

**IN THE STATE COURT OF ROCKDALE COUNTY  
STATE OF GEORGIA**

REBECCA MILLER as Mother and Next-of-Kin to Daniel Garcia, III, deceased minor, and Maria Garcia, injured minor, and REBECCA MILLER, Individually and as Personal Representative / Administrator of the Estate of Daniel Garcia, III, deceased minor,

Plaintiff,

v.

ZACHARY CHASE ROBERTS, JEFF ROBERTS, & SHEILA EPSTEIN,

Defendants.

JURY TRIAL DEMANDED

CIVIL ACTION

FILE NO. 2021-TD-1234

**PLAINTIFF'S BRIEF IN SUPPORT OF HER MOTION FOR PARTIAL  
SUMMARY JUDGMENT**

**I. INTRODUCTION AND STATEMENT OF RELEVANT FACTS**

Sheila Epstein purchased the single-family residence at 7227 Maple Lane SE, Conyers, Rockdale County, Georgia, 30094-3529, in 1997. (Deposition of Sheila Epstein, hereinafter "Epstein Depo." at 5:25-6:2). The home didn't have a pool when Epstein purchased it, and Epstein installed a pool in 1999. (Epstein Depo. at 31:25-32:7). At the same time that she installed the pool, Epstein also installed a sliding glass door with direct access to the pool. (Epstein Depo. 30:2-14). The sliding glass door was not equipped with an automatically resetting alarm that chimed for thirty (30) consecutive seconds when the door was opened. (Epstein Depo. 30:22-31:1). The sliding glass door was not self-closing with self-latching devices, nor did it have positive mechanical latching or locking devices. The swimming pool was not fitted with an automatic pool cover.

In 2013, Sheila Epstein moved out of her home at 7227 Maple Lane SE. Sometime later, Epstein entered into an informal leasing agreement to allow her son, Jeff Roberts, to live in the home. (Epstein Depo. at 7:23-9:3). Per the agreement, Jeff was to pay the balance

of the monthly mortgage payment directly to Epstein in exchange for living in the home. (Epstein Depo. at 8:23-9:3). Epstein continued to pay the utilities, the home insurance, and the property taxes. (Epstein Depo. 9:4-19; 27:16-18). From 2013 until 2019, there was no written lease agreement between Epstein and Jeff Roberts. (Epstein Depo. 11:14-20). Jeff Roberts shared the home with his girlfriend, Christine, his son, Zachary Roberts, and Zachary's daughter, Meghan.

Jeff Roberts did not make changes to the sliding glass door or swimming pool after he moved into the home. He did not fit the sliding glass door with an automatically resetting alarm that chimed for thirty (30) consecutive seconds when the door was opened. He did not install self-closing doors with self-latching devices, or positive mechanical latching or locking devices. He did not install an automatic pool cover. (Deposition of Zachary Roberts, hereinafter "Zachary Roberts Depo." at 52: 24-53:12).

On April 25, 2019, Rebecca Miller and her two children, Daniel and Maria Garcia, were house guests of Zachary Roberts. (Zachary Roberts Depo. at 27:11-28:6). At the time, Daniel and Maria were two and three years old, respectively. On the morning of April 25, 2019, Zachary was watching Daniel and Maria while Rebecca Miller slept in his room. (Zachary Roberts Depo. at 38:15-39:17). At some point, Zachary left Daniel and Maria unattended in the living room while he hung out with friends in the garage. (Zachary Roberts Depo. at 38:15-39:17). While alone, Daniel and Maria opened the sliding glass door and entered the pool area. (Zachary Roberts Depo. at 60:17-61:2). They both entered the pool and drowned. Zachary discovered the children between five (5) and fifty-two (52) minutes later when he reentered the living room and saw that they were not there. (Zachary Roberts Depo. at 68:2-12).<sup>1</sup> Zachary pulled the children out of the pool and performed CPR on Maria.

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<sup>1</sup> While Zachary has testified that he came to check on the children every five minutes, the police concluded that he did not check on the children were left unattended for fifty-two (52) minutes.

(Zachary Roberts Depo. at 68:11-18). Zachary was able to resuscitate Maria, but could not resuscitate Daniel. (Zachary Roberts Depo. at 69:8-9). Both children were transferred to a hospital by ambulance. Maria was treated and released after three days. Daniel died seventeen days later, four days before his third birthday.

## **II. ARGUMENT AND CITATION TO AUTHORITY**

Sheila Epstein's construction of the swimming pool and sliding glass door violated the 1991 Standard Swimming Pool Code which was in effect at the time of the 1999 construction and applicable to the State of Georgia and Rockdale County through O.C.G.A. 8-2-20.<sup>2</sup> Per Standard Swimming Pool Code Section 315.2.9, the sliding glass door in Epstein's home that provided direct access to her pool was required to be equipped with an automatically resetting alarm that chimed for thirty (30) consecutive seconds when the door was opened. Per the 1994 and 1999 iterations of the same code section, if Epstein's door did not have such an alarm, then her doors were to have self-closing and self-latching devices, or positive mechanical latching or locking devices. If her doors had none of these safety measures, then her pool should have been fitted with an automatic pool cover. Epstein was negligent per se for failing to adhere to these mandatory code sections.

Sheila Epstein is liable for negligence per se even if this Court finds that she was an out-of-possession landlord at the time of this incident. Because the pool was installed under Epstein's direction while she was living in the home, she is liable for damages resulting from its defective construction per O.C.G.A. § 44-7-14.

### **A. Even if this Court finds that Sheila Epstein was an out-of-possession landlord, she is still liable for the defective construction of her pool.**

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<sup>2</sup> It is Plaintiff's understanding that the 1994 version of the Standard Swimming Pool Code was in effect at the time of this incident. However, even if the 1991 version of the Code was still in effect in 1999, the pool construction was still defective.

Per O.C.G.A. § 44-7-14, an out-of-possession landlord, “is not responsible to third persons for damages resulting from the negligence or illegal use of the premises by the tenant; provided, however, the landlord is responsible for damages arising from defective construction or for damages arising from the failure to keep the premises in repair.” Epstein is liable for the damage suffered in this case because it arose from her defective construction of the pool.<sup>3</sup>

In *Hayes v. Guerra* (2008 U.S. Dist. LEXIS 130031), the United States District Court for the Northern District of Georgia addressed a case in which a landlord was sued for negligence after a child drowned in the swimming pool of the landlord’s rental property. Applying Georgia law, the court held that an out-of-possession landlord “cannot be held liable for damages in tort resulting from a third party’s use of the swimming pool, unless it is shown that the damages occurred due to his failure to repair the pool, or due to his defective construction of the pool.” *Hayes v. Guerra*, 2008 U.S. Dist. LEXIS 130031, at \*6 (N.D. Ga. Dec. 23, 2008). In *Hayes*, the court held that the landlord was not liable for defective construction because the pool had already been installed at the house before the landlord purchased the property.

The facts in *Hayes* stand in stark contrast to those of the instant case. Unlike the landlord in *Hayes*, Sheila Epstein installed the pool two years after she bought the property. (Epstein Depo. at 31:25-32:7). It was Epstein’s responsibility to ensure that the pool met the legal requirements set out in Section 315.2.9 of the Standard Swimming Pool Code because she supervised and directed the pool’s installation. The liability for damages resulting from

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<sup>3</sup> Plaintiff does not concede that Defendant was an out-of-possession landlord. Epstein never entered into a formal lease agreement with her son. She paid all of the utilities for the home, continued to pay the property taxes, and maintained home insurance under her name. Epstein even filed an insurance claim for flood damage while Roberts was living in the home. (Epstein Depo. at 15:2-16:7). All of this evidence supports the conclusion that Epstein never fully parted with possession and the right of possession per O.C.G.A 44-7-14.

this defective construction remained that of Epstein even after she had parted with possession of the property. Because Epstein was responsible for the defective construction of the pool, she is liable for damages arising out of that defective construction under O.C.G.A. § 44-7-14.

**B. Epstein is negligent per se for the defective construction of her swimming pool and access door.**

In order to establish negligence per se based upon a violation of a building code, a plaintiff must show that the defendant:

- (1) Violated a specific code provision,
- (2) That the provision was mandatory and had the force of law,
- (3) That the injured parties were in the class the provision was intended to protect,
- (4) That the injured parties suffered the type of harm that the provisions were intended to guard against, and
- (5) That the alleged negligence per se proximately caused her injuries.

Norman v. Jones Lang LaSalle Ams., Inc., 277 Ga. App. 621, 628 (2006).

*(1) Epstein’s construction of her pool and sliding glass door violated Standard Swimming Pool Code Section 315.2.9, applicable through O.C.G.A. § 8-2-20(9)(A)(i)(XIII).*

O.C.G.A. § 8-2-20(9)(A)(i)(XIII) established the Standard Swimming Pool Code (SBCCI) as a “state minimum standard code” in 1991. The SBCCI is based in the International Building Code as published by the International Code Council and is **“applicable to all construction [in the state of Georgia] whether or not [it is] locally enforced.”**<sup>4</sup> Section (ii) of the statute stipulates that all of the codes provided in that section “shall mean such codes as they exist on October 1, 1991, provided that the department, with the approval of the board, may adopt a subsequently published edition of any such code as provided in subsection (b) of Code Section 8-2-23 [...].”

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<sup>4</sup> Construction Codes: Basic Info, Georgia Department of Community Affairs, <https://www.dca.ga.gov/local-government-assistance/construction-codes-industrialized-buildings/construction-codes>; See also gacities.com, Building Code Enforcements, Georgia Municipal Association (Feb. 22, 2018), <https://www.gacities.com/Resources/GMA-Handbooks-Publications/Handbook-for-Georgia-Mayors-and-Councilmembers/Part-Four-MUNICIPAL-SERVICES/Building-Codes-Enforcement.aspx>.

In 1991, the Standard Swimming Pool Code Section 315.2.9 stated that:

Where a wall of a dwelling serves as part of the [pool] barrier all doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and its screen are opened. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door is opened and be capable of being heard throughout the house during normal household activities. The alarm shall automatically reset under all conditions. The alarm shall be equipped with a manual means to temporarily deactivate the alarm for a single opening. Such deactivation shall last no more than 15 seconds. The deactivation switch shall be located at least 54 inches above the threshold of the door. Other means of protection which are approved by the administrative authority shall be acceptable provided the degree of protection is not less than the protection afforded by the alarm described.

See 1991 Standard Swimming Pool Code pp. 17, attached hereto as Plaintiff's Exhibit 1.<sup>5</sup>

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<sup>5</sup> Per O.C.G.A. 8-2-23(b) the Georgia Department of Community affairs may adopt a new edition of any state minimum standard code either on its own motion or upon recommendation from any profession, state agency, or political subdivision. Because of this authority, it is likely that the 1994 or 1999 Standard Swimming Pool Code were in effect at the time that Epstein's pool was constructed. However, for the purposes of this argument, Plaintiff's will rely on the 1991 code as it is explicitly referenced in O.C.G.A. 8-2-23. For this Court's purposes, Plaintiff includes the later iterations of the code section below:

315.2.1.9 if the 1994 version states the following:

Where a wall of a dwelling serves as part of the barrier, one of the following shall apply:

1. All doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and its screen are opened. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door is opened and be capable of being heard throughout the house during normal household activities. The alarm shall automatically reset under all conditions. The alarm shall be equipped with a manual means to temporarily deactivate the alarm for a single opening. Such deactivation shall last no more than 15 seconds. The deactivation switch shall be located at least 54 inches above the threshold of the door.
2. The pool shall be equipped with a power safety cover which complies with ASTM F 1346-199 1.
3. Other means of protection, such as self-closing doors with self-latching devices, which are approved by the administrative authority shall be accepted so long as the degree of protection afforded is not less than the protection afforded by 1 or 2 described.

315.2.1.9 if the 1999 version states the following:

Where a wall of a dwelling serves as part of the barrier, one of the following shall apply:

1. All doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and its screen are opened. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door is opened and be capable of being heard throughout the house during normal household activities. The alarm shall automatically reset under all conditions. The alarm shall be equipped with a manual means to temporarily deactivate the alarm for a single opening. Such deactivation shall last no more than 15 seconds. The deactivation switch shall be located at least 54 inches above the threshold of the door.
2. Other means of protection, such as self-closing doors with self-latching devices, or doors with positive mechanical latching or locking devices installed a minimum 54 inches above the threshold of the door, which are approved by the administrative authority shall be accepted.

It is undisputed that no such alarm existed on Defendants' sliding glass door. (Deposition of Zachary Roberts, hereinafter "Zachary Roberts Depo." at 97:22-98:1). While there is some testimony on the record to suggest that the house was equipped with some type of alarm system, the record unequivocally establishes that the alarm system was irregularly activated and that it did not produce a sound when the sliding glass doors were opened. The facts of the case also exclusively establish that no continuously sounding alarm alerted Zachary Roberts or Rebecca Miller to the fact that Daniel and Maria had opened the sliding glass door and entered the pool area. Per his testimony, Zachary Roberts only discovered the children when he returned from the garage of his own accord and found them drowning in the pool.

Section 315.2.9 does allow for "other means of protection," approved on a case-by-case basis that provide at least the same degree of protection as the alarm. Later versions of the statute provide guidance regarding acceptable means of protection. The 1994 version of Section 315.2.1.9 includes the options of a power safety cover or self-closing doors with self-latching devices. The 1999 version allows for self-closing doors with self-latching devices or doors with positive mechanical latching or locking devices.

Defendants did not employ a means of protection at least equal to that of an automatic restarting alarm to prevent unknown entry into the pool area. It is undisputed that the pool was not fitted with an electric pool cover. (Zachary Roberts Depo. at 52:24-53:12). It is undisputed that the door was neither self-closing nor self-locking. Sheila Epstein does testify to having placed a dowel in the sliding glass door for security. (Epstein Depo. at 31:14-24). Jeff Roberts later replaced that dowel with an axe handle that he used to secure the door when the family went away on vacation. (Deposition of Jeff Roberts, hereinafter "Jeff Roberts

Depo.” at 26:12-20). However, these barriers were placed in the door for the express purpose of keeping the premises secure from potential trespassers. Nothing in the record suggests that the dowels were too heavy for a child to lift, that they were difficult to handle or manipulate, or that they were placed in the door for the specific purpose of discouraging entry into the pool area from inside of the house. The dowels made it difficult to slide open the doors from the outside, but could be easily removed without detection by someone inside the house who wanted to gain access to the pool. Because an axe handle or a dowel does not prevent or prohibit the undetected entry into the pool area from the sliding glass door, it does not provide a level of protection at least equal to an alarm and therefore is not an adequate security alternative under Section 315.2.1.9.<sup>6</sup>

*(2) Standard Swimming Pool Code Section 315.2.9 was mandatory and had the force of law when Epstein’s pool was installed.*

Per O.C.G.A. § 8-2-20 the Standard Swimming Pool Code creates a mandatory state minimum standard. This means that counties cannot opt out of the standard and are bound by the dictates of the code regardless of whether or not they decide to adopt it specifically. See Legarth v. Legarth, 2010 U.S. Dist. LEXIS 154140, at \*5 (N.D. Ga. Mar. 9, 2010). The Georgia Department of Community Affairs regularly updates the Standard Swimming Pool Code, which is now called the International Swimming Pool and Spa Code. However, even if the Code had never been updated and the 1991 Standard Swimming Pool Code applied when Epstein’s pool was installed, her construction of the pool was defective resulting in negligence per se under O.C.G.A. § 8-2-20(9) which unequivocally establishes the 1991 version of the Standard Swimming Pool Code as a state minimum standard.

*(3) The purpose of Standard Swimming Pool Code Section 315.2.9 is to protect children found legally inside a house with a swimming pool from drowning or other injury.*

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<sup>6</sup> There is also no evidence that Daniel and Maria removed a dowel or axe handle from the door before gaining access to the pool area.



Georgia has enacted a host of different laws to protect trespassing children who encounter dangerous artificial conditions on a landowner's property. Because courts have routinely held that "a swimming pool in a residential setting is often found to be a condition which could present issues of negligence and foreseeable risk of injury," laws exist to ensure that landowners with pools install and maintain fences and gates that inhibit or deter the entry of unsupervised, trespassing children. Knutzen v. O'Leary, 210 Ga. App. 590, 592 (1993). Georgia courts have routinely upheld the landowner's duty to protect trespassing children against the threat of drowning. While laws concerning the building and maintenance of fences and gates exist to protect trespassing children, the requirements of the Standard Swimming Pool Code Section 315.2.9 illustrate that it was enacted to protect children legally found on the property.

Standard Swimming Pool Code Section 315.2.9 only requires doors with direct pool access to have alarms that sound for thirty (30) continuous seconds whenever the door is opened. It does not address other doors in the house that do not lead to the pool area. It does not require that windows have alarms. This distinction supports the conclusion that the purpose of Code Section 315.2.9 was created specifically to alert people in the home that someone has entered the pool area. The code also requires that the alarm's deactivation switch be located at least 54 (fifty-four) inches above the threshold of the door. It is clear that this requirement – that the deactivation switch be placed beyond the reach of the average ten-year-old – was included to ensure that a child could not deactivate the alarm.<sup>7</sup> Later iterations of the Code Section reinforce the conclusion that the purpose of the code is to deter or inhibit the entry of children from the home into the pool area. The 1999 version of the code includes the option of doors with positive mechanical latching or locking devices installed a minimum

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<sup>7</sup> "What is considered normal growth rate?" Stanford Medicine Children's Health, <https://www.stanfordchildrens.org/en/topic/default?id=normal-growth-90-P01625>.

of 54 (fifty-four) inches above the threshold of the door. Again, the condition that the self-locking devices be installed 54 (fifty-four) inches above the door's threshold is clearly meant to make it more difficult for a child to reach the lock and open the door. Finally, every iteration of the code section uses the word "protection" when describing the purpose of the alarms and locks. While the code does not specify who the alarms and locks are meant to protect, it is clear from the language and requirements of the code that it is intended to protect children found lawfully inside of a house from drowning or otherwise being injured in a residential pool. Daniel and Maria Garcia squarely fall within the class of people that Code Section 315.2.9 is meant to protect.

*(4) Plaintiffs suffered the type of harm that the provisions were intended to guard against.*

In *Holbrook v. Exec. Conf. Ctr.* (219 Ga. App. 104), the Georgia Court of Appeals addressed a case in which a thirteen-year-old boy nearly drowned in the defendants' swimming pool. The child's parents brought suit against the defendants alleging, in part, that defendants were negligent per se for failing to comply with "the Fulton County ordinance requiring the presence of a qualified attendant trained in first aid, requiring a life-line as the demarcation of the shallow end from the deep end, and requiring permanent interior markings of the pool's depth [...]." *Holbrook v. Exec. Conference Ctr.*, 219 Ga. App. 104, 107 (1995) (internal citation and punctuation omitted). Finding that there was a causal connection between the child's near drowning and the defendants' negligence per se, the *Holbrook* court held that the Fulton County ordinance was "intended to prevent precisely the type of accidental near drowning" that the child sustained. *Id.* at 107. The court further held that "such safety statutes create a duty, *the breach of which is inextricable from the proximate cause of the damage.*" *Id.* (internal citation and punctuation omitted) (emphasis added).

On April 25, 2019, Daniel and Maria Garcia were two and three years old, respectively. Sitting behind a sliding glass door on a hot spring day, they were seduced by the vision of a glimmering pool. Looking at the pool, they didn't see danger, only the promise of pleasure and fun. Unaware of its depth, oblivious to its danger, Daniel and Maria did what so many children would do if left unsupervised in front of a luminous, refreshing-looking pool – they jumped in. This is the action that Section 315.2.9 was written to inhibit. This is the danger it is supposed to protect against. A young child entering a pool area unprotected, unaware of the danger that it presents, pursuing pleasure at their own peril.

It is almost certain that if the pool door from which Daniel and Maria exited was equipped with an alarm that sounded continuously for thirty seconds and that could be heard over normal household activities, someone would have discovered these children and intervened. An alarm like that would have woken up Rebecca Miller. It would have disrupted Zachary Roberts's time with his friends. It would have given both Rebecca and Zachary the time and opportunity to find the children and intervene before they suffered such dire consequences. Had there been an alarm on that door, or if the door had been closed by a lock unreachable by a two- or three-year-old child, it is very likely that these injuries would have never occurred, and that Daniel Garcia would still be alive.

*(5) Epstein's negligence in constructing her pool proximately caused plaintiffs' injuries.*

Defendants might argue that Daniel and Maria Garcia's own actions were the proximate cause of their injuries. In *Rice v. Oaks Investors II* (292 Ga. App. 692), the Georgia Court of Appeals addressed a case in which a ten-year-old girl drowned while swimming unsupervised in an apartment complex pool. The parents brought a wrongful death suit against the complex alleging, among other things, that the complex had been negligent per se because the fence surrounding the pool had a large hole on one side which allowed the

girl to enter the pool area despite the gate being locked. The complex conceded that they had been negligent per se, but the court held that their negligence had not been the proximate cause of the child's death. The court held that the ten-year-old child was "capable of appreciating the risk associated with swimming in the pool" and therefore her own negligence was the sole proximate cause of her drowning. Rice v. Oaks Inv'rs II, 292 Ga. App. 692, 694 (2008). Georgia courts have routinely held that there is "no legal bar to applying assumption of the risk, as a matter of law, to the conduct of a child between [the ages of seven and fourteen] when the evidence shows that the danger was obvious, that the child knew of the danger and was able to appreciate the risks associated with it, and the child voluntarily chose to run the risk." Spooner v. City of Camilla, 256 Ga. App. 179, 182 (2002). This rule, however, does not apply to babies and toddlers. The dangers of a pool are not obvious to toddlers. Nor are the dangers of eating crayons, running in traffic, touching hot stoves, or handling sharp knives. Children of this age must be supervised constantly because they are incapable of understanding danger and they do not know how to protect themselves against it. As stated above, Daniel and Maria were two and three years old. They were too young to understand the risk associated with swimming in a pool. They were too young to make decisions for their own well-being. They were emotionally, mentally, and legally incapable of assuming the risk of jumping in Epstein's pool.

### **CONCLUSION**

Because Defendant Epstein is unequivocally liable for the damages resulting from the defective construction of her pool and sliding glass door, Plaintiff requests that this Court GRANT its motion for partial summary judgment on the issue of negligence per se.

**IN THE STATE COURT OF ROCKDALE COUNTY  
STATE OF GEORGIA**

REBECCA MILLER as Mother and Next-of-Kin to Daniel Garcia, III, deceased minor, and Maria Garcia, injured minor, and REBECCA MILLER, Individually and as Personal Representative / Administrator of the Estate of Daniel Garcia, III, deceased minor,

Plaintiff,

v.

ZACHARY CHASE ROBERTS, JEFF ROBERTS, & SHEILA EPSTEIN,

Defendants.

JURY TRIAL DEMANDED

CIVIL ACTION

FILE NO. 2021-TD-1234

**PLAINTIFF’S STATEMENT OF UNDISPUTED MATERIAL FACTS AND  
THEORIES OF RECOVERY**

Pursuant to Uniform Superior Court Rule 6.5, Plaintiffs hereby file this Statement of Undisputed Material Facts and Theories of Recovery in Support of their Motion for Partial Summary Judgment and Show this Court the following:

1. Sheila Epstein purchased the single-family residence at 7227 Maple Lane SE, Conyers, Rockdale County, Georgia, 30094-3529, in 1997. (Deposition of Sheila Epstein, hereinafter “Epstein Depo.” at 5:25-6:2).
2. 7227 Maple Lane SE did not have a pool when Sheila Epstein bought the property. (Epstein Depo. at 31:25-32:7).
3. Sheila Epstein directed and supervised the construction of the pool in 1999. (Epstein Depo. at 31:25-32:7).
4. Sheila Epstein did not install an automatic pool cover.
5. Sheila Epstein also installed a sliding glass door with direct access to the pool in 1999. (Epstein Depo. 30:2-14).
6. Georgia has adopted the Standard Swimming Pool Code (later known as the

- International Pool and Spa Code) as a mandatory state minimum applicable to the construction of private swimming pools in Georgia.
7. Per O.C.G.A. 8-2-20(9)(A)(i)(N), the 1991 Standard Swimming Pool Code (SBCCI) was the mandatory state minimum applicable to swimming pool construction in 1999.
  8. 1991 Standard Swimming Pool Code Section 315.2.9 stated that: Where a wall of a dwelling serves as part of the [pool] barrier all doors with direct access to the pool through that wall shall be equipped with an alarm which produces an audible warning when the door and its screen are opened. The alarm shall sound continuously for a minimum of 30 seconds immediately after the door is opened and be capable of being heard throughout the house during normal household activities. The alarm shall automatically reset under all conditions. The alarm shall be equipped with a manual means to temporarily deactivate the alarm for a single opening. Such deactivation shall last no more than 15 seconds. The deactivation switch shall be located at least 54 inches above the threshold of the door. Other means of protection which are approved by the administrative authority shall be acceptable provided the degree of protection is not less than the protection afforded by the alarm described. (*See* 1991 Standard Swimming Pool Code attached hereto as Defendant's Exhibit 1).
  9. This sliding glass door that Epstein installed was not fitted with an automatically resetting alarm that chimed for thirty (30) consecutive seconds when the door was opened. (Epstein Depo. 30:22-31:1).
  10. The sliding glass door was not self-closing or self-locking.
  11. In 2013, Sheila Epstein moved out of her home at 7227 Maple Lane SE.
  12. Sheila Epstein allowed her son, Jeff Roberts, to move into the home in or around

2013. (Epstein Depo. at 7:23-9:3).
13. From 2013 through 2019, Sheila Epstein and Jeff Roberts did not have a written lease agreement. (Epstein Depo. 11:14-20).
14. Jeff Roberts paid Sheila Epstein's mortgage payment in exchange for living in the home. (Epstein Depo. at 8:25-3).
15. Jeff Roberts made mortgage payments directly to Sheila Epstein. (Deposition of Jeff Roberts, hereinafter "Jeff Roberts Depo." at 13:1-4).
16. Sheila Epstein continued to pay property taxes, home insurance, and utilities for the home after Jeff Roberts moved in. (Epstein Depo. 9:4-19; 27:16-18).
17. Jeff Roberts did not install an automatic pool cover. (Deposition of Zachary Roberts, hereinafter "Zachary Roberts Depo." at 52: 24-53:12).
18. Jeff Roberts did not install an automatically resetting alarm that chimed for thirty (30) continuous seconds when opened on the sliding glass door. (Zachary Roberts Depo. at 108:24-109:3; Jeff Roberts Depo. at 25:3-10).
19. Jeff Roberts did not install self-closing or self-latching features on the sliding glass door. (Zachary Roberts Depo. at 40:10-25).
20. Zachary Roberts, the son of Jeff Roberts, was a resident of 7227 Maple Lane SE on April 25, 2019. (Zachary Roberts Depo. at 5:10-13).
21. Daniel and Maria Garcia were houseguests of Zachary Roberts on April 25, 2019. (Zachary Roberts Depo. at 27:11-28:6).
22. Daniel Garcia was two years old on April 25, 2019. (Complaint at ¶ 3).
23. Maria Garcia was three years old on April 25, 2019. (Complaint at ¶ 4).
24. Zachary left Maria and Daniel unattended in front of the sliding glass door with direct access to the pool on April 25, 2019. (Zachary Roberts Depo. at 38:15-39:17).

25. Maria and Daniel opened the sliding glass door and entered the pool area. (Jeff Roberts Depo. at 60:17-62:8).

26. Maria and Daniel went into the pool. (Jeff Roberts Depo. at 60:17-62:8)

27. At some point, Zachary came back to check on the children and found them in the pool. (Zachary Roberts Depo. at 68:11-13).

28. He retrieved both children from the pool. (Zachary Roberts Depo. at 68:11-13).

29. Both children were unconscious when Zachary retrieved them from the pool. (Zachary Roberts Depo. at 69:3-5).

30. Zachary Roberts performed CPR on Maria Garcia. (Zachary Roberts Depo. at 69:8-9).

31. Both children were seriously injured. (Complaint at ¶ 3).

32. The children were transported to a hospital. (Complaint at ¶ 14).

33. Maria was treated for her injuries and released. (Complaint at ¶ 15).

34. Daniel died seventeen days after the incident. (Complaint at ¶ 16).

### **THEORIES OF RECOVERY**

1. Epstein is negligent per se because her construction of the pool and the sliding glass door with direct access to the pool did not conform to the mandatory state minimum dictated by the 1991 Standard Swimming Pool Code Section 315.2.9.
2. Epstein's failure to conform to the Section 315.2.9 was the proximate cause of Daniel and Maria Garcia's injuries.
3. Because Epstein installed the pool, she is liable for damages that resulted from its defective construction pursuant to O.C.G.A. § 44-7-14.

WHEREFORE, Plaintiffs respectfully request this Court award them partial summary judgment on the claim of negligence per se against Defendant.