

2011-18268

CAUSE NO. _____

NIRVANA E. HIGHTOWER,
AS NEXT FRIEND OF
_____, A MINOR and
WRONGFUL DEATH BENEFICIARY OF
BRIAN JOSEPH GREENHOUSE,
DECEASED, and AS REPRESENTATIVE
OF THE ESTATE OF BRIAN JOSEPH
GREENHOUSE, DECEASED,
NATHANIEL ANTHONY
GREENHOUSE, AS NATURAL FATHER
and WRONGFUL DEATH
BENEFICIARY OF BRIAN JOSEPH
GREENHOUSE, DECEASED, GRET
EL GREENHOUSE, AS NATURAL MOTHER
and WRONGFUL DEATH BENEFICIARY
OF BRIAN JOSEPH GREENHOUSE,
DECEASED

Plaintiffs,

vs.

HOUSTON LIVESTOCK SHOW and
RODEO, INC. and RAY CAMMACK
SHOWS, INC.

Defendants.

IN THE DISTRICT COURT OF

FILED
Loren Jackson
District Clerk

MAR 24 2011

Time: _____

By _____

Harris County, Texas

Deputy

HARRIS COUNTY, TEXAS

127 JUDICIAL DISTRICT

PLAINTIFFS' ORIGINAL PETITION

Plaintiffs, NIRVANA E. HIGHTOWER, AS NEXT FRIEND OF
_____, A MINOR and WRONGFUL DEATH BENEFICIARY OF BRIAN JOSEPH
GREENHOUSE, DECEASED, and AS REPRESENTATIVE OF THE ESTATE OF BRIAN
JOSEPH GREENHOUSE, DECEASED, NATHANIEL ANTHONY GREENHOUSE, AS
NATURAL FATHER and WRONGFUL DEATH BENEFICIARY OF BRIAN JOSEPH
GREENHOUSE, DECEASED, GRET EL GREENHOUSE, AS NATURAL MOTHER and
WRONGFUL DEATH BENEFICIARY OF BRIAN JOSEPH GREENHOUSE, DECEASED,
file this Original Petition and respectfully show the Court the following:

1. DISCOVERY TRACK

01. Plaintiffs request that discovery be conducted under Level 2 of Texas Rule of Civil Procedure 190.

2. INTRODUCTION

01. On March 20, 2011 Brian Joseph Greenhouse was killed when he fell over twenty feet from a roller coaster operated by Defendant Ray Cammack Shows, Inc. Defendant Houston Livestock Show and Rodeo, Inc. contracted with Defendant Ray Cammack Shows, Inc. to supply carnival equipment and operate the equipment during the Houston Livestock Show and Rodeo. The roller coaster in question is referred to as the "Hi-Miler." Mr. Greenhouse is the legal adoptive father of _____, the six year old son that survives him. The interests of the minor _____ in this litigation are represented by his adoptive mother, Nirvana Hightower.

3. PARTIES & SERVICE

01. Plaintiff Nirvana Hightower, _____, as next friend of _____ and Wrongful Death Beneficiary of Brian Joseph Greenhouse, deceased and as Representative of the Estate of Brian Joseph Greenhouse, deceased, is a resident of Houston, Harris County, Texas.

02. Plaintiff Nathaniel Anthony Greenhouse _____, as Natural Father and Wrongful Death Beneficiary of Brian Joseph Greenhouse, deceased, is a resident of Oakland, California.

03. Plaintiff Gretel Greenhouse, _____, as Natural Mother and Wrongful Death Beneficiary of Brian Joseph Greenhouse, deceased, is a resident of Oakland, California.

04. Defendant Houston Livestock Show and Rodeo, Inc. (Defendant HLSR) is a Texas nonprofit corporation that at all times material hereto, was doing business in Houston, Harris County, Texas. Defendant HLSR may be served with process by serving CT Corporation System, 350 N. St. Paul St., Suite 2900, Dallas, Texas 75201-4234.

05. Defendant Ray Cammack Shows, Inc. (Defendant RCS) is a foreign for-profit corporation that is registered to do, and is doing business in Texas. Defendant RCS may be served through its registered agent Mendel Kaliff at 1250 N. E. Loop 410, Suite 308, San Antonio, Texas 78209.

4. JURISDICTION AND VENUE

01. Jurisdiction is proper in this Court because this suit arises under the Laws of the State of Texas and because the Plaintiffs have suffered damages in excess of the minimum jurisdictional limits of this Court.

02. Venue is proper pursuant to Texas Civil Statute & Remedies Code §15.002(a)(1) because all or a substantial part of the events or omissions giving rise to this claim occurred in Harris County, Texas.

5. BACKGROUND FACTS

01. Brian Joseph Greenhouse and two of his friends went to the Houston Livestock Show and Rodeo to enjoy the carnival on March 20, 2011. Upon arrival the three first rode the ferris wheel and then made their way to ride the Hi-Miler roller coaster. When it was Brian Joseph Greenhouse's turn to board the Hi-Miler, he was instructed by an employee/agent of Defendant RCS to sit himself in the front car of the Hi-Miler. This particular roller coaster is made up of five separate but connected cars. Defendant RCS through its agents and employees had a duty to assure that Mr. Greenhouse was secured by the restraint system in the Hi-Miler and that the restraint system was in proper working order so as to restrain a person of the same

general nature as Brian Joseph Greenhouse. The employees of Defendant RCS failed in this duty because Brian Joseph Greenhouse was not properly secured in the roller coaster. Further, Defendant HLSR had a duty to assure the rides were operated in a safe manner and were safe for their intended purposes.

02. At some point during the Defendant RCS's roller coaster ride Mr. Greenhouse was ejected from the roller coaster car and fell more than 20 feet to the pavement below.

6. CAUSES OF ACTION AGAINST DEFENDANT HLSR

A. Negligence

01. Plaintiffs hereby adopt, restate and re-allege each and every of the foregoing paragraphs of this Petition as if fully and completely set forth herein.

02. Plaintiffs allege that the negligence of Defendant HLSR was a proximate cause of the occurrence in question and Plaintiffs' resulting injuries and damages. Specifically, Plaintiffs allege Defendant HLSR was negligent in one or more of the following respects:

- a. Failing to instruct Brian Joseph Greenhouse regarding the safe manner in which to ride the Hi-Miler.
- b. Failing to instruct Brian Joseph Greenhouse regarding the safe manner in which to secure any available restraint device.
- c. Failing to adequately restrain Brian Joseph Greenhouse with the available restraint device.
- d. Failing to adequately warn Brian Joseph Greenhouse of the unreasonably dangerous risks associated with the use of the Hi-Miler.
- e. Failing to provide proper and safe equipment to safely use the Hi-Miler.
- f. Failing to provide a safe recreational roller coaster ride.
- g. Failing to properly monitor the Hi-Miler as it progressed around the track and to take appropriate safety actions.
- h. Failing to assure the employees and agents of Defendant RCS were properly trained, supervised and instructed in the correct manner to perform all functions of their respective jobs.

- i. Failing to assure the employees and agents of Defendant RCS were competent and had the requisite skill level to perform all functions of their respective jobs in a correct and safe manner.
- j. Failing to monitor the employees and agents of Defendant RCS in the performance and carrying out of the respective job functions of the employees and agents of Defendant RCS.

03. Each of the above acts and/or omissions, singularly or in combination with others was a proximate cause of the event that is the basis of this action and the injuries and damages suffered by Plaintiffs.

B. Negligent Activity

01. In addition to and/or in the alternative, Plaintiff pleads that Brian Joseph Greenhouse was killed as the direct and contemporaneous result of a negligent activity being performed by Defendant HLSR on the date and at the time of the incident in question. At the time of the incident in question, Defendant HLSR failed to instruct Brian Joseph Greenhouse regarding the safe use of the Hi-Miler. Additionally at the time of the incident in question, Defendant HLSR failed to assure Brian Joseph Greenhouse was safely and securely in the Hi-Miler car. Such negligent activities on the part of Defendant HLSR proximately cause the injuries and other damages suffered by Plaintiff as further detailed below.

7. CAUSES OF ACTION AGAINST DEFENDANT RCS

A. Negligence

01. Plaintiff hereby adopts, restates and re-alleges each and every of the foregoing paragraphs of this Petition as if fully and completely set forth herein.

02. Plaintiff alleges that the negligence of Defendant RCS was a proximate cause of the occurrence in question and Plaintiffs' resulting injuries and damages. Specifically, Plaintiffs alleges Defendant RCS was negligent in one or more of the following respects:

- a. Failing to instruct Brian Joseph Greenhouse regarding the safe manner in

which to ride the Hi-Miler.

- b. Failing to instruct Brian Joseph Greenhouse regarding the safe manner in which to secure any available restraint devices.
- c. Failing to adequately restrain Brian Joseph Greenhouse with the available restraint device.
- d. Failing to adequately warn Brian Joseph Greenhouse of the unreasonably dangerous risks associated with the use of the Hi-Miler.
- e. Failing to provide proper and safe equipment to safely use the Hi-Miler.
- f. Failing to provide a safe recreational roller coaster ride.
- g. Failing to properly monitor the Hi-Miler as it progressed around the track and to take appropriate safety actions.
- h. Failing to properly and safely secure Brian Joseph Greenhouse in the Hi-Miler roller coaster car.
- i. Failing to assure the employees and agents of Defendant RCS were properly trained, supervised and instructed in the correct manner to perform all functions of their respective jobs.
- j. Failing to assure the employees and agents of Defendant RCS were competent and had the requisite skill level to perform all functions of their respective jobs in a correct and safe manner.
- k. Failing to monitor the employees and agents of Defendant RCS in the performance and carrying out of the respective job functions of the employees and agents of Defendant RCS.

03. Each of the above acts and/or omissions, singularly or in combination with others was a proximate cause of the event that is the basis of this action and the injuries and damages suffered by Plaintiffs.

B. Negligent Activity

01. In addition to and/or in the alternative, Plaintiffs plead that Brian Joseph Greenhouse was injured as the direct and contemporaneous result of a negligent activity being performed by Defendant RCS on the date and at the time of the incident in question. At the time of the incident in question, Defendant RCS instructed and/or failed to instruct Brian Joseph

Greenhouse regarding the safe use of the Hi-Miler. Additionally at the time of the incident in question Defendant RCS failed to assure Brian Joseph Greenhouse was safely and securely in the Hi-Miler car. Such negligent activities on the part of Defendant RCS proximately cause the injuries and other damages suffered by Plaintiffs as further detailed below.

8. RESPONDEAT SUPERIOR

01. Defendants are sued under the theory of respondeat superior, that they are vicariously liable for the negligent acts, and omissions of their employees, agents, servants, and those contractors the defendants were controlling and supervising in relation to the activities and conditions alleged herein.

9. DAMAGES

01. Plaintiffs hereby restate and re-allege each and every paragraph of the Statement of Facts as if fully and completely set forth herein.

02. Plaintiffs hereby restate and re-allege each and every paragraph of the aforementioned Counts.

03. _____ is the adopted son and statutory beneficiary of Brian Joseph Greenhouse. Nirvana Hightower is the adoptive mother of the minor

and she is entitled to represent his interests in this case as his next of friend.

Nirvana Hightower, as next friend of _____, brings this suit, in part, pursuant to Texas Civil Practices and Remedies Code §§ 71.002-004, commonly referred to as the "Wrongful Death Act," and pursuant to the terms and provisions of Texas Civil Practices and Remedies Code § 71.021, known as the "Survival Act," and any and all other applicable laws including the common law of the State of Texas.

04. As a direct and proximate result of the conduct of Defendants, Brian Joseph Greenhouse died. Plaintiff Nirvana Hightower as next friend of _____ seeks

to recover a sum of money that would fairly and reasonably compensate the minor son for the premature termination of the parent-child relationship, including loss of the love, comfort, companionship and society that young Isaiah would, in reasonable probability, have received from his father, had he lived. Plaintiff also seeks compensation for the emotional pain, torment and suffering that he has suffered, and in reasonable probability will continue to suffer, in connection with the wrongful death of Brian Joseph Greenhouse.

05. , the minor son of Brian Joseph Greenhouse survives the decedent as his heir and beneficiary and he has sustained and will sustain pecuniary and non-pecuniary losses by reason of the death of his father. Plaintiff is entitled to recover his pecuniary losses in the form of the lost earnings or earning capacity and/or loss of household services which Decedent would have contributed to the his son had his life not been ended by reason of Defendants' conduct.

06. Nathaniel Anthony Greenhouse is the natural father of Brian Joseph Greenhouse and brings this suit, in part, pursuant to Texas Civil Practices and Remedies Code §§ 71.002-004, commonly referred to as the "Wrongful Death Act," and pursuant to the terms and provisions of Texas Civil Practices and Remedies Code § 71.021, known as the "Survival Act," and any and all other applicable laws including the common law of the State of Texas.

07. As a direct and proximate result of the conduct of Defendants, Brian Joseph Greenhouse died. Plaintiff Nathaniel Anthony Greenhouse seeks to recover a sum of money that would fairly and reasonably compensate the natural father for the premature termination of the parent-child relationship, including loss of the love, comfort, companionship and society that he would, in reasonable probability, have received from his son, had he lived. Plaintiff also seeks compensation for the emotional pain, torment and suffering that he has suffered, and in reasonable probability will continue to suffer, in connection with the wrongful death of Brian

Joseph Greenhouse.

08. Nathaniel Anthony Greenhouse, the natural father of Brian Joseph Greenhouse survives the decedent as his heir and beneficiary and he has sustained and will sustain pecuniary and non-pecuniary losses by reason of the death of his son. Plaintiff is entitled to recover his pecuniary losses in the form of the lost earnings or earning capacity and/or loss of household services which Decedent would have contributed to the his father had his life not been ended by reason of Defendants' conduct.

09. Gretel Greenhouse is the natural mother of Brian Joseph Greenhouse and brings this suit, in part, pursuant to Texas Civil Practices and Remedies Code §§ 71.002-004, commonly referred to as the "Wrongful Death Act," and pursuant to the terms and provisions of Texas Civil Practices and Remedies Code § 71.021, known as the "Survival Act," and any and all other applicable laws including the common law of the State of Texas.

10. As a direct and proximate result of the conduct of Defendants, Brian Joseph Greenhouse died. Plaintiff Gretel Greenhouse seeks to recover a sum of money that would fairly and reasonably compensate the natural mother for the premature termination of the parent-child relationship, including loss of the love, comfort, companionship and society that she would, in reasonable probability, have received from her son, had he lived. Plaintiff also seeks compensation for the emotional pain, torment and suffering that she has suffered, and in reasonable probability will continue to suffer, in connection with the wrongful death of Brian Joseph Greenhouse.

11. Gretel Greenhouse, the natural mother of Brian Joseph Greenhouse survives the decedent as his heir and beneficiary and she has sustained and will sustain pecuniary and non-pecuniary losses by reason of the death of her son. Plaintiff is entitled to recover her pecuniary losses in the form of the lost earnings or earning capacity and/or loss of household services

which Decedent would have contributed to the his mother had his life not been ended by reason of Defendants' conduct.

12. Plaintiff Nirvana E. Hightower as representative of the Estate of Brian Joseph Greenhouse have incurred and are entitled to recover the expenses of Decedent's funeral and burial expenses reasonably suited for his station in life, medical expenses for treatment of injuries sustained by him as a result of the accident made the basis of this lawsuit until the time of his death pursuant to the Texas Civil Practices and Remedies Code § 71.021. Additionally, Plaintiff is entitled to recover for the pain and mental anguish Brian Joseph Greenhouse experienced before his death as a result of the occurrence in question.


10. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiffs request that Defendants be cited to appear and answer herein and that, upon final determination of these claims, they receive judgment against Defendants awarding them the following relief:

01. Actual damages alleged herein, in an amount not in excess of the jurisdictional limits of the Court;
02. Costs of court and expenses necessary for preparation of this case for trial;
03. Prejudgment interest at the highest lawful rate and to the maximum amount allowed by law from the earliest date allowed by law;
04. Interest on the judgment at the highest legal rate from the date of judgment until collected; and
05. All such other and further relief at law and in equity to which Plaintiffs may justly show themselves entitled.

Respectfully submitted,

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