

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

Jana P. Stone
CLERK OF STATE COURT

MICHAEL SMITH, as administrator of the
estate of Saulo Suarez-Bernal, deceased

Plaintiff,

v.

MESSER NORTH AMERICA, INC.,
MESSER GAS LLC, JOHN KLINE, JOHN
DOE(S) and JOHN DOE
CORPORATION(S)

Defendants.

JURY TRIAL DEMANDED

CIVIL ACTION FILE
NO.: 21-C-01352-S1

COMPLAINT

COMES NOW Plaintiff Michael Smith, as administrator of the estate of Saulo Suarez-Bernal, deceased, and hereby files this Complaint against Defendants Messer North America, Inc., Messer Gas LLC, John Kline, John Doe(s) and John Doe Corporation(s), as follows:

PARTIES AND JURISDICTION

1.

Plaintiff is a citizen and resident of the State of Georgia and is subject to the jurisdiction of this Court.

2.

Defendant Messer North America, Inc. ("Messer") is a foreign corporation with its principal place of business in New Jersey and may be served by delivering a copy of the Summons and Complaint to its registered agent Corporation Service Company at 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092 and is subject to the jurisdiction of this Court.

3.

Defendant Messer Gas LLC (“Messer Gas”) is a foreign corporation with its principal place of business in New Jersey and may be served by delivering a copy of the Summons and Complaint to its registered agent Corporation Service Company at 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, Georgia 30092 and is subject to the jurisdiction of this Court.

4.

Defendant John Kline is a resident of Georgia and may be served at his home address at 2384 Bronze Oak Lane, Braselton, Gwinnett County, Georgia 30517.

5.

John Doe(s) is the unknown and unidentified individuals who were involved in the installation, inspection, maintenance, and repair of the machine at issue in this litigation.

6.

John Doe Corporation(s) is the employer of the employees involved in the installation, inspection, maintenance, and repair of the machine at issue in this litigation

7.

Jurisdiction and venue are proper in this Court.

BACKGROUND

8.

In December of 2020, Messer and Messer Gas installed a machine that used liquid nitrogen at the facility located at 2076 Memorial Park Drive in Gainesville, Georgia for the purpose of processing chicken.

9.

The machine never worked properly and had multiple issues with it that left it susceptible to leaking nitrogen.

10.

On or about January 28, 2021, Saulo Suarez-Bernal was at 2076 Memorial Park Drive in Gainesville, Georgia when nitrogen leaked from the machine at the facility.

11.

Messer and Messer Gas were the companies responsible for the manufacture, design, installation, maintenance and repair of the machine at issue in this litigation.

12.

Defendant Kline was the employee of Messer and/or Messer Gas responsible, in part, for the installation, maintenance and repair of the machine at issue in this litigation.

13.

As a result of exposure to the nitrogen leaking from the machine, Mr. Suarez-Bernal suffered immensely and then died of asphyxiation.

14.

The sole and proximate cause of the death of Mr. Suarez-Bernal was the misconduct of the Defendants and their employees.

COUNT I- STRICT LIABILITY

15.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 14 above as if fully restated.

16.

Defendants Messer and Messer Gas are the manufacturers of the machine at issue in this litigation.

17.

Defendants Messer and Messer Gas are strictly liable for manufacturing and designing a machine that was defective, for manufacturing and designing a machine that did not have sufficient warnings and warning devices and for manufacturing and designing a machine that the risk of the machine outweighed its utility.

18.

The defective machine manufactured and designed by Messer and Messer Gas caused the death of Mr. Suarez-Bernal.

COUNT II- NEGLIGENCE

19.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 18 above as if fully restated.

20.

Defendants Messer and Messer Gas installed, repaired and maintained the machine at issue in this litigation.

21.

Defendants Messer and Messer Gas and their employees were negligent in installing, repairing and maintaining the machine at issue in this litigation.

22.

Defendants Messer and Messer Gas and their employees were negligent in failing to properly inspect and test the machine.

23.

Defendants Messer and Messer Gas and their employees were negligent in failing to properly warn the people in the vicinity of the machine of the dangers of the machine and the liquid nitrogen.

24.

Defendants Messer and Messer Gas and their employees were negligent in failing to train people at the facility about the machine at issue in this litigation.

25.

Defendant Kline was negligent in installing, repairing, inspecting, testing and maintaining the machine at issue in this litigation on January 26 or 27 of 2021.

26.

Defendant Kline was an employee of Messer and/or Messer Gas at the time of his work on the machine and was acting within the scope of his employment.

27.

Defendant Messer and Messer Gas are responsible for the conduct of the Defendant Kline in regards to his work on the machine.

28.

As a result of the negligence of Defendants Messer and Messer Gas and Defendant Kline, the machine leaked nitrogen causing the death of Mr. Suarez-Bernal.

COUNT III – DAMAGES

29.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 28 above as if fully restated.

30.

As a direct and proximate result of the breaches of duty by Defendants, Mr. Suarez-Bernal suffered immensely before dying of asphyxiation.

31.

Mr. Suarez-Bernal was not married at the time of his death and did not have any children and his biological parents pre-deceased him.

32.

Mr. Suarez-Bernal was survived by a sister and a brother.

33.

As a direct and proximate result of the breaches of duty by Defendants, Mr. Suarez-Bernal died and the Plaintiff as the administrator of the estate has a claim for the full value of the life of Mr. Suarez-Bernal, and for his pain and suffering and funeral expenses.

COUNT IV – PUNITIVE DAMAGES

34.

Plaintiff realleges and incorporates herein the allegations contained in paragraphs 1 through 33 above as if fully restated.

35.

At all times pertinent hereto, Defendants' foregoing breaches of duty showed and exhibited wantonness, recklessness, and the entire want of care that would raise the presumption of

conscious indifference to the consequences of their actions pursuant to O.C.G.A. § 51-12-5.1 and O.C.G.A. § 9-11-12.

36.

By reason of the above and foregoing, Plaintiff is entitled to recover punitive damages from Defendants.

WHEREFORE, Plaintiff prays that he have a trial on all issues and judgment against Defendants as follows:

- (a) That Plaintiff recover for the full value of the life of Mr. Suarez-Bernal;
- (b) The Plaintiff recover for the pre-death pain and suffering of Mr. Suarez-Bernal;
- (c) That Plaintiff recover for the funeral expenses;
- (d) That Plaintiff recover punitive damages in an amount to be determined by the enlightened conscience of a jury; and
- (e) That Plaintiff recover such other and further relief as is just and proper.

This the 18th day of February, 2021.

Respectfully Submitted,
FRIED GOLDBERG LLC

By: /s/ Michael L. Goldberg
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