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Verdicts & Settlements

Jury returns verdict for painter injured in fall

The plaintiff, a 48-year-old painter, fell to the ground from a third-floor condo unit when a balcony railing collapsed. He suffered compound fractures to his left leg, including severe damage to the nerves and arteries. His left leg was amputated below the knee.

Several weeks before his fall, the plaintiff contracted with the condominium's homeowners' association and its management company to paint several multi-family, three-story condo buildings. This contract included pre-paint preparation, such as replacing damaged wood on the building's walls, decks and railings.

Although he had finished his pre-painting work on the building where the accident took place, the owner of one of the condo units, who also was the condo association officer in charge of the project, insisted that the plaintiff return to her unit to replace the decorative top board of her railing.

Once back at the site, and before removing the top rail, the plaintiff looked over the side of the railing to make sure that no one was on the ground below him. When he leaned against the railing, it detached from the building wall and swung open like a gate. The plaintiff fell to the ground.

The plaintiff contended that the defendants failed to warn him that the balcony railings were not properly fastened to the building's side.

The defendants' discovery response adamantly denied prior problems. The plaintiff's investigation revealed that the homeowner's association faced a lawsuit several years before involving a third-floor balcony railing at an adjacent building.

At trial, the plaintiff offered a report by a registered professional engineer, hired by one of the parties in the prior lawsuit, who had concluded that repairs needed to be undertaken to all railings at the condo buildings.

The plaintiff also presented evidence of board meeting minutes documenting discussions of the earlier suit and evidence of historical railing repair records.

The plaintiff's general contracting expert estimated the repair cost at \$400 per railing. The defendants contested liability.

They claimed that the railings were safe and strong and met all applicable building codes.

They also argued contributory negligence, contending that the plaintiff had a duty to inspect and repair the balcony railings. They pointed out that the plaintiff had replaced several of the top boards on other balconies without incident.

The defendants claimed that instead of owing the plaintiff a duty to warn, the plaintiff should have warned them about any problems.

The defendants also argued that the plaintiff was negligent in failing to use safety gear such as a fall-protection belt or harness.

The plaintiff requested \$670,000 in past and future medical expenses, \$165,000 in loss of future earnings, \$168,000 in loss of household services, \$500,000 in pain and suffering and \$500,000 in permanent impairment.

The jury deliberated eight hours before returning a verdict of \$1.9 million.

Type of action: Premises liability

Injuries alleged: Amputation of left leg below the knee

Case name: *Wentz v. Fox Ridge Condominium II, et al.*

Case number: 08-CVS-9279

Court: Mecklenburg County Superior Court

Name of judge: Hon. Robert Ervin

Verdict or settlement: Verdict (jury)

Date: Oct. 17, 2008

Amount: \$1.9 million

Offer: \$200,000

Insurance carrier: Nationwide Insurance and Montgomery Insurance

Plaintiff's attorneys: Michael Workman of The Workman Law Firm (Charlotte) and Andrew Fink of The Law Firm of Fink & Hayes (Charlotte)

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