

IN THE STATE COURT OF GWINNETT COUNTY
STATE OF GEORGIA

Jiana P. Stone
CLERK OF STATE COURT

VERONICA VELLEZ, Individually and as *
the Surviving Spouse of VICTOR *
VELLEZ, Deceased, *

Plaintiff,

CIVIL ACTION *
FILE NO.: 21-C-01346-S4 *

vs. *

JURY TRIAL DEMANDED *

MESSER GAS LLC, MESSER NORTH *
AMERICA, INC., MESSER LLC, *
MESSER GROUP GMBH, and *
JOHN CHRISTOPHER KLINE, *

Defendants. *

COMPLAINT

COMES NOW the Plaintiff in the above-styled action and hereby shows the Court the following:

PARTIES, JURISDICTION, AND VENUE

1.

At the time of filing this Complaint, Plaintiff is a resident of Georgia.

2.

At all times pertinent to this Complaint, Plaintiff Veronica Vellez was the spouse of Victor Vellez, Deceased. Plaintiff asserts claims for the wrongful death of her husband, Victor Vellez, Deceased.¹

¹ Plaintiff will bring all claims on behalf of the Estate of Victor Vellez once the Estate has been established.

3.

Defendant Messer Gas LLC (“Messer Gas”) is a foreign limited liability company organized under the laws of Delaware with its principal office address located at 200 Somerset Corporate Blvd., Suite 7000, Bridgewater, NJ 08807. Defendant Messer Gas may be served with legal process by serving its registered agent for service of process, Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, GA 30092.

4.

Personal jurisdiction exists as to Defendant Messer Gas because it is duly authorized to transact business in Georgia, transacts business in Georgia, and maintains a registered agent in Georgia. Personal jurisdiction also exists as to Defendant Messer Gas because it committed a tort in Georgia, by and through its agent.

5.

Venue is proper in this Court because Defendant Messer Gas maintains its registered agent in Gwinnett County, Georgia. Venue is further proper because venue is proper as to a joint tortfeasor.

6.

Defendant Messer North America, Inc. (“Messer North America”) is a foreign corporation organized under the laws of Delaware with its principal office address located at 200 Somerset Corporate Blvd., Suite 7000, Bridgewater, NJ 08807. Defendant Messer North America may be served with legal process by serving its registered agent for service of process Corporation Service Company, 40 Technology Parkway South, Suite 300, Norcross, Gwinnett County, GA 30092.

7.

Personal jurisdiction exists as to Defendant Messer North America because it is duly authorized to transact business in Georgia, transacts business in Georgia, and maintains a registered agent in Georgia. Personal jurisdiction also exists as to Defendant Messer North America because it committed a tort in Georgia, by and through its agent.

8.

Venue is proper in this Court because Defendant Messer North America maintains its registered agent in Gwinnett County, Georgia. Venue is further proper because venue is proper as to a joint tortfeasor.

9.

Defendant Messer LLC is a foreign limited liability company organized under the laws of Delaware with its principal office address located at 200 Somerset Corporate Blvd., Suite 7000, Bridgewater, NJ 08807. Defendant Messer LLC maintains sufficient minimum contacts within the State of Georgia such that jurisdiction is appropriate. Defendant Messer LLC may be served with legal process by serving its registered agent for service of process Corporation Service Company, 251 Little Falls Drive, Wilmington, DE 19808.

10.

Personal jurisdiction exists as to Defendant Messer LLC because it transacts business in Georgia and because it committed a tort in Georgia, by and through its agent.

11.

Venue is proper in this Court as to Defendant Messer LLC because venue is proper as to a joint tortfeasor.

12.

Defendant Messer Group GmbH (“Messer Group”) is a foreign corporation that maintains sufficient minimum contacts within the State of Georgia such that jurisdiction is appropriate. Upon information and belief, Messer Group, either independently or through its wholly owned subsidiary, has agents, business affiliates, and/or employees in Georgia and/or regularly conducts business in Georgia with its principal place of business at Messer-Platz 1, 65812 Bad Soden, Germany. At all times material to this Complaint, Messer Group transacted business in Georgia by maintaining, inspecting, testing, and servicing nitrogen systems including the nitrogen system at issue in this Complaint, which it or its wholly owned subsidiaries sold and placed into the stream of commerce with its component parts into Georgia. Defendant Messer Group may be served through the Hague Convention at Messer-Platz 1, 65812 Bad Soden, Germany.

13.

Personal jurisdiction exists as to Defendant Messer Group because it transacts business in Georgia and committed a tort in Georgia, by and through its agents, and/or Plaintiff’s claim is reasonably related to Defendant Messer Group’s in-state activities.

14.

Venue is proper in this Court as to Defendant Messer Group because venue is proper as to a joint tortfeasor.

15.

Defendant John Christopher Kline is a resident of Gwinnett County, Georgia with a last known residence address of 2384 Bronze Oak Lane, Braselton, GA 30517, where he may be served with legal process.

16.

This Court has personal jurisdiction over Defendant Kline because, *inter alia*, he is a resident of Gwinnett County, Georgia and committed a tort in Georgia.

17.

Venue is proper in this Court because Defendant Kline resides in Gwinnett County, Georgia.

OPERATIVE FACTS

18.

Defendants Messer Gas, Messer North America, and Messer LLC are entities of Defendant Messer Group, a chemical gas company that has more than 10,000 employees and specializes in the installation and maintenance of nitrogen and other volatile gas systems.

19.

Defendants Messer Gas, Messer North America, Messer LLC and/or Messer Group (hereinafter collectively referred to as “Messer”) have aggressively marketed their services assuring customers that their work and systems are safe and reliable.

20.

Safety is one of Messer’s espoused core values.

21.

Messer is the world’s largest privately held industrial gas enterprise.

22.

In or around December of 2020, Messer installed a liquid nitrogen system at 2076 Memorial Park Drive, Gainesville, Georgia 30504 where Foundation Food Group, Inc. (“FFG”) now operates a food processing plant (“the subject location”).

23.

Since the initial installation of the liquid nitrogen system, Messer had received complaints about the system at the subject location. Despite such complaints, Messer failed to properly inspect, test, repair and/or shut the system down until it could be properly repaired.

24.

On January 26, 2021 or January 27, 2021, Defendant Kline, an employee and/or agent of Messer, attempted to service the subject liquid nitrogen system. Defendant Kline was negligent on that service visit and failed to properly repair or shut the system down and allowed it to continue to operate, leaving vulnerable workers at FFG, including Victor Vellez, at risk for injuries and death from a volatile, odorless, and colorless gas.

25.

Following that service call, Defendants Kline and Messer also failed to properly warn persons who would be working at the subject location of the dangers of the nitrogen system.

26.

Subsequent to Defendant Kline's service attempt, during which he failed to properly inspect, repair, and warn of the dangers associated with the system, a massive nitrogen leak occurred on the morning of January 28, 2021 at the subject location killing six people, including Victor Vellez, and injuring several others.

27.

Victor and Veronica Vellez were married on January 16, 2016.

28.

The negligence of Defendants Kline and Messer described above caused the nitrogen leak at the subject location on January 28, 2021 and directly and proximately caused Victor Vellez's injuries and wrongful death.

29.

During all times relevant to this Complaint, Defendant Kline was in the course and scope of his employment with Defendants Messer Gas, Messer North America, Messer LLC, and/or Messer Group.

30.

During all times relevant to this Complaint, Defendant Kline was an employee and/or agent of Defendants Messer Gas, Messer North America, Messer LLC, and/or Messer Group.

31.

During all times relevant to this Complaint, Defendant Kline was acting in the furtherance of Defendants Messer Gas, Messer North America, Messer LLC, and/or Messer Group's business.

32.

As a result of the negligence described above of Defendants Kline, Messer Gas, Messer North America, Messer LLC, and/or Messer Group, Victor Vellez needlessly suffered and died. As a result of the negligence of Defendants, Plaintiff Veronica Vellez was deprived of the society, care, and companionship of her husband.

LIABILITY OF DEFENDANTS

33.

Defendants Messer Gas, Messer North America, Messer LLC, and/or Messer Group are liable under the doctrine of *respondeat superior* for the tortious acts and omissions of its agents and employees, including Defendant Kline.

34.

Defendant Kline is liable for at least the following tortious acts and omissions:

- (a) Failing to properly maintain and repair the subject nitrogen system;
- (b) Failing to properly test the subject nitrogen system;
- (c) Failing to properly service the subject nitrogen system;
- (d) Failing to properly inspect the subject nitrogen system; and
- (e) Failing to warn workers at FFG of the dangers of the subject nitrogen system.

DAMAGES CLAIMED

35.

The damages claimed by Plaintiff were proximately caused by the tortious acts and omissions of Defendants Kline, Messer Gas, Messer North America, Messer LLC, and/or Messer Group, for which they are liable jointly and severally.

36.

Plaintiff claims all damages allowable under Georgia law arising from the wrongful death of her spouse, Victor Vellez.

37.

Plaintiff Veronica Vellez, as the spouse of Victor Vellez, claims damages for the loss of consortium as a direct and proximate cause of Defendants' negligence as set forth herein, as defined and allowed by law, and to be determined by the enlightened conscience of a fair and impartial jury.

PRAYER FOR RELIEF

38.

WHEREFORE Plaintiff prays for the following relief:

- (a) That Summons issue requiring Defendants to appear as provided by law to answer this Complaint;
- (b) That Plaintiff have a trial by jury;
- (c) That Plaintiff have and recover all damages for all losses compensable under Georgia law as set forth above;
- (d) That all costs be cast against Defendants; and
- (e) For such other and further relief as the Court shall deem just and appropriate.

Dated this 18th day of February 2021.

COOK LAW GROUP, LLC.

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