

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

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ESTATE OF JACK HENRY ROSE, by  
his Administrators, Gary Rose and Linda Rose,

Plaintiff(s),

Index No: 16-1354  
Date Purchased:

COMPLAINT

~~-against-~~

MARY ALICE MARK,

Defendant(s).

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Plaintiffs, ESTATE OF JACK HENRY ROSE, by his Administrators, Gary Rose and Linda Rose, by their attorneys Mainetti, Mainetti & O'Connor, P.C., complaining of the defendant(s) herein, respectfully sets forth and allege as follows, upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

1. At all times hereinafter mentioned, plaintiffs were and still are residents of Saugerties, County of Ulster, State of New York.
2. At all times hereinafter mentioned, the defendant(s) MARY ALICE MARK, was and is a resident of Woodstock, County of Ulster, State of New York.
3. At all times hereinafter mentioned, defendant MARY ALICE MARK, was the owner of certain real property located at 11 Fel Qui Road, Woodstock, County of Ulster, State of New York.

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ULSTER COUNTY CLERK

4. At all times hereinafter mentioned the plaintiff, **JACK HENRY ROSE**, was lawfully on the premises owned by the defendant at 11 Fel Qui Road, Woodstock, County of Ulster, State of New York.
5. At all times hereinafter mentioned upon information and belief, the defendant **MARY ALICE MARK**, was in possession and control of, the subject premises, and had the responsibility for the maintenance of said premises.
6. That on December 19, 2015, at defendant's residence located at 11 Fel Qui Road, Woodstock, County of Ulster, State of New York, the defendant, caused and created a dangerous condition when a fire began at the premises in or at the interior rear wall as a result of solid fuel heating equipment.
7. At the aforesaid time and place defendant, **MARY ALICE MARK**, carelessly, negligently and recklessly failed to maintain the wood burning stove situated in the middle of the living room, and failed to service, clean and maintain the chimney flute of the aforesaid wood stove at plaintiffs' residence which negligence caused the said wood stove to malfunction and set fire to defendant's home resulting in the wrongful death of decedent plaintiff, **JACK HENRY ROSE**.
8. That by reason of the negligence acts of the defendant, a conflagration and fire was caused to created and maintained on the aforesaid premises of such nature and degree that an alarm was sounded in the local fire departments.
9. That by reason of the aforesaid negligence on the part of the defendant, **MARY**

**ALICE MARK**, the fire company was required to come upon the premises in order to fight a fire and conflagration.

10. That all times hereafter mentioned, the plaintiff was a member of the Centerville Fire Department.
11. That by reason of the aforesaid the plaintiff, as a member of Centerville Fire company, was caused to come upon the premises to fight the fire as aforesaid. While engaged in his duties as a fire fighter, the plaintiff was caused to be suffocated, severely injured and killed by the heat and hot gases caused by the instant fire.
12. The aforesaid occurrence was due solely to the negligence of the defendant **MARY ALICE MARK**, and through no negligent act or omission on the part of the plaintiff contributing thereto.
13. The negligence of the defendant consisted in negligently, carelessness, maintaining, and controlling, and operating of the aforesaid premises so as to create and maintain and cause a highly dangerous condition to exist: in failing and violating the fire laws and residential codes of New York State including but not limited to, R1001.1, R1001.2, R1001.3, R1001.4, R1001.5, R1001.6, R1001.7, R1001.8, R1001.9, R1001.10, R1001.11, R1001.12, as well as, § M1801 and in further violation of §205-A of the General Municipal Law.
14. That by reason of the foregoing and through no negligence on the part of the plaintiff, the plaintiff was caused to sustain serious injuries to his body and limbs

which ultimately resulted in his death.

15. The said occurrence and death resulting therefrom were caused solely and wholly by the negligence of the defendant, **MARY ALICE MARK**, and without any negligence on the part of the plaintiff(s) contributing thereto.
16. This action falls under the exception of Article 16 as provided in §1602 of the Civil Practice Law and Rules of the State of New York.
17. This action is brought by the proposed administrators for personal injuries and death of the plaintiff decedent, **JACK HENRY ROSE**.
18. As a result of the above, plaintiffs have been damaged in a sum which exceeds the jurisdictional limits of all lower Courts, which would otherwise have jurisdiction.

AS AND FOR A SECOND CAUSE OF ACTION

19. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "18" of the First Cause of Action with the same force and effect as if set forth at length herein.
20. That the defendants, agents, servants and employees, recklessly maintained the wood stove, burning apparatus and chimney in such a manner that violated New York Residential Codes of New York. The Building and Residential Codes of Town of Saugerties, County of Ulster, State of New York.
21. The plaintiff herein was injured as aforesaid directly or indirectly as a result of the negligence, omission, willful or culpable negligence of the defendant in an operation, management and control of the aforesaid premises in that the defendant failed to comply with the requirements of the Statutes, Ordinances, Rules, Orders and requirements of the State of New York, County of Ulster and Town of

Saugerties and more particularly the Residential Codes of the State of New York and the Building Codes of the State of New York and Town of Saugerties and in failing to maintain the aforesaid wood stove and chimney and attach apparatuses in a safe and good condition and that the plaintiff was injured in the discharge of and in the performance of his duties as imposed on him by the fire department, all to his damage, in a sum that exceeds the jurisdictional limits of all lower Courts and said claim is made pursuant to New York General Municipal Law § 205-A.

AS AND FOR A THIRD CAUSE OF ACTION

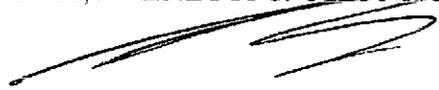
22. Plaintiff repeats, reiterates and realleges each and every allegation contained in Paragraphs "1" through "18" of the First Cause of Action and Paragraphs "19" through "21" of the Second Cause of Action, with the same force and effect as if set forth at length herein.
23. On or about December 19, 2015, plaintiff decedent, **JACK HENRY ROSE**, died as a result of asphyxia due to intoxication of heated products of combustion injuries sustained as a result of the house fire at 11 Fel Qui Road, Woodstock, New York, caused and created by the negligence of the defendant, **MARY ALICE MARK**.
24. This action is brought by the proposed administrators herein for wrongful death and pecuniary losses related thereto.
25. As a result of the above, plaintiffs have incurred medical and funeral expenses.
26. As a result of the above, plaintiffs have been damaged in a sum which exceeds the jurisdictional limits of all lower Courts, which would otherwise have jurisdiction.

WHEREFORE, plaintiffs demand judgment against the defendant on the First Cause of Action in a sum that exceeds the jurisdictional limits of all lower courts, which

would otherwise have jurisdiction, on the Second Cause of Action in a sum that exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, and the Third Cause of Action all in a sum that exceeds the jurisdictional limits of all lower courts, which would otherwise have jurisdiction, all together with attorneys' fees costs and disbursements of this action and for such other and further relief as this Court deems just and proper.

Dated: May 18, 2016  
Kingston, New York

MAINETTI, MAINETTI & O'CONNOR, P.C.



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