

# NEW YORK CITY

## BRONX COUNTY

### CONSTRUCTION

#### Labor Law — Accidents — Scaffolds and Ladders

## Poorly constructed scaffold blamed for worker's fatal fall

**SETTLEMENT**      **\$6,000,000**

**CASE**                      Maria Gonzalez as Admx. of the Estate of Efrain Gonzalez, Deceased v. Dever Properties N.V., Inc., 215 Park Avenue South Associates, L.P., SL Green Leasing LLC, S.L. Green Management Corp., Nesa, Inc., Nesa Roofing & Restoration, Inc., Tri-State Scaffold & Equipment Supplies, Inc., DPA Contracting Inc., New Millennium Construction & Development Corp., New Millennium Construction & Restoration Corporation, & Mario Contracting Corp., No. 31081/02

**COURT**                      Bronx Supreme

**JUDGE**                      Paul A. Victor

**DATE**                        8/9/2007

**PLAINTIFF**  
**ATTORNEY(S)**              Glenn D. Miller, Sivin & Miller, New York, NY  
Edward Sivin, Sivin & Miller, New York, NY

**DEFENSE**  
**ATTORNEY(S)**              Richard Bakalor, Quirk & Bakalor, P.C., New York, NY (215 Park Avenue South Associates, L.P., Dever Properties N.V. Inc., S.L. Green Leasing LLC, S.L. Green Management Corp.)  
Liza Fleissig, Quirk & Bakalor, P.C., New York, NY (215 Park Avenue South Associates, L.P., Dever Properties N.V. Inc., S.L. Green Leasing LLC)  
None reported (DPA Contracting Inc., Mario Contracting Corp., Nesa Inc., Nesa Roofing & Restoration Inc., New Millennium Construction & Development Corp., New Millennium Construction & Restoration Corp., Tri-State Scaffold & Equipment Supplies Inc.)

**FACTS & ALLEGATIONS** On Oct. 24, 2001, plaintiff's decedent Efrain Gonzalez, 44, a construction worker, was doing façade restoration work on a building that was located at 215 Park Ave. South, in Manhattan. He was working on a 14-story pipe scaffold that had been erected against the building. The scaffold collapsed, and Gonzalez died of suffocation after being trapped in the debris.

Gonzalez's widow, Maria Gonzalez, acting as administratrix of her husband's estate, sued the building's owner, Dever Properties N.V. Inc.; the building's lessee, 215 Park Avenue South Associates, L.P.; the building's managing agents, S.L. Green Leasing LLC and S.L. Green Management Corp.; and several of the project's subcontractors: Nesa, Inc., Nesa Roofing & Restoration Inc., Tri-State Scaffold & Equipment Supplies Inc., DPA Contracting Inc., New Millennium Construction & Development Corp., New Millennium Construction & Restoration Corp., and Mario Contracting Corp. The estate alleged that the defendants violated the labor law.

The estate ultimately discontinued its claims against Nesa, Nesa Roofing & Restoration, Tri-State Scaffold & Equipment Supplies, DPA Contracting, New Millennium Construction & Development, New Millennium Construction & Restoration and Mario Contracting. The matter proceeded against the remaining defendants.

The estate's counsel claimed that the incident stemmed from an elevation-related hazard, as defined by Labor Law § 240(1), and that Mr. Gonzalez was not provided the proper, safe equipment that is a requirement of the statute.

The estate was granted summary judgment against the owner and lessee of the building.

The president of the subcontractor that erected the scaffolding was convicted of manslaughter in connection with this incident because he erected the scaffolding without consulting with an engineer, as required by law.

#### **INJURIES/DAMAGES** *death*

Gonzalez died of suffocation. He was 44. He was survived by his wife and two minor children.

The estate sought recovery of wrongful-death damages that included damages for Gonzalez's future lost earnings, his conscious pain and suffering, and his children's loss of parental guidance. The estate also claimed that the defendants should be subject to punitive damages for knowingly allowing a dangerous scaffold to remain on the work site.

The court denied the motion of the owner, lessee and managing agent to dismiss the punitive damages claim. However, the defendants claimed that the judge's order denying their motion was erroneous and would be reversed on appeal because none of them actually erected the dangerous scaffolding and there was insufficient evidence of the type of wanton or reckless intent to sustain an award of punitive damages.

The defendants also contended that, given that Gonzalez died at the scene, there was no direct evidence of conscious pain and suffering, any that award for pain and suffering should be minimal. They also contended that because Gonzalez was an undocumented immigrant, the future-lost-earnings claim

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should also be limited. Further, they argued that because Gonzalez's children lived in Ecuador and he had not seen them for two years prior to his death, the loss-of-guidance claim should be limited.

**RESULT** The parties agreed to a \$6 million settlement.

**INSURER(S)** Chubb Group of Insurance Cos. for 215 Park Avenue South Associates, Dever Properties, SL Green Leasing and S.L. Green Management

**PLAINTIFF  
EXPERT(S)** Les Seplaki, Ph.D., economics, Fort Lee, NJ  
Lone Thanning, M.D., pathology,  
New York, NY

**DEFENSE  
EXPERT(S)** Emanuel Rubin, M.D., pathology,  
Philadelphia, PA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiff's counsel. Counsel of 215 Park Avenue South Associates, Dever Properties, S.L. Green Leasing and S.L. Green Management did not respond to the reporter's phone calls. The remaining defendants' counsel was not asked to contribute.

—Julie Bratvold