

June 22, 2015

An ALM Publication

NEW YORK

FEATURED VERDICT

BRONX COUNTY

CONSTRUCTION

Labor Law — Workplace — Workplace Safety — Slips, Trips & Falls

Contractor ignored recurrent hazards, injured worker claimed

MIXED VERDICT **\$10,600,000**
ACTUAL **\$9,228,450**

CASE Juan Vargas v. Peter Scalamandre & Sons, Inc., Ferrera Bros. Building Materials Corp., Rad & D'Aprile Construction Corp., Total Safety Consulting, LLC, and AB Green Gansevoort, LLC, No. 302608/08

COURT Bronx Supreme
JUDGE Alexander W. Hunter Jr.
DATE 5/15/2015

PLAINTIFF ATTORNEY(S) Neva Hoffmaier, Hoffmaier & Hoffmaier, P.C., New York, NY

DEFENSE ATTORNEY(S) James Burbage, Barry, McTiernan & Moore, LLC, New York, NY (AB Green Gansevoort, LLC) Martin Galvin Jr., Burke, Gordon, Conway, Loccisano & Dillon, White Plains, NY (Ferrara Bros. Building Materials Corp.) Jeffrey K. Van Etten, Perry, Van Etten, Rozanski & Primavera, LLP, New York, NY (Peter Scalamandre & Sons Inc.) None reported (Rad & D'Aprile Construction Corp., Total Safety Consulting LLC)

PLAINTIFF EXPERT(S) Kristin K. Kucsma, M.A., economics, Livingston, NJ

Charles A. Kincaid, Ph.D., life-care planning, Hackensack, NJ

Richard J. Radna, M.D., neurosurgery, New York, NY (treating doctor)

Hal D. Rosenfeld, D.C., chiropractic, Bronx, NY (treating doctor)

DEFENSE EXPERT(S) Robert S. April, M.D., neurology, New York, NY
 Caren Jahre, M.D., radiology, New York, NY

FACTS & ALLEGATIONS On Feb. 19, 2008, plaintiff Juan Vargas, 40, a union-affiliated laborer and shop steward, worked at a construction site that was located at 848 Washington St., in Manhattan. Vargas tripped while he was repairing a loading dock's gate. He fell, and he claimed that he sustained injuries of his back.

Vargas sued the premises' owner, AB Green Gansevoort, LLC; a subcontractor that performed all tasks involving the use of cement, Peter Scalamandre & Sons Inc.; a subcontractor that provided the cement that was used at the work site, Ferrara Bros. Building Materials Corp.; an agency that had been retained to ensure safe conditions at the work site, Total Safety Consulting LLC; and a subcontractor that provided masonry services at the work site, Rad & D'Aprile Construction Corp. Vargas alleged that the defendants violated the New York State Labor Law, that the subcontractors were negligent in their maintenance of the work site, and that the subcontractors' negligence created a dangerous condition that caused the accident.

Rad & D'Aprile Construction and Total Safety Consulting were dismissed via summary judgment. The matter proceeded to a trial against the remaining defendants.

Vargas claimed that he tripped on a pile of concrete debris. He claimed that a Peter Scalamandre & Sons Inc. supervisor had been advised of the hazard, but that it was not addressed. He also claimed that such hazards had been commonplace for months and regularly resulted from Ferrara Bros. Building Materials' deliveries of concrete. Vargas' counsel contended that the defendants failed to provide or ensure reasonable and adequate protection, as required by Labor Law § 241(6). He further contended that the defendants violated Labor Law § 200, which defines general workplace-safety requirements.

Defense counsel noted that the accident occurred while Vargas was stepping backward, and they argued that Vargas failed to exercise due caution.

Peter Scalamandre & Sons Inc.'s counsel claimed that Vargas did not trip on concrete debris. He contended that the debris was created by one or more other contractors. He also contended



Kristin Kucsma
 Chief Economist
 Sobel Tinari Economics Group

that Peter Scalamandre & Sons Inc. was not responsible for maintaining the area in which the accident occurred.

Ferrara Bros. Building Materials' counsel contended that his client merely performed deliveries and was not responsible for maintenance of the work site.

INJURIES/DAMAGES *chiropractic; cortisone injections; decompression surgery; fusion, lumbar; hardware implanted; herniated disc at L4-5; herniated disc at L5-S1; nerve impingement; physical therapy; pins/rods/screws*

Vargas visited a medical clinic, where he underwent minor treatment.

Vargas ultimately claimed that he sustained herniations of his L4-5 and L5-S1 intervertebral discs. He further claimed that the herniations caused indentation of the thecal sac, which houses the roots of spinal nerves.

Vargas underwent conservative treatment that included chiropractic manipulation, physical therapy that was typically rendered three times a week and a pain-management regimen that included administration of about 40 injections of cortisone.

Vargas claimed that he experienced ongoing pain. On March 3, 2009, he underwent minimally invasive decompressive surgery that involved fusion of his spine's L4-5 and L5-S1 levels and the implantation of stabilizing hardware that included a cage, rods and screws.

Vargas claimed that he suffers residual pain, that he requires use of a cane, and that his residual effects prevent his resumption of his job. He undergoes physical therapy and a regimen of pain management. He also claimed that he may require additional surgeries and/or implantation of a device that would provide pain-relieving stimulation of his spine.

Vargas sought recovery of past and future rehabilitative expenses, additional past and future medical expenses, past and future lost earnings, damages for past and future impairment of earning capacity, and damages for past and future pain and suffering. The parties stipulated that past non-rehabilitative medical expenses could not exceed \$153,833, which represented the amount of a pending workers' compensation lien.

Defense counsel contended that Vargas' injuries were degenerative conditions that were not related to the accident.

RESULT The jury rendered a mixed verdict: AB Green Gansevoort, Peter Scalamandre & Sons Inc. and Vargas were deemed liable for the accident, and Ferrara Bros. Building Materials was not deemed liable. Peter Scalamandre & Sons Inc., which was deemed negligent in its maintenance of the work site, was assigned 70 percent of the liability; AB Green Gansevoort, which was found to have violated Labor Law § 241(6), was assigned 20 percent of the liability; and Vargas was assigned 10 percent of the liability.

The jury determined that Vargas' damages totaled \$10.6 million, which included past non-rehabilitative medical expenses in the amount of \$500,000. The latter amount was reduced

to the stipulated limit: \$153,833. After an offset to reflect Vargas' comparative negligence, Vargas' recovery totaled \$9,228,449.70.

JUAN VARGAS	\$500,000 past medical cost \$3,000,000 future medical cost \$800,000 past lost earnings \$1,800,000 future lost earnings \$500,000 past pain and suffering \$2,000,000 future pain and suffering \$500,000 past rehabilitative cost \$500,000 past impairment of earning capacity \$1,000,000 future impairment of earning capacity <u>capacity</u> \$10,600,000
DEMAND	\$16,000,000 (total, from AB Green Gansevoort, Ferrara Bros. Building Materials and Peter Scalamandre & Sons Inc.)
OFFER	\$1,000,000 (total, by AB Green Gansevoort, Ferrara Bros. Building Materials and Peter Scalamandre & Sons Inc.)
INSURER(S)	Liberty Mutual Insurance Co. for Ferrara Bros. Building Materials Scottsdale Insurance Co. for Peter Scalamandre & Sons Inc. American International Group Inc. for AB Green Gansevoort
TRIAL DETAILS	Trial Length: 4 weeks Trial Deliberations: 3 hours Jury Composition: 3 male, 3 female

POST-TRIAL Judge Alexander Hunter Jr. denied an oral motion to set aside the verdict.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel, AB Green Gansevoort's counsel, Ferrara Bros. Building Materials' counsel and Peter Scalamandre & Sons Inc.'s counsel. Additional information was gleaned from court documents. The remaining defendants' counsel was not asked to contribute.

—Jacqueline Birzon

