

IN THE COURT OF COMMON PLEAS  
FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

TATIANA WALKER, individually, and as  
Executrix of the Estate of  
Elijah Walker (minor), Deceased, and as parent  
and next friend of minor children Khonyea and  
Tyion.  
3522 Greenwood Avenue  
Louisville, Kentucky 40211

Plaintiff,

V.

HARTFORD ON THE LAKE, LLC  
c/o CT Corporation System  
4400 Easton Commons Way  
Suite 125  
Columbus, Ohio 43219

Defendant.

CASE NO.:

JUDGE:

Jacqueline S. Downey (0022818)

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Attorney for Plaintiff.

Plaintiff, TATIANA WALKER, INDIVIDUALLY, AND AS EXECUTRIX OF THE  
ESTATE OF ELIJAH WALKER, DECEASED, AND AS PARENT AND NEXT FRIEND OF  
MINOR CHILDREN, KHONYEA AND TYION, by her attorney, JACQUELINE S.  
DOWNEY, brings this action against Defendant HARTFORD ON THE LAKE, LLC, and states  
as follows:

**PRELIMINARY STATEMENT**

1. This is a wrongful death and survival action based upon the tragic but avoidable death of her minor child, Elijah Walker (“Elijah”) who had lived at Hartford on the Lake with his mother and Khonyea (9), Tyion (7), and Anthony (1) for approximately two months before his life unnecessarily ended on February 10<sup>th</sup>, 2013.
2. On February 7, 2013, Elijah Walker, age 5, was a resident at Hartford on the Lake Apartments.
3. Elijah’s mother picked up her youngest child, Anthony, from day care and immediately went grocery shopping. This was between 3:30p.m. - 4:30p.m. The after-school routine for the boys was to do chores and homework before any games or television.
4. At approximately 4:45p.m. a neighborhood child came over to ask if the “new boys” could come out to play. Elijah’s mother said “yes”
5. Elijah’s mother admonished the children before they went out, “stay near by, do not go into anyone’s house, do not mess with any cars and stay away from the water.”
6. The temperature on February 7, 2013 was in the mid-40’s Fahrenheit. Several days before, the overnight temperatures were well below freezing.
7. Elijah’s mother continued to prepare dinner while the children were outside.
8. Less than twenty (20) feet from the edge of the pond, the ice gave way and Elijah fell into the cold water.
9. Elijah’s oldest brother Khoynya ran breathlessly into the apartment saying that Elijah had fallen through the ice on the pond.
10. Elijah’s mother ran outside and found people gathered around trying to assist her five-year-old son.

11. Regrettably, due to the negligence of Defendant and the conditions of its property, Elijah died three days later on February 10, 2013. Mr. James Russell Jenkins, who attempted to save Elijah, died on February 7, 2013.

#### **STATEMENT OF JURISDICTION AND VENUE**

12. The Franklin County Court of Common Pleas has jurisdiction over this matter is through Ohio Revised Code § 2305.01.
13. This matter is properly venued with the Franklin County Court of Common Pleas pursuant to Ohio Civil Rule 3, in that:
- a. Defendant, Hartford on the Lake, LLC, is an Ohio Limited Liability Company;
  - b. Defendant has its principal place of business in Franklin County; and/or
  - c. Franklin County is the county in which all or part of the claims has arisen.

#### **PARTIES**

14. Plaintiff Tatania Walker is the mother of Elijah Walker, deceased, and is the Executrix of his Estate.
15. Hartford on the Lake, LLC is an Ohio registered Limited Liability Company. Service of process may be made upon Defendant by serving its registered agent at the address set forth in the caption hereof.

#### **STATEMENT OF THE FACTS**

16. In 2010, Hartford at the Lake, LLC, purchased a multi-family residential apartment complex in Columbus, Franklin County, Ohio from Graoch Associates for approximately \$2.3 million.
17. The apartment complex is located at 2400 Shore Boulevard West, Columbus, Ohio, 43232.
18. Since August 2010, Hartford has continuously owned, operated, and managed the apartment complex.

19. Hartford advertises the complex as “resort living” in a “lakeside setting”, with apartments having “lakeside views”.
20. Hartford invites residents to “leisurely stroll around [its] lake” or “spend a relaxing afternoon fishing at [its] fully stocked lake.”
21. Hartford invites and permits its residents to use the “lake” for recreational purposes such as fishing and boating.
22. Hartford furnishes the “lake” to the tenants as part of the consideration for their payment of rent.
23. Hartford markets to and solicits business from families with minor children.
24. Upon information and belief, the “lake” Hartford refers to, is a man-made retention pond that is approximately 5-6 acres in size.
25. Hartford does not provide the residents with any rules or regulations regarding the pond.
26. The embankment slopes for the pond are steeper than a 4:1 (vertical: horizontal) slope.
27. Upon information and belief, the pond does not have an aquatic bench, or has an aquatic bench that is steeper than a 10:1 (vertical: horizontal) slope.
28. Upon information and belief, the pond, in spots, reaches or exceeds depths of 20 feet when at the pond’s normal water level.
29. The water is regularly murky and polluted.
30. There have been multiple drowning deaths in the pond under Defendant’s brief ownership.
31. Those deaths include Shennell Mallory and her daughter, Kamiya, in February 2011; and Daynarro Hall, in April 2011.
32. Upon information and belief, under Defendant’s ownership, more than 50% of the residents have been minor children.

33. On February 7, 2013, one or more of the following conditions existed relating to the pond on the Hartford's premises:

- a. The pond was not properly constructed or maintained; and/or
- b. The pond was not marked or equipped with depth markers; and/or
- c. Defendants did not have lighting around the pond or had inadequate lighting; and/or
- d. Defendant had no pond rules or regulations in place for the safety of residents or failed to communicate such rules or regulations to residents; and/or
- e. Defendant had no warning signs; and/or
- f. Defendant failed to warn residents regarding the dangerous and deceptive conditions of the pond; and/or
- g. Defendant had no barriers around the pond; and/or
- h. Defendant had no rescue or lifesaving equipment and/or easily observable and accessible rescue or lifesaving equipment on the premises, including but not limited to rope, telescopic poles, rescue buoys, or boats; and/or
- i. Defendant had no personnel observing or monitoring the pond area; and/or
- j. Defendant had no personnel trained or properly trained, certified, and/or prepared for emergency situations; and/or
- k. Defendant had no personnel available to engage in rescue or lifesaving efforts.
- l. Defendant has no warning or reference regarding safety issues and the pond.

34. At approximately 5:40 p.m., February 7, 2013, Mr. James Jenkins and his girlfriend, Alana Gamble, were returning to her apartment at the Hartford on the Lake apartment complex in Columbus.

35. While driving through the complex, they heard screams and observed a crowd of people near the edge of the apartment complex's pond.
36. Mr. Jenkins parked his car and ran to the site and Ms. Gamble followed.
37. The people who were gathered said a small boy had fallen through the ice on the pond.
38. Elijah held on to the edge of the ice, while the other children got help.
39. Residents came to the scene, but could not locate any item to rescue the child.
40. 911 was called at approximately 5:39 p.m.
41. The ice appeared solid except where the child had fallen in.
42. Russell immediately removed his coat and went out on the ice on his stomach.
43. Russell was able to reach the child and pulled him from the water but the ice gave way and they both fell into the freezing water.
44. Russell held the boy, keeping him afloat.
45. Elijah's mother and his two brothers were watching the entire time of the attempt to rescue her son and their brother.
46. Residents attempted rescues using human chains, jumper cables, and an extension cords tied to a shovel, but could not reach Russell and Elijah.
47. At approximately, 5:43 p.m., police and fire crews began to arrive on scene.
48. They likewise, did not have, and could not locate, water rescue equipment.
49. Officers entered the pond in an effort to reach Russell and Elijah, but were unable to do so, due to the steep drop-offs in the pond.
50. At approximately, 5:50 p.m., after 10 minutes in the water, Russell announced he could not continue, took his last breath, went under the water, and lifted Elijah above the water as long as he could.

51. Officers made several attempts to reach Elijah but failed to do so, for reasons including, but not limited to, the slope of the shoreline, the depth of the pond, a lack of lighting, and the lack of water rescue equipment.
52. Columbus Fire Department Rescue Divers came on scene.
53. At approximately 6:32 p.m., divers recovered Russell's body.
54. Russell was recovered in an estimated twenty (20) feet of water.
55. Russell was taken by Life Flight to Grant Hospital and pronounced dead at 7:09 p.m.
56. At approximately 6:42 p.m., divers recovered Elijah's body.
57. Elijah was recovered in an estimated twenty (20) feet of water.
58. Elijah was taken by Life Flight to Nationwide Children's Hospital.
59. On February 10, 2013 at 5:15 p.m., Elijah was removed from life support and pronounced dead.

**COUNT I**  
**Wrongful Death**  
**(Negligence)**

60. Plaintiff incorporates all the preceding paragraphs 1-59 as set forth above.
61. Defendant had a common law, statutory, and/or contractual duty to maintain and keep all common areas in a safe condition.
62. Defendant had a duty warn of hidden dangers.
63. Defendant knew, or by using ordinary care, could have known of the conditions described in paragraph 33 of this Complaint.
64. Defendant failed to use ordinary care to remedy or correct any one or more of the conditions described in paragraph 33 of this Complaint.

65. That failure directly caused, or contributed to cause, Elijah to be put in peril and ultimately die.

66. By Ohio's Attractive Nuisance doctrine, Defendant is liable for Elijah's death.

**COURT II**  
**Wrongful Death**  
**(Premise Liability)**

67. Plaintiff incorporates all the preceding as if fully stated herein.

68. Defendant knew children lived and played on its property.

69. Defendant knew that children were likely to play near the pond or go on ice on the pond.

70. Defendant knew ice on the pond presented a risk of injury to children if they would go on the pond.

71. Defendant knew that children would or may not appreciate the risk of danger the ice and/or water presented.

72. The cost to reduce the risk or otherwise protect the children is nominal in comparison to the risk to the children and other residents.

73. Defendant failed to exercise care to eliminate or reduce the risk, or otherwise protect the children.

74. That failure directly caused or contributed to cause, Elijah to be put in peril and ultimately die.

75. Elijah, being five years old, was too young to recognize the perils of the ice.

76. Defendant is liable for Elijah's death.

**COUNT III**  
**Survival Action**

77. Plaintiff incorporates all the preceding paragraphs as if fully stated herein.



- 78. Elijah was in the freezing water and conscious for more than 55 minutes.
- 79. Elijah suffered as he held unto the ice while he was being rescued by James Russell Jenkins who held him above water.
- 80. Elijah suffered pain and suffering.
- 81. Defendant is liable for Elijah's pain and suffering.

**COUNT IV**  
**Negligent Infliction of Emotional Distress**

- 86. Plaintiff incorporates all the preceding paragraphs as if fully restated herein.
- 87. As a direct and proximate result of the tortious conduct by Defendant, Elijah's mother, Tatiana, and his brothers, Khonyea and Tyion, being present at the scene of his drowning, observed and were otherwise aware of Elijah's struggle and critical injuries and as a direct and proximate result thereof, they have suffered serious and continuing emotional distress.
- 88. This Negligent Infliction of Emotional Distress cause of action is a separate and distinct cause of action asserted on behalf of Tatiana, Khonyea and Tyion, and is in addition to each of the other claims brought herein.

**COUNT V**  
**Loss of Consortium**

- 89. Plaintiff incorporates all the preceding paragraphs as if fully restated herein.
- 90. Plaintiff Tatiana and her children, Khonyea and Tyion, as a direct and proximate result of the tortious conduct by Defendant, in addition to the harm and damages suffered due to the loss and wrongful death of Elijah, have suffered, each of them, the loss of relationship, companionship, and affection of Elijah, which is permanent and lasting.
- 91. Accordingly, Defendant is liable to Plaintiff and her children for the direct and consequential losses of consortium.

**COUNT VI**  
**Punitive Damages**

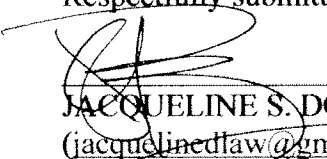
- 92. Plaintiff incorporates all the preceding paragraphs as if fully restated herein.
- 93. Defendant's actions and inactions, as detailed above, were willful and malicious in that Defendant's conduct was carried out with a conscious disregard for the safety and rights of Elijah.
- 94. Defendant's conduct thereby warrants an assessment of exemplary and punitive damages in an amount appropriate to punish it and to make an example of it.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks judgment against Defendant Hartford on the Lake, LLC as follows:

- a. For an award of damages in an amount to be determined at trial, which amount, exceeds the sum of \$25,000.00;
- b. For an award of punitive damages in excess of \$25,000.00; Reasonable attorneys' fees and costs;
- c. For pre-judgment interest; and
- d. For such further and other relief the court deems just, equitable, and proper.

Respectfully submitted,

  
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