

Caroline Woodburn
District Clerk
6/21/2017 8:05 AM
Potter County, Texas
By _____ Deputy

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CAUSE NO. 106528-D-CV

YRMA GURROLA, Individually, and
on Behalf all Lawful Heirs of
YGNACIO RODRIGUEZ (Deceased)

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IN THE DISTRICT COURT OF

POTTER COUNTY, TEXAS

v.

FELIPE RAMIREZ-RAMOS and
RAMIREZ CONCRETE LLC

320th JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION AND REQUEST FOR DISCLOSURES

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff, Yrma Gurrola (hereinafter “Gurrola” and or “Plaintiff”), Individually and on behalf of all lawful heirs of Ygnacio Rodriguez (Deceased) (hereinafter “Rodriguez”) and files this Plaintiff’s Original Petition and Request for Disclosures, complaining of Felipe Ramirez-Ramos (hereinafter “Ramos”) and Ramirez Concrete LLC, (hereinafter “RCLLC”) and (hereinafter collectively “Defendants”) and for cause of action would respectfully show the Court the following:

I. DISCOVERY CONTROL PLAN

1. Plaintiff alleges that discovery should be conducted under a Level 3 discovery control plan pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

II. PARTIES

2. Plaintiff, Yrma Gurrola is an individual residing in Amarillo, Potter County, Texas. The last three digits of Plaintiff’s Texas Driver’s License is 241 and the last three digits of Plaintiff’s Social Security Number are 151.

3. Defendant, Felipe Ramirez-Ramos, is an individual residing in Amarillo, Texas and can be served with process at his residence located at 1315 Iroquois Ave, Amarillo, Texas 79107 Defendant's Social Security Number are 805 and the last three digits of his Texas Driver's License are 878.

4. Defendant, Ramirez Concrete, LLC, in a business doing business in doing business in Amarillo, Potter County, Texas. Defendant, Ramirez Concrete, LLC can be served by serving its Registered Agent Felipe Ramirez at 1315 Iroquois, Amarillo, Texas 79107.

III. JURISDICTION

5. The Court has jurisdiction over this matter because the injuries and damages sought are within the jurisdictional limits of this Court. Plaintiff is seeking an amount of damages in excess of \$200,000.

IV. VENUE

6. Venue is proper in Potter County under the general venue provisions found in TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1) because all or part of the cause of action accrued in Potter County.

V. FACTUAL BACKGROUND

7. On or about June 10, 2107 at approximately 9:05 a.m., Defendant Ramos was driving a Ford F250 pick-up truck in the course and scope of his employment for Defendant Ramirez Concrete, LLC with a trailer attached eastbound on I-40.

8. Defendant Ramos was carrying a load of sand and rebar on the trailer.

9. The fully loaded trailer's pin, that held the trailer to the truck, came lose or broke causing the trailer to disconnect from the truck.

10. The trailer veered off the road and collided into the rear of a gravel truck being used to resurface the roadway and a GMC Sierra pick-up parked parallel to the south of the gravel truck.

11. Upon the trailer striking the two parked vehicles three (3) of the employees, including Ygnacio Rodriguez were killed upon impact and thrown onto the median and access road south of the parked vehicles. Two other individuals were also critically injured.

VI. NEGLIGENCE

12. Plaintiff incorporates by reference each and every preceding paragraph as if restated fully herein.

13. Defendants owed a duty to Ygnacio Rodriguez to act as a person of ordinary prudence in the exercise of ordinary care would have under the same of similar circumstances. At the time of the accident, Defendants were negligent in various acts and omissions, including the following:

- i. At the time and on the occasion in question, a representative of Defendants failed to inspect the trailer hitch and pin as a person of ordinary prudence in the exercise of ordinary care would have kept under the same or similar circumstances;
- ii. At the time and on the occasion in question and immediately prior thereto, a representative of Defendants failed to keep and maintain a proper lookout as a person of ordinary prudence in the exercise of ordinary care would have kept under the same or similar circumstances;
- iii. At the time and on the occasion in question, Defendant Ramos failed to keep and maintain proper control of the vehicle he was operating as a person of ordinary prudence in the exercise of ordinary care would have done under the same or similar circumstances; and
- iv. At the time on the occasion in question, Defendant Ramos and RCLLC acting by and through its employees committed gross deviation from the standard of care by not attaching the required safety chains as a person of ordinary prudence

in the exercise of ordinary care would have done under the same or similar circumstances.

13. Each and all of the above and foregoing acts and omissions were negligent and each and all were a proximate cause of the collision made the basis of this suit and the resulting injuries, death and damages sustained by decedent, Ygnacio Rodriguez and Plaintiffs.

VII. GROSS NEGLIGENCE

14. At the time and on the occasion in question, Defendant Ramos and RCLLC should have been aware that their failure to secure the trailer to the vehicle by attaching the required safety chains presented a substantial and unjustifiable risk of injury and/or death to the general public.

15. At the time and on the occasion in question, Defendant Ramos should have been aware that his failure to realize the underlying risk to the general public constitutes a gross deviation from the standard that a person of ordinary prudence in the exercise of ordinary care would have done under the same or similar circumstances.

VII. NEGLIGENT ENTRUSTMENT

16. Plaintiff incorporates by reference each and every preceding paragraph as if restated fully herein.

17. Defendant Ramirez Concrete, LLC is liable to Plaintiff under the doctrine of negligent entrustment.

18. At the time of the accident, Defendant Ramos was operating a vehicle owned by Defendant RCLLC.

19. Defendant RCLLC was negligent in entrusting their vehicle to Defendant Ramos: an incompetent and/or reckless driver.

20. Defendant RCLLC knew or should have known that Defendant Ramos was incompetent and/or reckless in not inspecting the trailer hitch and pin.

21. Defendant RCLLC was negligent on the occasion in question and their negligence was the proximate cause for the accident.

VIII. NEGLIGENCE PER SE

22. Plaintiff incorporates by reference each and every preceding paragraph as if stated fully herein.

23. Defendants committed the acts and omissions described above that constitute negligence per se as detailed below:

- i. Defendants failed to secure the safety chains in the manner approved by the Department of Transportation as required by the department. Defendant Felipe Ramirez-Ramos failed to follow this requirement, which is negligence per se. *See* TEX. TRANSP. CODE § 545.410.
- ii. Defendant RCLLC by and through the acts of its employees failed to act as a reasonably prudent corporation under the circumstances;
- iii. Defendant RCLLC by and through the acts of its employees failed to be properly attentive;

22. Defendants acts violated a State of Texas statute. Therefore, they are liable for all the damages described above which were proximately caused by Defendants violation of this statute.

IX. WRONGFUL DEATH

23. Plaintiff incorporates by reference each and every preceding paragraph as if restated fully herein.

24. The negligent, careless, and wrongful actions of Defendants were the proximate cause of the death of Ygnacio Rodriguez. This has caused Ygnacio Rodriguez to suffer tremendous injuries to his body causing his death and Plaintiffs damages

X. WRONGFUL DEATH DAMAGES

25. Plaintiff incorporates by reference each and every preceding paragraph as if restated fully herein.

26. This suit is brought by Plaintiff, Yrma Gurrola, Individually and on behalf of all lawful heirs to recover damages resulting from the negligence of Defendants for the wrongful death of Ygnacio Rodriguez pursuant to the terms and provisions of §§71 *et seq.* of the TEX. CIV. PRAC. & REM. CODE.

27. At the time of his untimely death, Ygnacio Rodriguez was 59 years of age and had a life expectancy to 84.31 years according to U.S. Life Tables.

28. Since decedent, Ygnacio Rodriguez was not married at the time of his death and had no children or living parents alive at the time of his death, Plaintiff, decedent's sister and applicant to determine heirship and applicant to be appointed administrator of the estate of Ygnacio Rodriguez is authorized to bring this suit.

29. With this loss, Plaintiff has suffered and will continue to suffer substantial damages, which include, but not limited to, the following:

- i. LOSS OF COMPANIONSHIP AND SOCIETY meaning the loss of the positive benefits flowing from the love, comfort, companionship, and society that Plaintiff, in reasonable probability, would have received from Ygnacio Rodriguez, deceased, had he lived;
- ii. MENTAL ANGUISH meaning the emotional pain, torment, and suffering experienced by Ygnacio prior to his death; and

- iii. PECUNIARY LOSS meaning the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, in reasonable probability, would have received from Ygnacio Rodriguez, deceased, had he lived.

30. For all of the above, Plaintiff seeks damages individually and on behalf of all lawful heirs of and from Defendants in an amount within the jurisdictional limits of the Court.

XI. ACTUAL DAMAGES

31. Plaintiff incorporates by reference each and every preceding paragraph as if restated fully herein.

32. As a proximate cause of the Defendants' negligence and other wrongful conduct, as set forth herein, Plaintiff on behalf of the estate of decedent Ygnacio Rodriguez is entitled to recover the following:

- i. Reasonable expenses of necessary medical, hospital, health care, and medicines of and/or sustained in the past in an amount within the jurisdictional limits of the Court;
- ii. The funeral expenses;
- iii. Loss of earnings in an amount within the jurisdictional limits of the Court;
- iv. Loss of household services in an amount within the jurisdictional limits of the Court;
- v. Loss of services and reasonable contributions in an amount within the jurisdictional limits of the Court;
- vi. Physical pain and mental anguish sustained in the past in an amount within the jurisdictional limits of the Court;
- vii. Loss of enjoyment of life or loss of capacity to enjoy in an amount within the jurisdictional limits of the Court;
- viii. Loss of companionship and society in an amount within the jurisdictional limits of the Court;

- ix. Inconvenience in an amount within the jurisdictional limits of the Court;
- x. Loss of enjoyment of life in an amount within the jurisdictional limits of the Court; and
- xi. Any other nonpecuniary loss within the jurisdictional limits of the Court.

33. Plaintiff is also entitled to and seeks an award of prejudgment and post judgment interest as a matter of law on the above described actual damages.

XII. DISCOVERY REQUESTS

34. Under Texas Rule of Civil Procedure 194, Plaintiff requests that Defendant disclose within fifty-one (51) days of the service of this request the information or material described in Rule 194.2(a) through (i).

35. THIS IS NOTICE TO YOU THAT ALL DOCUMENTS PRODUCED BY YOU IN RESPONSE TO DISCOVERY THROUGHOUT THIS CASE MAY BE USED BY US AT SUBSEQUENT HEARINGS AND/OR TRIAL.

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that the Plaintiff recovers judgment against the Defendants for the damages described herein, including costs of court, and for such other and further relief, both general and special, at law and in equity, to which he may show himself justly entitled.

Respectfully Submitted,

/s/ W. Kelly Puls

Mark A. Haney
State Bar No. 08908480
Mark@pulshaney.com

W. Kelly Puls
State Bar No. 16393350
Kelly@pulshaney.com

Kolter R. Jennings
State Bar No. 24094048
Kolter@pulshaney.com

PULS HANEY, PLLC
301 Commerce Street, Suite 2900
Fort Worth, Texas 76102
Telephone: 817-338-1717
Facsimile: 817-332-1333

Filed
Caroline Woodburn
District Clerk
6/21/2017 8:05 AM
Potter County, Texas
By _____ Deputy