

CAUSE NO. 2023CI12450

VELMA INFANTE, Individually and on	§	IN DISTRICT COURT OF
behalf of the ESTATE OF GABRIEL	§	
INFANTE,	§	
Plaintiff,	§	
	§	
V.	§	
	§	37th JUDICIAL DISTRICT
	§	
	§	
	§	
B COMM CONSTRUCTORS LLC,	§	
FUTURE INFRASTRUCTURE, LLC	§	
AND PRIMORIS SERVICES	§	
CORPORATION	§	
Defendants.	§	BEXAR COUNTY, TEXAS

PLAINTIFF’S THIRD AMENDED PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff Velma Infante, Individually and on behalf of the Estate of Gabriel Infante, and file this Plaintiff’s Third Amended Petition against Defendants, B Comm Constructors LLC, Future Infrastructure, LLC, and Primoris Services Corporation and in support thereof would show the Court as follows:

I. DISCOVERY CONTROL PLAN

1. Pursuant to the provisions of Texas Rule of Civil Procedure 190.4, Plaintiff proposes to conduct discovery according to Discovery Control Plan Level 3.

II. PARTIES

2. Plaintiff, Velma Infante, Individually and on behalf of the Gabriel Infante, is an individual residing in the state of Texas and is the surviving parent of Gabriel Infante.

3. Defendant, B Comm Constructors LLC (hereinafter “Defendant”) is organized under the laws of the State of Texas, with its principal place of business located at 1010 Creekview

Drive, San Antonio, Texas 78219. Defendant B Comm Constructors LLC may be served by and through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporating Service Company, at 211 E. 7th Street, Suite 620, Austin, Texas 78701. **Service has been perfected on Defendant B Comm Constructors LLC and is not requested.**

4. Defendant, Future Infrastructure, LLC is a domestic limited liability company registered with the Texas Secretary of State doing business in the State of Texas. The Defendant may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. **Service has been perfected on Defendant Future Infrastructure, LLC and is not requested.**

5. Defendant, Primoris Services Corporation is a foreign for-profit corporation conducting business in the State of Texas. The Defendant may be served through its registered agent, Corporation Service Company d/b/a CSC-Lawyers Incorporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701. **Service has been perfected on Defendant Primoris Services Corporation and is not requested.**

III. VENUE AND JURISDICTION

6. Plaintiff seeks monetary relief of over \$1,000,000.00 pursuant to Texas Rule of Civil Procedure 47(c)(5). The Court has jurisdiction over the lawsuit because the amount in controversy exceeds the Court's minimum jurisdictional requirements.

7. Venue is proper in Bexar County, Texas pursuant to § 15.002(a)(3) of the Texas Civil Practice and Remedies Code because Defendants has its principal offices and headquarters located in Bexar County, Texas.

IV. FACTUAL BACKGROUND

8. On or about June 23, 2022, Gabriel Infante was working as an employee of B Comm as a laborer, assisting in the installation of fiber optic cables in residential neighborhoods, specifically at the job site near 10451 Fork Creek, San Antonio, Texas 78245. Gabriel Infante had recently begun his employment with B Comm.

9. Defendants Future Infrastructure, LLC and Primoris Services Corporation either directly or indirectly influenced the directions given to and the conditions of the workers, such as Gabriel Infante, who were to work in the high heat conditions that B Comm's employees were required to labor in.

10. Gabriel Infante was among a group of laborers tasked by B Comm and its forepeople to work under high heat conditions without safeguards for dangerously high heat and with inadequate or no access to water. The work was to be performed in Bexar County, which is among the top 10 Texas counties with the most heat-related deaths according to the Texas Department of State Health Services.

11. With the certainty of the high heat conditions coupled with the extreme physical manual labor being performed by B Comm's workers, based on the number of general laborers laboring under high heat conditions who would undoubtedly be susceptible to heat-related death as a result of the extreme heat and lack of safeguards, it was a scientific and medical certainty that a worker such as Gabriel Infante would die under those conditions.

12. At the direction of the Defendants, Gabriel Infante was in the process of performing soft scaling (hand digging with a shovel) in direct heat with no shade. He was moving fiber optic cable from the street to behind a curb in a grassy area, with the goal of burying the cable about 12 inches into the ground.

13. On or around June 23, 2022, at approximately 5:24 pm, Gabriel Infante began displaying symptoms indicative of heat stress. Instead of addressing his concerns immediately, Gabriel Infante's supervisor and/or agent and representative of the Defendants forcefully insisted that he continue working. They sent him with a coworker to dump a load and then had him return to soft scaling again.

14. Even as EMS arrived at the scene, the B Comm supervisor continued to obstruct their work, instead insisting that Gabriel be penalized rather than helped.

15. Gabriel Infante's childhood friend and co-worker, Joshua Espinoza, recognized that Gabriel required medical attention for heat and began to pour water on him in an effort to cool him down.

16. On the other hand, rather than calling emergency medical services ("EMS"), the B Comm foreman on duty set in motion a call to police and obstructed efforts to call EMS to the scene.

17. Gabriel's childhood friend and coworker, Joshua Espinoza, called EMS, despite the objections from the B Comm leadership. But B Comm's foreman continued to obstruct Gabriel's medical assistance and instead demanded that EMS perform a drug test. Gabriel Infante was immediately transported to the nearest emergency room at Christus Spohn Santa Rosa Westover Hills Hospital.

18. On June 24, 2022, at only 24 years old, Gabriel Infante passed away in the Intensive Care Unit of Christus Spohn Santa Rosa Westover Hills Hospital at 2:25 a.m. central time. An autopsy concluded that Gabriel Infante died because of a heatstroke. The autopsy findings also revealed his initial temperature while being transported to the Emergency Room was at least 109.8 degrees Fahrenheit.

19. Historical weather records associated with San Antonio for June 23, 2022, indicate temperatures reached an excess of 100 degrees Fahrenheit, with humidity levels reaching as high as 75%. Bio-meteorological information for the date in question advises that the influence of solar activity associated with conditions present on that date indicate an extreme risk of harm from unprotected sun exposure due to intense UV radiation, rating the degree of risk as a 4 on a four-point index scale.

20. Gabriel Infante's death is the direct and proximate result of the intentional placement of workers under extreme high heat conditions, with limited or no access to water or cooling stations, for long periods of time, while performing exceptionally demanding physical manual labor and with supervisors whose training and instruction results in forcing those workers to remain under the high-heat conditions. Under these conditions, and with this regularity, and with this sheer lack of safeguards and the number of workers who are no more or less healthy than the general population, it was an unavoidable certainty that a worker such as Gabriel Infante would die from heat exposure, and B Comm is accordingly liable to the beneficiaries of Gabriel Infante's estate for his death. This particular injury was substantially certain to result specifically to Gabriel as all the aforementioned factors existed, coupled with the fact that Gabriel was new to the job, new to manual labor work, new to working in the extreme heat conditions and had not performed such work for a long enough period of time to have developed any sort of tolerance to the extreme heat conditions. Gabriel's supervisor acting as the B Comm agent in charge at the scene acted intentionally when he required Gabriel to labor under those conditions and thereafter failed to aid Gabriel and actively impeded others' ability to do so when Gabriel clearly began to exhibit signs of heat stroke.

V. CAUSES OF ACTION AGAINST ALL DEFENDANTS

COUNT ONE: WRONGFUL DEATH

21. Plaintiff brings claims for the intentional torts of Defendants as recognized by the Texas Supreme Court in *Middleton v. Texas Power & Light Co*, 108 Tex 96, 185 S.W. 556 (1916) and its progeny.

22. Gabriel Infante's death was the substantially certain result of intentional acts on the part of B Comm constructors and its agents. The agents of B Comm's intentional acts were committed in the course and scope of employment and in the furtherance of the employer's objectives.

23. To the extent that the remaining Defendants intentionally directed, managed, or controlled the environment which created the certainty of Gabriel Infante's death, said Defendants are either jointly or severally liable to Plaintiffs for Gabriel Infante's death.

VI. PRESERVATION OF EVIDENCE/SPOLIATION NOTICE

24. Plaintiff hereby requests and demands that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit, or the damages resulting therefrom, including all records related to the jobsite including but not limited to project plans, contracts, work orders, specifications, design drawings, and any other relevant documentation; all maintenance and inspection logs for the equipment, machinery, and tools used at the jobsite, particularly those directly involved in the soft scaping operations; all weather reports, both official and internal, for the date of the incident and the preceding days; any training materials, safety manuals, guidelines, and protocols provided to the employees involved in the soft scaping activities, particularly those pertaining to working in high-temperature environments; all employment records, including but not limited to the Plaintiff's personnel file,

job descriptions, certifications, qualifications, training records, and any other relevant documentation regarding the employees and/or representatives present at the jobsite; emails, text messages, instant messages, and any other electronic or written correspondence exchanged between individuals involved in the soft scaping project, including supervisors, employees, contractors, and subcontractors; and any investigation reports conducted by Defendants or any external entities regarding the incident (this includes incident reports, safety inspection reports, or any other reports related to the circumstances surrounding the Plaintiff's injuries and subsequent death). Failure to maintain such items shall constitute a "spoliation" of the evidence.

VII. NOTICE OF SELF-AUTHENTICATION

25. Pursuant to Rule 193.7 of the Texas Rules of Civil Procedure, Defendants are hereby notified that the production by Defendants of any document in response to written discovery authenticates the document for use against Defendants in any pre-trial proceeding or at trial.

VIII. CONDITIONS PRECEDENT

26. All conditions precedent to Plaintiff right to recover the relief sought herein have occurred or have been performed.

IX. PRE-JUDGMENT AND POST-JUDGMENT INTEREST

27. Plaintiff seeks pre- and post-judgment interest as allowed by law.

X. JURY DEMAND

28. Plaintiff requests a trial by jury for all issues of fact.

XI. PRAYER

WHEREFORE, FACTS CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and required to answer herein accordingly to law, that this cause be set for trial

before a jury, that Plaintiff recovers judgment of and from said Defendants, for their actual damages, and in light of the indivisible injury they caused, in this cause in such amounts as the evidence may show and the Jury may determine to be proper, together with the costs of suit, pre-judgment interest and post judgment interest, and for all such other and further relief, both in equity and at law, to which Plaintiff may show that she is justly entitled.

Respectfully Submitted,

HILLIARD LAW

By: /s/ Alexis A. Medina

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been furnished to all known counsel of record in accordance with the Texas Rules of Civil Procedure on January 11, 2024, via electronic service.

/s/ Alexis Medina

Alexis Medina

Via E-Serve:

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Automated Certificate of eService

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Filing Code Description: THIRD AMENDED PETITION
Filing Description:
Status as of 1/12/2024 9:48 AM CST

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