrongful death. Plaintiffs, as the surviving parents and next of kin pray for all damages legally recognizable and recoverable at law, including the mental and physically suffering actually endured by Antonia Tomasiewicz between the injury and her death; medical expenses necessitated by the injury, including expenses for doctors, nurses, hospital care and drugs; reasonable funeral and burial expenses; and the loss of earning capacity during the time period from her injury to death. Plaintiffs seek damages in accordance with the Tennessee Wrongful Death Act, and seek recovery for the pecuniary value of the life of the deceased taking into consideration her age, the condition of her health, her life expectancy and the strength and capacity of Antonia Tomasiewicz for work and earning.

20. Plaintiff further pray for damages based upon *Jordan v. Baptist Three Rivers Hospital*, which damages include recovery for loss of consortium damages based upon the loss of tangible services and intangible benefits, including love, affection, attention, education, guidance, care, protection, training, companionship, and cooperation that Antonia Tomasiewicz would reasonably have provided to Plaintiffs during her life.

21. Plaintiffs further pray for exemplary damages against all Defendants for their willful, wanton, reckless and grossly negligent conduct.

22. Plaintiffs further pray that a jury of twelve (12) be impaneled in this case.

Respectfully submitted,

DAVID RANDOLPH SMITH & ASSOCIATES

By:

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following on this _____ day of December 2003, via first-class, postage prepaid, U.S. mail:

Hye S. King

C. Benton Patton, Esq.
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Michelle Incannella

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Ambiance

**M.S. El-Chaer, Inc. d/b/a Ambiance;
Marzouk El Chaier**

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Terry E. Hudson

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