

Angie Avina

CAUSE NO. DC-16-10398

MARIELA PENA, INDIVIDUALLY	§	IN THE DISTRICT COURT OF
AND AS PERSONAL REPRESENTATIVE	§	
OF THE ESTATE OF FABIAN PENA,	§	
DECEASED MINOR	§	
	§	
VS.	§	DALLAS COUNTY, TEXAS
	§	
SOLANA RIDGE APARTMENTS,	§	
SOLANA, LLC., MIGNEAULT	§	
PROPERTIES, LP, and ATMOS	§	
ENERGY CORPORATION	§	_____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION, REQUESTS FOR DISCLOSURE AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

Plaintiff Mariela Pena, Individually, and as Personal Representative of the Estate of Fabian Pena, Deceased Minor, complaining of Solana Ridge Apartments, Solana, LLC, Migneault Properties LP, and Atmos Energy Corporation, and would respectfully show unto the Court and the jury as follows:

DISCOVERY CONTROL PLAN

1. In accordance with Rule 190.1, Plaintiffs intend to conduct discovery under Level 3.

RULE 194 REQUEST FOR DISCLOSURE

2. Pursuant to Rule 194 of the Texas Rules of Civil Procedure, Defendants are requested to disclose within fifty [50] days of this request, the information and material described in Rule 194.2 of the Texas Rules of Civil Procedure.

PARTIES AND SERVICE

3. Plaintiff, Mariela Pena, Individually, and as Personal Representative of the Estate of Fabian Pena, Deceased Minor, is an individual who resides in Dallas, County, Texas.

4. Defendant, Solana Ridge Apartments, is a business entity doing business in Dallas, Texas. Defendant may be served with process through the registered agent for this party's managing company, Migneault Properties LP. The registered agent is Kim L. Lawrence, 5720 LBJ Freeway, Suite 470, Dallas, Texas 75240.

5. Defendant, SOLANA, LLC, is a foreign limited liability corporation having sufficient business contacts with the state of Texas to make it amenable to service of process, but does not maintain a regular place of business or a designated agent upon whom service of process may be had for causes of action arose out of business done in the state of Texas. For these reasons, service of process shall to be made pursuant to § 17.044 of the Tex. Civ. Prac. & Rem. Code, by serving the Secretary of State of Texas as agent for SOLANA, LLC. This matter arose out of business contacts in this state, and under the circumstances, SOLANA, LLC has appointed the Secretary of State of Texas as its agent upon whom service of process may be had in this action. The Secretary of State is requested to forward a copy of the process with this petition to SOLANA, LLC through its registered agent, Paracorp Incorporated, at its home office located at 2140 Dupont Hwy, Camden, Delaware 19934.

6. Defendant, MIGNEAULT PROPERTIES LP, is a domestic limited partnership licensed to do business in the state of Texas and doing business in the state of Texas for the purpose of accumulating monetary profit. Defendant may be served with process by serving its registered agent for service of process, Kim L. Lawrence, 5720 LBJ Freeway, Suite 470, Dallas, Texas 75240.

7. Defendant, ATMOS ENERGY CORPORATION, is a domestic corporation licensed to do business in the state of Texas and doing business in the state of Texas for the purpose of accumulating monetary profit. Defendant may be served with process by serving its registered agent for service of process, Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas

JURISDICTION AND VENUE

8. Venue may be maintained in Dallas County, Texas because the events that form the basis of this lawsuit occurred in Dallas County, Texas.

9. Additionally, Plaintiff specifically invokes her rights under Tex. Civ. Prac. & Rem. Code § 71.031, which is commonly known as the "open forum" provision, and chooses to maintain this action in the state district courts of Texas.

10. It is yet too early to ascertain the full extent of the damages sustained by Plaintiff, but they are clearly within the jurisdictional limits of this Court. Although the fact-finder should determine the monetary compensation for Plaintiff's injuries and damages, Plaintiff seeks monetary damages for compensatory losses in an amount over \$1,000,000.00, excluding any punitive damages, interests, or costs.

FACTS

11. This action arises from a fire that occurred on August 17, 2016 that caused Plaintiff's injuries and damages, including the death of Fabian Pena, Deceased Minor. Plaintiff, Mariela Pena, is the natural mother of Fabian Pena, Deceased Minor. Plaintiff, Mariela Pena, brings this suit individually and as the personal representative of the Estate of Fabian Pena, Deceased Minor. The fire occurred at 8039 Chariot Drive, Dallas, Texas 75227 at the Solana Ridge Apartments. Fabian Pena died August 18, 2016 as result of the injuries caused by the incident.

NEGLIGENCE

12. Plaintiff and her deceased son resided at the SOLANA RIDGE APARTMENTS. The Solana Ridge Apartments property is owned by Defendant, SOLANA, LLC, and managed by Defendant, MIGNEAULT PROPERTIES LP. Before the fire occurred, the Solana Ridge

Apartments had reported problems with gas leaks. Natural gas was provided by Defendant, ATMOS ENERGY CORPORATION.

13. On information and belief, Defendants' negligent acts or omissions caused a natural gas leak at the apartment complex. Defendants failed to take reasonable and appropriate steps to remedy the problem at the apartment complex in question.

14. Defendants knew, or in the exercise of reasonable care should have known, that the apartment complex in question was not reasonably safe. Defendants knew or should have known about the presence of a dangerous natural gas leak. However, Defendants failed to take reasonable and appropriate steps to remedy the problem or warn residents of the apartment complex.

15. Defendants' negligent acts and omissions caused the fire, as well as Plaintiff's injuries and damages.

GROSS NEGLIGENCE

16. Defendants' conduct involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual subjective awareness of the risk involved but nevertheless proceeded with conscious indifference to the rights, safety and/or welfare of others. Defendants' conduct constitutes gross negligence as that term is defined under the Civil Practice and Remedies Code. Plaintiff seeks exemplary damages.

WRONGFUL DEATH

17. Plaintiff, Mariela Pena, is the surviving natural mother of Fabian Pena, Deceased Minor. Defendants' negligence and gross negligence caused the loss of the companionship, assistance, support, love, and affection that Plaintiff would have received from Fabian Pena if he would have survived. Plaintiff, therefore, seeks to recover all damages pursuant to Tex. Civ. Prac. & Rem. Code §71.002 for the wrongful death of Fabian Pena.

SURVIVAL CLAIM

18. The incident in question caused Fabian Pena to suffer injuries that led to his death. At the time of the incident made the basis of this suit, Fabian Pena, Deceased Minor, was a healthy, able-bodied child. As a result of the incident in question, Plaintiff, Fabian Pena, Deceased Minor, suffered conscious physical pain and mental anguish. Plaintiff as the Personal Representative of the Estate of Fabian Pena, Deceased Minor, seeks the recovery of damages for pre-death physical pain, mental anguish, and medical expenses before the death of Fabian Pena. Plaintiff also seeks damages for funeral and burial expenses. Plaintiff, therefore, seeks to recover all damages pursuant to Tex. Civ. Prac. & Rem. Code §71.021, as a result of the death of Fabian Pena.

BYSTANDER CLAIM

19. Plaintiff, Mariela Pena, in her individual capacity, would show that she is entitled to recover damages as a bystander as that cause of action is understood and applied under Texas law. Mariela Pena suffered physical pain and mental anguish as a result of witnessing the events that caused the death of her son, Fabian Pena, Deceased Minor. Defendants' negligence and gross negligence caused Plaintiff's injuries and damages arising from the death of her son.

DAMAGES

20. Plaintiff, Mariela Pena, in her individual capacity, suffered severe bodily injuries as a result of the incident made the basis of this lawsuit. Plaintiff, therefore, seeks the recovery of the following damages:

- a. Past and future physical pain;
- b. Past and future mental anguish;
- c. Past and future physical impairment;
- d. Past and future physical disfigurement;

- e. Past loss of wages and household services;
- f. Future loss of earning capacity and household services; and
- g. Past and future medical expenses.

RECOVERY OF INTEREST

21. Plaintiff seeks the recovery of pre-judgment interest, if applicable, and post-judgment interest. Plaintiff, therefore, requests that she recover pre-judgment interest, if applicable, and post-judgment interest as provided by law.

APPLICATION FOR TEMPORARY RESTRAINING ORDER

22. Plaintiff's application for temporary restraining order is authorized by Tex. Civ. Prac. & Rem. Code § 65.011(2) and/or Tex. Civ. Prac. & Rem. Code § 65.011(3). Plaintiffs seek to preserve the subject matter of this lawsuit, and to preserve all evidence related to the explosion and fire that caused Decedent's death and Plaintiff's injuries, until this suit may be resolved by a final judgment.

23. Plaintiff asks the Court to prevent Defendants, their agents, assigns, representatives, or any others acting in concert with them from doing any action or inaction that may result in the destruction of all material evidence relating to fire and explosion that caused Decedent's death and Plaintiff's injuries. This includes, but is not limited to the following: (1) preserving the scene of the fire and explosion "as-is" until such time as Plaintiff's representatives and experts may inspect the scene, apartment, apartment complex, natural gas line, and all components parts of the relevant subject matter; (2) prevent Defendants and anyone acting on Defendants' behalf or at Defendants' request from disposing or discarding or destroying any materials, including building materials, electronics, consumer products, furniture, clothes, other personal belongings and components related to the fire and explosion at Solana Ridge Apartments, 8039 Chariot Drive, Dallas, Texas 75227 on

August 17, 2016; (3) prevent Defendants from deleting or discarding any emails, text messages, voice mails or recordings, or other forms of correspondence or communication (whether written or oral) relating to the fire and explosion at Solana Ridge Apartments, 8039 Chariot Drive, Dallas, Texas 75227 on August 17, 2016. Plaintiffs request that the Court order Defendants, their agents, assigns, and representatives, to preserve any all emails, text messages, or other forms of communication regarding natural gas service at Solana Ridge Apartments from January 1, 2016 to present. This includes any communications between maintenance personnel at Solana Ridge Apartments and Defendant Atmos Energy and residents of the apartment complex; (4) prevent Defendants from discarding, deleting, or disposing of any documents or communications relating to their investigation regarding the cause of the fire and explosion at Solana Ridge Apartments, 8039 Chariot Drive, Dallas, Texas 75227 on August 17, 2016. This includes all emails, documents, or other communications with the Dallas Fire-Rescue Department; (5) prevent Defendants from testing, altering, destroying, or removing any property or material from the scene of fire until Plaintiff's representatives have had an opportunity to examine and document the scene; and, (6) direct Defendants to allow Plaintiff's representatives to enter the property, Solana Ridge Apartments, and restrain all persons from preventing Plaintiff's agents or representatives to conduct an investigation of the fire scene.

24. It is probable that Plaintiff will recover from Defendants after a trial on the merits because one or more of Defendants, individually or collectively, caused the incident and will be responsible for Plaintiff's injuries and damages.

25. If Plaintiff's application is not granted, imminent harm will occur because critical and material evidence related to this cause may be lost forever. See Affidavit, attached as Exhibit A. The harm that will result if the temporary restraining order is not issued is irreparable because, once

lost or destroyed, Plaintiffs will be unable to recover material evidence relating to this cause. This evidence should be preserved until this lawsuit may be resolved by a final judgment.

26. Plaintiff has no remedy at law because once the evidence is lost or destroyed, it cannot be replaced and will cause irreparable injury to Plaintiffs and impede their prosecution of this suit.

27. Plaintiffs are willing to post a bond should the Court deem necessary.

28. There is not enough time to serve notice on defendant and to hold a hearing on this application because, on information and belief, remediation activities may already be underway which may materially change the scene of the fire and explosion.

29. Plaintiff asks the Court to set their application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendants for the pendency of this lawsuit regarding the relief requested herein.

PRAYER

30. WHEREFORE, Mariela Pena, Individually, and as Personal Representative of the Estate of Fabian Pena, Deceased Minor, Plaintiff, prays that the Temporary Restraining Order be granted, that Defendants be cited to appear and answer this lawsuit, that judgment be entered against Defendants, that Plaintiff recover her damages in accordance with the evidence, that Plaintiff recover her costs of court, that Plaintiff recover interest to which she is entitled under the law, and for all other just and equitable relief.

Respectfully submitted,

STEVENSON & MURRAY

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AFFIDAVIT

1. My name is Jeremy Newell. I am one of the attorneys who represents Mariela Pena in this lawsuit. The information in this affidavit is based on my personal knowledge and is true and correct.
2. I reviewed Plaintiff's Application for Temporary Restraining Order. According to published news articles, on August 17, 2016, a fire occurred at the Solana Ridge Apartments located in Dallas, Texas. On August 22, 2016, my office sent a written letter to Jennifer Lopez at the Solana Ridge Apartments. On August 23, 2016, my office also sent a written letter to Louis Peyton of Atmos Energy Corporation. Each letter requested that the fire scene and all potential evidence and artifacts be preserved for inspection by Plaintiff's counsel. None of the named parties contacted my office about preserving the fire scene and physical evidence.
3. Since the fire occurred on August 17, 2016, immediate and irreparable injury and harm will occur to Plaintiff, Mariela Pena, because vital and necessary physical evidence related to the cause of the fire may be lost forever. According to published news articles, a natural gas leak may have caused the fire. Therefore, Plaintiff's ability to obtain necessary evidence will be lost without access to the scene. According to published news articles, employees, agents, and representatives of Atmos Energy Corporation already accessed the fire scene to investigate the cause of the fire. Employees, agents, and representatives of other parties to this lawsuit have likely already accessed the fire scene for the same reason. Since Solana Ridge Apartments is an apartment complex, numerous residents and guests will also have access to the scene and physical evidence. Without the ability to secure physical evidence related to the fire, the parties may be prevented from identifying causes of the fire or to eliminate other possible cause of the fire.
4. On behalf of Plaintiff, Mariela Pena, in her individual capacity, and as personal representative of her deceased son, Fabian Pena, the Court should grant Plaintiff's Application for Temporary Restraining Order to preserve the fire scene and physical evidence that may have caused, or contributed to cause, the fire on August 17, 2016.

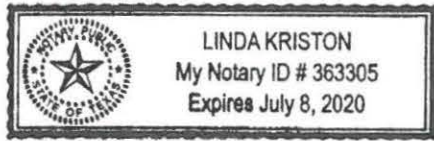


Signed on August 23, 2016.



Jeremy Newell

Subscribed and sworn to before me on August 23, 2016.





Notary Public, State of Texas