

FILED

06-11-2021

Clerk of Circuit Court

Racine County

2021CV001065

Honorable Jon E.

Fredrickson

Branch 7

STATE OF WISCONSIN:

CIRCUIT COURT:

RACINE COUNTY

ROGER BIENEMAN and JOY BIENEMAN, AS
CO-TRUSTEES OF THE BIENEMAN FAMILY
TRUST
3801 Bieneman Road
Burlington, WI 53105,

File No.: _____

Case Classification Type:

Property Damage
Code No. 30201

Plaintiffs,

v.

CITY OF BURLINGTON FIRE DEPARTMENT
c/o Chief Alan Babe
165 West Washington Street
Burlington, WI 53105,

-and-

CITY OF BURLINGTON
c/o Ms. Diahnn Halbach
City Clerk
300 North Pine Street
Burlington, WI 53105,

-and-

JUSTIN BENKO
3241 South Kennedy Drive
Sturtevant, WI 53177,

-and-

EMPLOYERS MUTUAL CASUALTY
COMPANY
c/o Mr. David Young
Registered Agent
16455 West Bluemound Road
Brookfield, WI 53005,

-and-

STATE FARM FIRE AND CASUALTY
COMPANY
c/o Corporation Service Company
Registered Agent
8040 Excelsior Drive
Suite 400
Madison, WI 53717,

Defendants.

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that the Plaintiffs named above have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Wis. Ch. 802, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Racine County Courthouse, whose address is 730 Wisconsin Avenue, Racine, Wisconsin, 53403, and to Plaintiffs' attorneys, Godfrey, Leibsle, Blackbourn & Howarth, S.C., Attn. Janel Bergsbaken, whose address is 354 Seymour Court, Elkhorn, Wisconsin, 53121. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real

estate you own now or in the future and may also be enforced by garnishment or seizure of property.

Dated this 11th day of June, 2021.

GODFREY, LEIBSLE,
BLACKBOURN & HOWARTH, S.C.
Attorneys for Plaintiffs

By: Electronically signed by Janel Bergsbaken
Lisle W. Blackbourn (1003897)
Janel Bergsbaken (1090500)

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CITY OF BURLINGTON FIRE DEPARTMENT,
CITY OF BURLINGTON, JUSTIN T. BENKO,
EMPLOYERS MUTUAL CASUALTY
COMPANY and STATE FARM FIRE AND
CASUALTY COMPANY,

Defendants.

COMPLAINT

NOW COME the Plaintiffs, Roger Bieneman and Joy Bieneman, as Co-Trustees of the Bieneman Family Trust, by their attorneys, Godfrey, Leibsle, Blackbourn & Howarth, S.C., and as and for a cause of action against the above-named Defendants, allege and show to the Court the following:

1. Plaintiffs, Roger Bieneman and Joy Bieneman, as Co-Trustees of the Bieneman Family Trust (collectively, "Bienemans"), are the sole owners of real estate commonly known as 3801 Bieneman Road, Burlington, Wisconsin, 53105 ("Bieneman Farm").

2. Upon information and belief, Defendant, City of Burlington Fire Department ("CBFD"), is a municipal fire department created by the City of Burlington pursuant to Wis. Stat. § 62.13, with its principal office located at 165 West Washington Street, Burlington, Wisconsin, 53105.

3. Upon information and belief, Defendant, City of Burlington (“City”), is a municipal corporation organized under the laws of the State of Wisconsin, with its principal office located at 300 North Pine Street, Burlington, Wisconsin, 53105.

4. Upon information and belief, Defendant, Justin T. Benko (“Benko”), is an adult residing at 3241 South Kennedy Drive, Sturtevant, Wisconsin, 53177.

5. Upon information and belief, Defendant, Employers Mutual Casualty Company (“EMC”), is a corporation organized under the laws of Iowa, whose principal office is located at 717 Mulberry Street, Des Moines, Iowa, 50309, and whose registered agent is David Young, 16455 West Bluemound Road, Brookfield, Wisconsin, 53005. Upon information and belief, at all times relevant to this Complaint, EMC had a policy of liability insurance in full force and effect issued to the City. EMC is a proper party to this action pursuant to Wis. Stat. § 803.04(2).

6. Upon information and belief, Defendant, State Farm Fire and Casualty Company (“State Farm”), is a corporation organized under the laws of Illinois, whose principal office is located at One State Farm Plaza, Bloomington, Illinois, 61710, and whose registered agent is Corporation Service Company, 8040 Excelsior Drive, Suite 400, Madison, Wisconsin, 53717. State Farm is in the business of issuing homeowners insurance policies. State Farm may have made payments to the Bienemans for damages they sustained in the incident described herein. State Farm is joined as a party for purposes of complying with Wis. Stat. § 803.03(2). No affirmative claim for relief is asserted by the Bienemans against State Farm.

7. Benko, at all times relevant to this Complaint, was employed by the City as a CBFD Fire Engineer.

8. A private road, with a historic truss bridge over Echo Lake (“Bieneman Bridge”), is located on the Bieneman Farm.

9. On May 15, 2020, at 6:15 p.m., an airplane crashed just north of the Bieneman Farm.

10. The City dispatched emergency responders to the crash site.

11. Benko drove CBFD fire engine number E925 (“Engine E925”) to the crash site.

12. Upon information and belief, at all times relevant to this Complaint, Engine E925 was owned by the City.

13. Upon information and belief, Engine E925 weighed in excess of 40,000 pounds.

14. Benko drove Engine E925 over the Bieneman Bridge to the crash site.

15. The Bieneman Bridge was unable to support the weight of Engine E925, and the weight of Engine E925 caused severe structural damage to Bieneman Bridge, including the catastrophic failure of a large portion of the wooden decking (“Incident”).

FIRST CLAIM AGAINST BENKO: NEGLIGENCE

The Bienemans reallege and incorporate herein by reference paragraphs 1 through 15 of this Complaint.

16. Benko was negligent in the operation of Engine E925 at the time and place described herein.

17. Benko knew, or should have known, that the Bieneman Bridge could not support the weight of Engine E925.

18. Benko breached his duty of care when he drove Engine E925 over Bieneman Bridge, despite the availability of alternative access to the crash site and warnings and other signs that the Bieneman Bridge could not support Engine E925.

19. As a proximate result of Benko's negligence, the Bieneman Bridge sustained damages, including \$93,724.06 to repair the Bieneman Bridge.

SECOND CLAIM AGAINST THE CITY AND CBFD: NEGLIGENCE

The Bienemans reallege and incorporate herein by reference paragraphs 1 through 19 of this Complaint.

20. At all times relevant to this Complaint, Benko was an employee or agent of the City and was acting within the scope of his employment as a CBFD fire engineer.

21. The City and CBFD are responsible for the negligent acts and omissions of Benko under the doctrine of *respondeat superior* and the rules of agency.

22. As a proximate result of the negligence of the City and CBFD, the Bienemans sustained damages.

THIRD CLAIM AGAINST THE CITY: NEGLIGENT ENTRUSTMENT

The Bienemans reallege and incorporate herein by reference paragraphs 1 through 22 of this Complaint.

23. The City, as the owner of the fire engine operated by Benko at the time of the Incident, had a duty of reasonable care to prevent the entrustment of its vehicle to an unsafe driver.

24. At the time of the Incident, Benko had a history of failing to perform job responsibilities, engaging in unsafe behaviors, and making discriminatory and harassing comments.

25. In April 2018, Benko was placed on administrative leave while the City investigated allegations that Benko made discriminatory, disparaging, and harassing comments and failed to perform job responsibilities in an appropriate manner.

26. On June 4, 2018, Benko entered into a Last Chance Agreement with the City and Fire Chief Alan Babe (“Chief Babe”).

27. The Agreement stated that “Benko engaged in serious acts of improper conduct involving inequity and unfairness. . . . Benko’s conduct was against the rules, policies, and general expectations of conduct.”

28. Benko acknowledged that any further violations of the rules, policies, procedures or expectations of conduct may result in Chief Babe or the City Administrator seeking termination of Benko’s employment.

29. In October 2018—four months after Benko signed the Last Chance Agreement—Benko was again under City investigation after firefighters alleged Benko made more derogatory, demeaning, and disrespectful comments.

30. One firefighter reported that she did not trust Benko, would not feel comfortable working with Benko, and did not believe Benko would look out for her wellbeing.

31. In October 2019, Benko was again placed on administrative leave during the pendency of another investigation by the City.

32. The results of the investigation concluded that Benko engaged in conduct that was disrespectful and denigrating of Benko’s fellow firefighters.

33. Chief Babe wrote, “The majority of your part-time peers have expressed that they currently feel unsafe or anxious in your presence After reviewing the investigation, I believe your cavalier attitude and disrespectful comments regarding your colleagues can put lives at risk and greatly hinders this Department from meeting important objectives.”

34. Chief Babe wrote, “I am taking a high-risk chance on you by keeping you as part of our fire service.”

35. Despite Chief Babe's concerns that Benko would engage in behaviors that put other lives at risk, Benko's employment was not terminated.

36. The City knew, or in the exercise of ordinary care, should have known, that Benko, because of his complete lack of regard for the safety of others and history of rule violations was likely to perform his duties as a City firefighter, including operation of the City's fire engine, negligently, in a manner that would create an unreasonable risk of harm, without regard for the safety and property interests of others.

37. The City failed to properly investigate whether or not Benko was a safe, fit, and competent firefighter.

38. The City breached its duty of care by entrusting its fire engine to Benko when it knew, or should have known, Benko was unfit to be a firefighter.

39. As a proximate result of the negligent entrustment of its fire engine to Benko by the City, the Bienemans sustained property damage and other compensable damage.

40. On December 10, 2020, seven months after the Incident, Benko was again placed on administrative leave by the City.

41. Ten days later, Benko resigned from his employment as a firefighter for the City.

FOURTH CLAIM AGAINST THE CITY:
NEGLIGENT HIRING, TRAINING, SUPERVISION AND RETENTION

The Bienemans reallege and incorporate herein by reference paragraphs 1 through 41 of this Complaint.

42. The City had a duty to exercise reasonable care to hire safe, competent, and qualified firefighters, to adequately train its firefighters, to periodically review the qualifications

of its firefighters, and to terminate firefighters who were not competent or otherwise qualified to safely perform the duties of a firefighter.

43. The City breached its duty of care by, among other things, failing to adequately train Benko on how to safely operate a fire engine, failing to periodically review Benko's qualifications, and failing to terminate Benko due to his history of violations of the rules, policies, safety procedures and job requirements of a City firefighter.

44. The failure to properly train, review, supervise and manage Benko was malicious, or in an intentional disregard of the rights of the public, including the Bienemans.

45. As a proximate result of the negligence of the City in training, supervising and retaining Benko, Benko was negligent in the operation of the City's fire engine, causing the Bienemans to sustain damages.

FIFTH CLAIM AGAINST EMC:
PRE-JUDGMENT INTEREST UNDER WIS. STAT. § 628.46

The Bienemans reallege and incorporate herein by reference paragraphs 1 through 45 of this Complaint.

46. The Bienemans request an award of prejudgment interest, pursuant to Wis. Stat. § 628.46, on all damages claimed herein.

WHEREFORE, the Bienemans demand judgment against the Defendants as follows:

- a. Judgment against CBFD, the City, Benko, and EMC, jointly and severally, for damages in accordance with the allegations of the Complaint, together with costs, disbursements, attorney fees, and prejudgment interest pursuant to Wis. Stat. § 628.46; and
- b. For such other and further relief as the Court may deem just and equitable.

Dated this 11th day of June, 2021.

GODFREY, LEIBSLE,
BLACKBOURN & HOWARTH, S.C.
Attorneys for Plaintiffs

By: Electronically signed by Janel Bergsbaken
Lisle W. Blackbourn (1003897)
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