

CAUSE NO. 101931-C

MARK KLINK, Individually and As	§	IN THE <u>251ST</u> DISTRICT COURT
Representative of the Estate of CADE KLINK	§	
And RENESSA KLINK, Individually	§	
Plaintiffs,	§	
	§	
	§	OF
v.	§	
	§	
GSM LAND HOLDINGS, LTD., And	§	
AGRISERVICES MANAGEMENT, LLC	§	
And GARTH MERRICK	§	
Defendants.	§	POTTER COUNTY, TEXAS

PLAINTIFFS' ORIGINAL PETITION AND JURY DEMAND

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, Plaintiffs in the above entitled cause complaining of Defendants named herein and would respectfully show the Court as follows:

I. DISCOVERY

1.01 Pursuant to Rule 190.1 of the Texas Rules of Civil Procedure, Plaintiffs intend to conduct discovery in this case under level 3 (Rule 190.4 Texas Rules of Civil Procedure).

II. PARTIES

2.01 Plaintiff, Mark Klink is the father of Cade Klink and a resident of Texas. Mark Klink's driver's license number is XXXXX839. Mark Klink's social security number is XXX-XX-X549.

2.02 Plaintiff, Renessa Klink is the mother of Cade Klink and a resident of Texas. Renessa Klink's driver's license number is XXXXX447. Renessa Klink's social security number is XXX-XX-X964.

2.03 Defendant GSM Land Holdings, LTD (hereinafter “GSM”), is a domestic limited partnership. Defendant GSM may be served with process by and through its registered agent: Garth Merrick, 700 S. Avondale Street, Amarillo, TX 79106.

2.04 Defendant Agriservices Management, LLC (hereinafter “Agriservices”) is a domestic limited liability company. Defendant Agriservices is a general partner for GSM. Defendant Agriservices may be served with process by and through its registered agent: Garth Merrick, 700 S. Avondale Street, Amarillo, TX 79106.

2.05 Defendant Garth Merrick is a resident of the State of Texas. Defendant Merrick may be serviced with process as follows: Garth Merrick, 700 S. Avondale Street, Amarillo, TX 79106.

III. VENUE AND JURISDICTION

3.01 All or a substantial part of the acts/omissions giving rise to the incident in question occurred in Potter County, Texas, and therefore, venue is proper in Potter County, Texas, pursuant to § 15.002(a)(1), TEX. CIV. PRAC. & REM. CODE.

3.02 The amount of the Plaintiffs’ damages are substantial and well in excess of the jurisdictional minimums of this Court. Many elements of damage cannot be determined with mathematical precision. Furthermore, the determination of many elements of damage is peculiarly within the province of the jury. Plaintiffs do not at this time seek any certain amount of damages for any elements of damage, but would instead rely upon the collective wisdom of the jury to determine an amount that would fairly hold Defendants accountable for their conduct. In order to comply with Tex. R. Civ. P. 47(c)(5), Plaintiffs seek monetary relief over \$1,000,000.00. Plaintiffs also seek judgment for all other relief to which Plaintiffs are entitled. Plaintiffs reserve the right to file an amended pleading on this issue should subsequent evidence show this figure to be either too high or too low.

IV. PLAINTIFF'S NARRATIVE

4.01 Defendants own and possess a building at 1015 S. Polk Street in Amarillo, Texas. Defendants' building contains an old elevator system which was not properly inspected and maintained. Specifically, the elevator doors did not properly lock to prevent opening directly to the elevator shaft. Defendants had performed substantial renovations on the building but did not bring the elevator up to code. Upon information and belief, the elevator had not been inspected as required by Texas law and could not pass the minimum safety requirements. As a result, the elevator created a hazard. Defendants knew or should have known of the hazard but did nothing about the danger.

4.02 On November 4, 2013, Cade Klink fell down the open and unprotected elevator shaft. Cade Klink suffered life-threatening injuries which ultimately resulted in his death.

V. CAUSES OF ACTION

Premises Liability & Negligence

5.01 Plaintiffs seek damages for premises liability. (a) Cade Klink was an invitee, (b) Defendants were possessors of the premises, (c) a condition on the premises (the faulty elevator) posed an unreasonable risk of harm, (d) Defendants knew or reasonably should have known of the danger, (e) Defendants breached their duty of ordinary care by failing to adequately warn of the condition and failing to make the condition reasonably safe, and (f) Defendants' breach proximately caused Cade Klink's injuries and death.

5.02 Defendants acts and omissions also constitute negligence. Defendants' negligence proximately caused Cade Klink's injuries and death.

Gross Negligence

5.03 The above-mentioned acts of negligence on the part of Defendants was of such character as to make Defendants guilty of gross negligence. Defendants' acts of negligence when viewed objectively from the standpoint of Defendants involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others. Defendants had actual, subjective awareness of this risk, but nevertheless proceeded with conscious indifference to the rights, safety, and welfare of Plaintiffs. The gross negligence of Defendants was a proximate cause of the incident and of the injuries and damages suffered by Plaintiffs. As a result of Defendants' gross negligence, Plaintiffs seek and are entitled to an award of exemplary damages.

VI. DAMAGES

Wrongful Death Claims

6.01 Plaintiffs, Mark and Renessa Klink, have suffered a severe losses associated with the death of their son, Cade Klink, and the resulting destruction of the parent-child relationship, including the loss of the positive benefits flowing from the love, comfort, companionship, and society from Cade Klink, Deceased.

6.02 As a direct and proximate result of Defendants' conduct, Plaintiffs Mark and Renessa Klink have suffered damages for the wrongful death of their son as follows:

- a. Pecuniary loss sustained in the past and which will reasonably be sustained in the future;
- b. Loss of companionship and society sustained in the past and which will reasonably be sustained in the future;
- c. Mental anguish sustained in the past and which will reasonably be sustained in the future;
- d. Loss of consortium; and
- e. Loss of care & support.

Survival Damages

6.03 Plaintiff Mark Klink as the representative of the Estate of Cade Klink brings this action pursuant to Section 71.021 of the Texas Civil Practice and Remedies Code, commonly referred to as the "Survival Statute." Plaintiff would show that Cade Klink was not killed instantly in the incident in question. The following damages survived to his estate, for which Plaintiff sues:

- a. Physical pain and mental anguish; and
- b. Funeral and burial expenses.

VII. PRAYER

7.01 WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request the following:

- a. Upon final trial, compensatory and exemplary damages as set forth above be awarded to Plaintiffs against Defendants;
- b. Pre-judgment and post-judgment interest as allowed by law;
- c. Costs of court; and
- d. Such other, further and different relief to which Plaintiffs may be justly entitled

Respectfully submitted,

GLASHEEN, VALLES & INDERMAN, L.L.P.
1302 Texas Avenue (79401)
P.O. Box 1976
Lubbock, TX. 79408
Tel: (806) 741-0284
Fax: (806) 329-0594



Chad Inderman
State Bar No. 24046133
ATTORNEYS FOR PLAINTIFFS

JURY DEMAND

Plaintiffs hereby respectfully demand a trial by jury in this cause and herewith pay the required fee.



Chad Inderman

Filed
Caroline Woodburn
District Clerk
12/5/2013 2:53:01 PM
Potter County, Texas
By _____ Deputy


CIVIL CASE INFORMATION SHEET
101931-C

CAUSE NUMBER (FOR CLERK USE ONLY): _____ COURT (FOR CLERK USE ONLY): _____

Filed
Caroline Woodburn
District Clerk
12/5/2013 2:53:01 PM
Potter County, Texas
By _____ Deputy

STYLED Mark Klink, Indiv. and as Rep. of the Estate of Cade Klink and Renessa Klink, Indiv. v. GSM Land Holdings, Ltd., et al
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: Chad Inderman	Email: cinderman@glasheenlaw.com	Plaintiff(s)/Petitioner(s): Mark Klink, Individually and as Rep. of the Estate of Cade Klink	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Address: 1302 Texas Avenue	Telephone: 806-776-1331	Defendant(s)/Respondent(s): GSM Land Holdings, Ltd. and Agriservices Management, LLC and Garth Merrick	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
City/State/Zip: Lubbock, TX 79401	Fax: 806-329-0594	State Bar No: 24046133	[Attach additional page as necessary to list all parties]
Signature: 			

2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil		Family Law		
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input checked="" type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input checked="" type="checkbox"/> Other Injury or Damage: <u>Negligence</u>	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property	<input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:		
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings		<input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:	

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
 Less than \$100,000 and non-monetary relief
 Over \$100,000 but not more than \$200,000
 Over \$200,000 but not more than \$1,000,000
 Over \$1,000,000

Glasheen, Valles & Inderman, L.L.P.

ATTORNEYS AT LAW

LUBBOCK | ODESSA | EL PASO | ALBUQUERQUE

1302 Texas Avenue, Lubbock, TX 79401 | Mailing Address: PO Box 1976, Lubbock, TX 79408

Phone: (806) 741-0284 Fax: (806) 763-2146

www.glasheenlaw.com

Filed
Caroline Woodburn
District Clerk
12/5/2013 2:53:01 PM
Potter County, Texas
By _____ Deputy

Kevin Glasheen

Board Certified in Personal Injury Trial Law &
Civil Trial Law - Texas Board of Legal Specialization.
Licensed In Texas, New Mexico and Colorado

Noe G. Valles

Licensed In Texas and New Mexico

Chad Inderman

Licensed In Texas and New Mexico

Jason Medina

Licensed In Texas, New Mexico & Oklahoma

John Cook

Licensed In Texas

Nick Pena

Licensed In Texas and New Mexico

Kenny Morris

Licensed In Texas

Matt Lopez

Licensed In Texas

Brent Ferrel

Licensed In New Mexico

December 5, 2013

Via E-File

Ms. Caroline Woodburn
Potter County District Clerk
P.O. Box 9570
Amarillo, TX 79101-9570

101931-C

Re: *Mark Klink, et al v. GSM Land Holdings, Ltd., et al*

Dear Clerk:

Enclosed please find Plaintiffs' Original Petition and Jury Demand and the Civil Cover Sheet.
Please issue citations as follows and forward the originals to our office for service:

GSM Land Holdings, Ltd., by and through his registered agent, Garth Merrick, 700 S.
Avondale Street, Amarillo, TX 79106.

Agriservices Management, LLC, by and through his registered agent, Garth Merrick, 700
S. Avondale Street, Amarillo, TX 79106.

Garth Merrick, 700 S. Avondale Street, Amarillo, TX 79106.

If you should have any questions, please do not hesitate to contact our office.

Sincerely,



Erika Simpson
Paralegal to Chad Inderman

/es

Enclosures as stated

Filed
Caroline Woodburn
District Clerk
12/5/2013 2:53:01 PM
Potter County, Texas
By _____ Deputy