

SERVICE AND PROCESSING OF CLAIMS

Plaintiff or Claimant: Estate of Duke Case No. 2020CV 002259

Date: 3/26/2020

In-person

Process Server

Claimant

Other _____

By mail

By email

By fax

Received by: Jlemanski

- Hand deliver to: Ann Marie or Janel
- Forwarded to Attorney's Office by Ann Marie or Janel
- Response from Attorney's Office
- Common Council Agenda: Yes No

STATE OF WISCONSIN

CIRCUIT COURT

MILWAUKEE

Estate of Duke A. Swan, By Special Administrator Rus...et al vs. City of West Allis et al

Electronic Filing Notice

Case No. 2020CV002259
Class Code: Other-Personal Injury

FILED
03-20-2020
John Barrett
Clerk of Circuit Court
2020CV002259
Honorable Carl Ashley-33
Branch 33

CITY OF WEST ALLIS
ROOM 108
7525 WEST GREENFIELD AVENUE
WEST ALLIS WI 53214

PROCESS SERVER
TIME 2:01 PM DATE 3/25/20
PERSONAL SUBSTITUTE
POSTED CORPORATE

Case number 2020CV002259 was electronically filed with/converted by the Milwaukee County Circuit Court office. The electronic filing system is designed to allow for fast, reliable exchange of documents in court cases.

Parties who register as electronic parties can file, receive and view documents online through the court electronic filing website. A document filed electronically has the same legal effect as a document filed by traditional means. Electronic parties are responsible for serving non-electronic parties by traditional means.

You may also register as an electronic party by following the instructions found at http://efiling.wicourts.gov/ and may withdraw as an electronic party at any time. There is a \$20.00 fee to register as an electronic party.

If you are not represented by an attorney and would like to register an electronic party, you will need to enter the following code on the eFiling website while opting in as an electronic party.

Pro Se opt-in code: 24cd33

Unless you register as an electronic party, you will be served with traditional paper documents by other parties and by the court. You must file and serve traditional paper documents.

Registration is available to attorneys, self-represented individuals, and filing agents who are authorized under Wis. Stat. 799.06(2). A user must register as an individual, not as a law firm, agency, corporation, or other group. Non-attorney individuals representing the interests of a business, such as garnishees, must file by traditional means or through an attorney or filing agent. More information about who may participate in electronic filing is found on the court website.

If you have questions regarding this notice, please contact the Clerk of Circuit Court at 414-278-4120.

Milwaukee County Circuit Court
Date: March 20, 2020

FILED
03-20-2020
John Barrett
Clerk of Circuit Court
2020CV002259
Honorable Carl Ashley-33
Branch 33

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

ESTATE OF DUKE A. SWAN
By Special Administrator RUSSEL SWAN, Individually
1962 South 59th Street
West Allis, Wisconsin 53219,

Plaintiffs,

U.S. BANCORP
4000 West Broadway Avenue
Robbinsdale, Minnesota 55422,

Involuntary Plaintiff,

v.

CITY OF WEST ALLIS
c/o Steven A. Braatz, Jr., City Clerk
7525 West Greenfield Avenue, Room 108
West Allis, Wisconsin 53214,

WISCONSIN COUNTY MUTUAL
INSURANCE CORPORATION
22 East Mifflin Street, Suite 900
Madison, Wisconsin 53703,

COUNTY OF MILWAUKEE
c/o George L. Christenson, County Clerk
901 North 9th Street, Room 105
Milwaukee, Wisconsin 53233,

STEVEN MARTIN
c/o West Allis Police Department
11301 West Lincoln Avenue
West Allis, Wisconsin 53227,

CIVIL SUMMONS

Case Number:
Code Number: 30107
Personal Injury – Other
Amount Claimed Greater
Than \$5,000.00

PETER BORREE
3859 South Logan Avenue
Milwaukee, Wisconsin 53207,

Defendants.

THE STATE OF WISCONSIN TO: All Named Defendants.

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

Within forty-five (45) days of receiving this Summons, you must respond with a written Answer, as that term is used in Wis. Stat. 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:

Clerk of Courts
Milwaukee County Courthouse
901 North 9th Street
Room 104
Milwaukee, Wisconsin 53223

and to the Plaintiffs' attorneys:

Todd R. Korb
Hupy and Abraham, S.C.
111 East Kilbourn Avenue
Suite 1100
Milwaukee, Wisconsin 53202

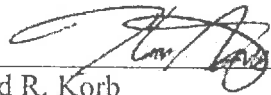
You may have an attorney help or represent you.

If you do not provide a proper Answer within forty-five (45) days, the Court may grant Judgment against you for the award of money or other legal action requested 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 at Milwaukee, Wisconsin, this 20th day of March, 2020.

HUPY AND ABRAHAM, S.C.
Attorneys for the Plaintiffs,

By: 
Todd R. Korb
State Bar Number: 1026950

Post Office Address:
111 East Kilbourn Avenue
Suite 1100
Milwaukee, Wisconsin 53202
(414) 223-4800

FILED
03-20-2020
John Barrett
Clerk of Circuit Court
2020CV002259
Honorable Carl Ashley-33
Branch 33

STATE OF WISCONSIN CIRCUIT COURT MILWAUKEE COUNTY

ESTATE OF DUKE A. SWAN
By Special Administrator RUSSEL SWAN, Individually
1962 South 59th Street
West Allis, Wisconsin 53219,

Plaintiffs,

U.S. BANCORP
4000 West Broadway Avenue
Robbinsdale, Minnesota 55422,

Involuntary Plaintiff,

v.

CITY OF WEST ALLIS
c/o Steven A. Braatz, Jr., City Clerk
7525 West Greenfield Avenue, Room 108
West Allis, Wisconsin 53214,

WISCONSIN COUNTY MUTUAL
INSURANCE CORPORATION
22 East Mifflin Street, Suite 900
Madison, Wisconsin 53703,

COUNTY OF MILWAUKEE
c/o George L. Christenson, County Clerk
901 North 9th Street, Room 105
Milwaukee, Wisconsin 53233,

STEVEN MARTIN
c/o West Allis Police Department
11301 West Lincoln Avenue
West Allis, Wisconsin 53227,

CIVIL COMPLAINT

Case Number:
Code Number: 30107
Personal Injury – Other
Amount Claimed Greater
Than \$5,000.00

PETER BORREE
3859 South Logan Avenue
Milwaukee, Wisconsin 53207,

Defendants.

NOW COME the Plaintiffs, the Estate of Duke A. Swan, by its Special Administrator, Russel Swan, individually and on behalf of the Decedent, Duke A. Swan, by and through their attorneys, Hupy and Abraham, S.C., by Todd R. Korb, and as for their Complaint against the Defendants, allege and show to the Court as follows:

1. That the Decedent, Duke A. Swan, was an adult resident of the City of West Allis, County of Milwaukee, Wisconsin, who resided at 1962 South 59th Street, Zip Code 53219; and that Russel Swan has been appointed Special Administrator for the Estate of Duke A. Swan.

2. That the Plaintiff, Russel Swan, is an adult resident of the City of West Allis, County of Milwaukee, Wisconsin, residing at 1962 South 59th Street, Zip Code 53219; and that the Plaintiff, Russel Swan, was the wife of the Decedent, Duke A. Swan.

3. That the Involuntary Plaintiff, U.S. Bancorp, is a foreign corporation, organized and existing under the laws of Delaware, with a self-funded employee welfare benefit plan governed by the Employee Retirement Income Security Act (ERISA), with the principal place of business located at 4000 West Broadway Avenue, Robbinsdale, Minnesota, Zip Code 55422; that the registered agent in Wisconsin for the Involuntary Plaintiff, U.S. Bancorp, is CT Corporation System, located at 301 Bedford Street, Suite One, Madison, Wisconsin, Zip Code 53703; and that the Involuntary Plaintiff, U.S. Bancorp, alleges to have paid out money from its ERISA plan on behalf of the Decedent, Duke A. Swan, and is therefore named as an alleged subrogated party in this action pursuant to Wis. Stat § 803.03.

4. That the Defendant, City of West Allis, is a domestic, self-insured, municipal body, organized and existing under the laws of Wisconsin, with its principal place of business located at 7525 West Greenfield Avenue, West Allis, Wisconsin, Zip Code 53214; that legal process for the Defendant, City of West Allis, shall be served upon Steven A. Braatz, Jr., City Clerk, also located at 7525 West Greenfield Avenue, Room 108, West Allis, Wisconsin, Zip Code 53214; that the Defendant, City of West Allis, employed the Defendants, Steven Martin and Peter Borree, at the time of the incident described herein, June 16, 2018; and that the Defendant, City of West Allis, is a named defendant herein pursuant to the theory of *Respondeat Superior*, in that it is liable for the actions of its employees, agents, servants, representatives, and/or volunteers while in the course and scope of their employment.

5. That the Defendant, Wisconsin County Mutual Insurance Corporation, is a domestic insurance company, organized and existing under the laws of Wisconsin, with its principal place of business located at 22 East Mifflin Street, Suite 900, Madison, Wisconsin, Zip Code 53703; that the registered agent in Wisconsin for the Defendant, Wisconsin County Mutual Insurance Corporation, is David Bisek, located at 18550 West Capitol Drive, Brookfield, Wisconsin, Zip Code 53045; that the Defendant, Wisconsin County Mutual Insurance Corporation, is engaged in the business of writing and selling insurance, and that prior to the date of the incident herein, June 16, 2018, it issued its policy of insurance to the Defendant, County of Milwaukee, insuring it, its employees, agents, servants, representatives, and/or volunteers while in the course and scope of their employment against liability of the type hereafter alleged; that this policy of insurance was issued and delivered in the State of Wisconsin; and that this policy of insurance was in full force and effect at all times material hereto.

6. That the Defendant, County of Milwaukee, is a domestic corporate municipal body, organized and existing under the laws of Wisconsin, with its principle place of business located at 901 North 9th Street, Room 105, Milwaukee, Wisconsin, Zip Code 53233; that legal process for the Involuntary Plaintiff, County of Milwaukee, shall be served upon George L. Christenson, County Clerk, also located at 901 North 9th Street, Room 105, Milwaukee, Wisconsin, Zip Code 53233; that the Defendant, County of Milwaukee, employed the Defendants, Steven Martin and Peter Borree, at the time of the incident described herein, June 16, 2018, and that the Defendant, County of Milwaukee, is a named defendant herein pursuant to the theory of *Respondeat Superior*, in that it is liable for the actions of its employees, agents, servants, representatives, and/or volunteers while in the course and scope of their employment.

7. That the Defendant, Steven Martin, upon information and belief, was employed as a police officer by the Defendants, City of West Allis and County of Milwaukee, at all times material hereto; and that the Defendant, Steven Martin, shall be served at the City of West Allis Police Department, located at 11301 West Lincoln Avenue, West Allis, Wisconsin, Zip Code 53207.

8. That the Defendant, Peter Borree, upon information and belief, is an adult resident of the City and County of Milwaukee, Wisconsin, currently residing at 3859 South Logan Avenue, Zip Code 53207; and that the Defendant, Peter Borree, was employed by the Defendants, City of West Allis and County of Milwaukee, at all times material hereto.

FIRST CAUSE OF ACTION – COMMON LAW NEGLIGENCE

9. That on or about June 16, 2018, the Decedent, Duke A. Swan, called for emergency police assistance at his home located at 1962 South 59th Street, West Allis, Wisconsin, Zip Code 53219; that at the same time and place, the Defendant, Steven Martin, was a police officer

conducting an investigation at the Decedent's home, when he, with the assistance of aiders and abettors, accosted and negligently used excessive force against the Decedent, including punches and/or kicks, thereby offensively causing injuries and damages to the Decedent, Duke A Swan, as hereinafter described.

10. That the Defendants, County of Milwaukee and City of West Allis, are named Defendants herein pursuant to the theory of *Respondeat Superior*, in that they are liable for the acts of their employees, servants, agents, representatives, and/or volunteers, herein, the Defendant, Steven Martin, while in the course and scope of their employment.

11. That at the time of the incident, the Defendant, Steven Martin, was acting within the course and scope of his employment with the Defendants, City of West Allis and County of Milwaukee, were the direct and proximate cause of the injuries and damages sustained by the Decedent, Duke A. Swan.

12. That as a result of the foregoing acts of negligence on the part of the Defendant, Steven Martin, the Decedent, Duke A. Swan, sustained injuries to his body and suffered emotional distress; that he has suffered pain and continued to suffer pain until his death; that he was required to seek medical attention; that he was required to seek additional medical attention and expended large sums of money for said medical attention; and that he was unable to engage in his normal activities until his death, all to his damage.

SECOND CAUSE OF ACTION – COMMON LAW NEGLIGENCE

As for a second cause of action, the Plaintiffs repeat and reallege all of the allegations contained previously herein, incorporate the same by reference, and further allege and show to the Court as follows:

13. That on or about June 16, 2018, the Decedent, Duke A. Swan, called for emergency police assistance at his home located at 1962 South 59th Street, West Allis, Wisconsin, Zip Code 53219; that at the same time and place, the Defendant, Peter Borree, was a police officer conducting an investigation at the Decedent's home, when he, with the assistance of aiders and abettors, accosted and negligently used excessive force against the Decedent, including punches and/or kicks, thereby offensively causing injuries and damages to the Decedent, Duke A Swan, as hereinafter described.

14. That the Defendants, County of Milwaukee and City of West Allis, are named Defendants herein pursuant to the theory of *Respondeat Superior*, in that they are liable for the acts of their employees, servants, agents, representatives, and/or volunteers, herein, the Defendant, Peter Borree, while in the course and scope of their employment.

15. That at the time of the incident, the Defendant, Peter Borree, was acting within the course and scope of his employment with the Defendants, City of West Allis and County of Milwaukee, were the direct and proximate cause of the injuries and damages sustained by the Decedent, Duke A. Swan.

16. That as a result of the foregoing acts of negligence on the part of the Defendant, Peter Borree, the Decedent, Duke A. Swan, sustained injuries to his body and suffered emotional distress; that he has suffered pain and continued to suffer pain until his death; that he was required to seek medical attention; that he was required to seek additional medical attention and expended large sums of money for said medical attention; and that he was unable to engage in his normal activities until his death, all to his damage.

THIRD CAUSE OF ACTION – 42 USC § 1983 CIVIL RIGHTS VIOLATION

As for a third cause of action, the Plaintiffs repeat and reallege all of the allegations contained previously herein, incorporate the same by reference, and further allege and show to the Court as follows:

17. That on or about June 16, 2018, the Decedent, Duke A. Swan, called for emergency police assistance at his home located at 1962 South 59th Street, West Allis, Wisconsin, Zip Code 53219; that at the same time and place, the Defendant, Steven Martin, was a police officer conducting an investigation at the Decedent's home, when he, with the assistance of aiders and abettors, accosted and negligently used excessive force against the Decedent, including punches and/or kicks, thereby offensively causing injuries and damages to the Decedent, Duke A Swan, as hereinafter described.

18. That, in using unnecessary force to effect the apprehension of the Decedent, Duke A. Swan, the Defendant, Steven Martin, acted willfully, wantonly, knowingly and purposefully with specific intent to deprive the Decedent, Duke A. Swan, of his rights to freedom from physical injury, abuse, coercion, intimidation, cruel and unusual punishment, unreasonable search and seizure, due process and equal protection under the law, all of these rights are secured to plaintiff by the provisions of the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. s 1983.

19. That at the time of the accident, the Defendant, Steven Martin, was acting under color of law within the course and scope of his duties as an employee of Defendants, City of West Allis and County of Milwaukee.

20. That the foregoing acts on the part of the Defendant, Steven Martin, were performed knowingly, intentionally, and maliciously, by reason of which the Decedent, Duke A. Swan, is

entitled to punitive damages, and to all remedies available under 42 U.S.C. § 1983, including reasonable attorney fees.

21. That the foregoing acts on the part of the Defendant, Steven Martin, were a substantial factor in causing the injuries and damages of the the Decedent, Duke A. Swan.

22. That as a result of the foregoing acts of negligence on the part of the Defendant, Steven Martin, the Decedent, Duke A. Swan, sustained injuries to his body and suffered emotional distress; that he has suffered pain and continued to suffer pain until his death; that he was required to seek medical attention; that he was required to seek additional medical attention and expended large sums of money for said medical attention; and that he was unable to engage in his normal activities until his death, all to his damage.

FOURTH CAUSE OF ACTION - 42 USC § 1983 CIVIL RIGHTS VIOLATION

As for a fourth cause of action, the Plaintiffs repeat and reallege all of the allegations contained previously herein, incorporate the same by reference, and further allege and show to the Court as follows:

23. That on or about June 16, 2018, the Decedent, Duke A. Swan, called for emergency police assistance at his home located at 1962 South 59th Street, West Allis, Wisconsin, Zip Code 53219; that at the same time and place, the Defendant, Peter Borree, was a police officer conducting an investigation at the Decedent's home, when he, with the assistance of aiders and abettors, accosted and negligently used excessive force against the Decedent, including punches and/or kicks, thereby offensively causing injuries and damages to the Decedent, Duke A Swan, as hereinafter described.

24. That, in using unnecessary force to effect the apprehension of the Decedent, Duke A. Swan, the Defendant, Peter Borree, acted willfully, wantonly, knowingly and purposefully with

specific intent to deprive the Decedent, Duke A. Swan, of his rights to freedom from physical injury, abuse, coercion, intimidation, cruel and unusual punishment, unreasonable search and seizure, due process and equal protection under the law, all of these rights are secured to plaintiff by the provisions of the Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the United States Constitution and by 42 U.S.C. § 1983.

25. That at the time of the accident, the Defendant, Peter Borree, was acting under color of law within the course and scope of his duties as an employee of the Defendants, City of West Allis and County of Milwaukee.

26. That the foregoing acts on the part of the Defendant, Peter Borree, were performed knowingly, intentionally, and maliciously, by reason of which the Decedent, Duke A. Swan, is entitled to punitive damages, and to all remedies available under 42 U.S.C. § 1983, including reasonable attorney fees.

27. That the foregoing acts on the part of the Defendant, Peter Borree, were a substantial factor in causing the injuries and damages of the Decedent, Duke A. Swan.

28. That as a result of the foregoing acts of negligence on the part of the Defendant, Peter Borree, the Decedent, Duke A. Swan, sustained injuries to his body and suffered emotional distress; that he has suffered pain and continued to suffer pain until his death; that he was required to seek medical attention; that he was required to seek additional medical attention and expended large sums of money for said medical attention; and that he was unable to engage in his normal activities until his death, all to his damage.

FIFTH CAUSE OF ACTION

As for a fifth cause of action, the Plaintiffs repeat and reallege all of the allegations contained previously herein, incorporate the same by reference, and further allege and show to the Court as follows:

29. That the Plaintiff, Russel Swan, was the wife of the Decedent, Duke A. Swan.

30. That by reason of the aforementioned acts of negligence on the part of the Defendants, Steven Martin and Peter Borree, the Plaintiff, Russel Swan, has lost the care, comfort, society and consortium of her husband, Duke A. Swan, by reason of his inability to perform all of the normal and usual duties, acts and responsibilities as husband of the Plaintiff, Russel Swan, by reason of his injuries suffered as alleged above, and as a result of the negligence previously described.

31. That Russel Swan and Duke A. Swan shared all debts and financial responsibilities as husband and wife; and that Russel Swan and Duke A. Swan incurred debt and financial responsibilities as a result of the negligence of the Defendants, Steven Martin and Peter Borree, to the financial damage of the Plaintiff, Russel Swan.

WHEREFORE, the Plaintiffs, the Estate of Duke A. Swan and Russel Swan, demand Judgment against the Defendants in the following forms: for compensatory damages as the Court may deem just and equitable, punitive damages resulting from the Defendants', Steven Martin and Peter Borree, malicious and/or intentional disregard of the rights of the Plaintiff, together with costs and disbursements of this action, for dismissal of any and all subrogation or reimbursement claims in this matter, for all interest due and owing under Wis. Stat. § 628.46, reasonable attorney's fees associated with this action, and any further relief the Court may deem just and equitable.

DATED at Milwaukee, Wisconsin, this 20th day of March, 2020.

HUPY AND ABRAHAM, S.C.
Attorneys for the Plaintiffs,

By: 

Todd R. Korb

State Bar Number: 1026950

Post Office Address:

111 East Kilbourn Avenue

Suite 1100

Milwaukee, Wisconsin 53202

(414) 223-4800