

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

SHARON D. LOVE, Administrator of the  
Estate of Yeardley R. Love, Deceased,

Plaintiff,

v.

Case No. CL2012-130

GEORGE W. HUGUELY, V,

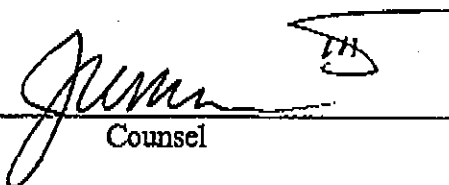
Defendant.

**DEFENDANT'S MOTION TO TRANSFER VENUE PURSUANT TO VIRGINIA CODE SECTION 8.01-265 OR, IN THE ALTERNATIVE, TO SUMMON A VENIRE FROM ANOTHER JURISDICTION PURSUANT TO VIRGINIA CODE SECTION 8.01-363**

Defendant George W. Huguely, V ("Defendant"), by counsel, moves to transfer venue pursuant to Virginia Code section 8.01-265, on the grounds that local prejudice will prevent a fair and impartial trial and, thus, good cause exists to transfer the action to another jurisdiction. In the alternative, Defendant moves this Court to summon a venire from another jurisdiction pursuant to Virginia Code section 8.01-363, on the grounds that it will not be possible to conveniently find jurors from the City of Charlottesville who will render a fair and impartial trial. A brief in support of this motion will be filed.

GEORGE W. HUGUELY, V,

By



Counsel

James W. Morris, III (VSB No. 05740)  
Matthew D. Green (VSB No. 46913)  
Melissa Y. York (VSB No. 77493)  
Morris & Morris, P.C.  
11 South 12th Street

FILED

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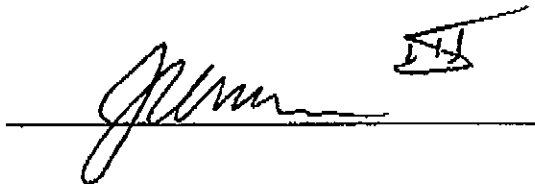
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**CERTIFICATE**

I hereby certify that on this 11<sup>th</sup> day of June 2012, a true and exact copy of the foregoing  
was mailed, first class postage prepaid, to the following:

Mahlon G. Funk, Jr.  
Jacqueline C. Hedblom  
Hirschler Fleischer, P.C.  
The Edgeworth Building  
P.O. Box 500  
Richmond, Virginia 23218

Irvin V. Cantor  
Stephanie E. Grana  
Elliott M. Buckner  
Cantor Stoneburner Ford Grana & Buckner  
7130 Glen Forest Drive, Suite 400  
Richmond, Virginia 23226.

A handwritten signature in black ink, appearing to read "Irvin V. Cantor", is written over a horizontal line. To the right of the signature, there is a small, stylized mark that looks like a box with a diagonal line through it.

**A. Plaintiff has stated no facts to support her allegations of assault.**

“The tort of assault consists of an act intended to cause either harmful or offensive contact with another person or apprehension of such contact, and that creates in that other person’s mind a reasonable apprehension of an imminent battery.” Koffman v. Garnett, 265 Va. 12, 16, 574 S.E.2d 258, 261 (2003). It is “an intentional, unprivileged act toward a touching the person of another, that creates in the mind of the other a reasonable apprehension of immediate battery.” 1 Charles E. Friend, Friend’s Virginia Pleading & Practice § 25.03[3], at 25-40 (2006). To state a claim for the tort of assault, a plaintiff must allege that the injured party had an apprehension of immediate battery. See Koffman, 265 Va. at 16, 574 S.E.2d at 261. While the torts of assault and battery “‘go together like ham and eggs,’ the difference between them is ‘that between physical contact and the mere apprehension of it. One may exist without the other.’” Id. (quoting W. Page Keeton, Prosser & Keeton on Torts § 10, at 46).

In Koffman, the Supreme Court of Virginia considered whether the trial court properly dismissed the plaintiff’s complaint for failure to state causes of action for gross negligence, assault, and battery. Id. at 14, 574 S.E.2d at 259. In that case, the defendant, a 260 pound football coach ordered the plaintiff, 144 pounds, to hold a football and to stand upright and motionless so that the defendant could demonstrate proper tackling technique. Id. at 14, 574 S.E.2d at 260. The defendant then, without warning, thrust his arms around the plaintiff’s body, lifted him off the ground by two feet or more, and slammed him to the ground, breaking the humerus bone in the plaintiff’s left arm. Id. The Court held that while the plaintiff had alleged sufficient facts to state a cause of action for the tort of battery, there was no allegation that he “had any apprehension of an immediate battery.” Id. at 16-17, 574 S.E.2d at 261. Therefore, his

“pleadings were insufficient as a matter of law to establish a cause of action for civil assault.”

Id.

Similarly, in the present case, Plaintiff has not alleged that Love had any apprehension of an immediate battery. Instead, the Complaint merely alleges that there was a physical altercation resulting in Love’s injuries and death. (Compl. at ¶ 5.) Therefore, as with the pleadings in Koffman, Plaintiff’s Complaint is insufficient as a matter of law to establish a cause of action for civil assault. As such, Count V should be dismissed.

**B. Plaintiff has stated no facts to support her allegations of battery.**

“The tort of battery is an unwanted touching which is neither consented to, excused, nor justified.” Koffman, 265 Va. at 16, 574 S.E.2d at 261. “In order for there to be a battery, the defendant must have intended the bodily contact.” Friend, supra, at § 25.03[2][b].

Plaintiff has not alleged any facts to support the allegation of battery, namely, there are no facts regarding Defendant’s intention and whether the touching was consented to, excused, or justified. Therefore, Plaintiff’s Complaint fails to state a cause of action for civil battery and Count V should be dismissed.

**V. Count VI—Alternative Count—Punitive Damages Fails to State a Claim.**

In Count VI, Plaintiff alleges that Defendant’s actions “were willful and/or wanton and/or malicious and/or done with actual malice and/or so reckless as to evince a conscious disregard for the safety and life of Love such that an award of punitive damages is warranted.” (Compl. at ¶ 17.)

Punitive damages are a remedy, not a cause of action. Hawkins v. Martin, 59 Va. Cir. 236, 237 (Richmond 2002); Eslami v. Global One Commc’ns, Inc., 48 Va. Cir. 17, 25 (Fairfax

1999); Spicer v. City of Norfolk, 46 Va. Cir. 535, 541 (Norfolk 1996). Therefore, Count VI fails to state a claim and should be dismissed.

**VI. Plaintiff's Fails to State a Claim for Punitive Damages.**

Plaintiff's Prayers for Relief with respect to Counts III, IV, and V seek \$29,450,000 in compensatory and \$1,000,000 in punitive damages.

**A. Plaintiff has stated no facts to support her claim for punitive damages.**

To recover punitive damages, a plaintiff must prove that the defendant's conduct was so willful or wanton as to evidence a conscious disregard of the rights of others. Baker v. Marcus, 201 Va. 905, 909, 114 S.E.2d 617, 621 (1960). "Willful or wanton conduct imports knowledge and consciousness that injury will result from the act done. The act must be intended or it must involve a reckless disregard for the rights of another and will probably result in an injury." Id. (quoting Friedman v. Jordan, 166 Va. 65, 68, 184 S.E. 186 (1936)). "A claim for punitive damages at common law in a personal injury action must be supported by factual allegations sufficient to establish that the defendant's conduct was willful or wanton." Woods v. Mendez, 265 Va. 68, 76, 574 S.E.2d 263, 268 (2003) (emphasis added).

As explained more fully supra in Part II, Plaintiff has stated no facts to support her allegations that Defendant's conduct was willful or wanton. The only facts alleged in the Complaint are that Defendant entered Love's apartment and engaged in a physical altercation resulting in Love's injuries and death. (Compl. ¶ 5.) These factual allegations do not rise to the level of willful or wanton conduct necessary to support a claim for punitive damages. As such, Plaintiff has not pled sufficient facts to support her claim for punitive damages and such claim should be dismissed.

B. Punitive damages are capped at \$350,000.

Plaintiff seeks \$1,000,000 in punitive damages. Pursuant to Virginia Code section 8.01-38.1, punitive damages are capped at \$350,000. As such, should Plaintiff's punitive damages claim be permitted to stand, it should be reduced to the statutory maximum.

CONCLUSION

For all of the foregoing reasons, George W. Huguely, V, by counsel, respectfully requests that this Court dismiss Plaintiff's Complaint without leave to amend.

GEORGE W. HUGUELY, V,

By \_\_\_\_\_

  
Counsel

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