

January 16, 2012

An ALM Publication

TEXAS

HARRIS COUNTY

PREMISES LIABILITY

Fall from Height — Dangerous Condition

Fall from building was a suicide attempt, defense argued

TYPE: Verdict Defendant
STATE: Texas
VENUE: Harris County
COURT: Harris County District Court, 269th
INJURY TYPE(S): brain-traumatic brain injury other-fracture face/nose-fracture; facial bone paralysis/quadriplegia-quadriplegia
CASE TYPE: Slips, Trips & Falls - Slips, Trips & Falls, Fall from Height Premises Liability - Dangerous Condition
CASE NAME: Nathan Fischer v. James Pirtle and Melissa Bosch, No. 2010-49066
DATE: December 11, 2011
PARTIES
PLAINTIFF(S): Nathan Fischer (Male, 37 Years)
PLAINTIFF ATTORNEY(S): Kevin O'Malley; The O'Malley Law Firm; Houston, TX, for Nathan Fischer Donna Roth; Law Offices of Donna Roth; Houston, TX, for Nathan Fischer
PLAINTIFF EXPERT(S): M. McStravick ; Homicide; Houston, TX called by: Kevin O'Malley, Donna Roth Brent Masel ; M.D. ; Neurology; Galveston, TX called by: Kevin O'Malley, Donna Roth Terry Arnold ; R.N.; Life Care Planning; Houston, TX called by: Kevin O'Malley, Donna Roth Andrew Taravella ; Crime Scene Investigation/Reconstruction; Houston, TX called by: Kevin O'Malley, Donna Roth Harold May ; J.D., CPA ; Economics; Houston, TX called by: Kevin O'Malley, Donna Roth
DEFENDANT(S): James Pirtle, Melissa Bosch
DEFENSE ATTORNEY(S): Spencer G. Markle; Markle DeLaCruz LLP; Houston, TX, for James Pirtle, Melissa Bosch Obed DeLaCruz; Markle DeLaCruz LLP; Houston, TX, for James Pirtle, Melissa Bosch

FACTS: On Feb. 22, 2009, plaintiff Nathan Fischer, 37, an information technology specialist, was at a party on the second floor of a downtown Houston building owned by James Pirtle and Melissa Bosch. Pirtle also owns Notsuoh, a live music venue on the first floor, and he lives on the second and third floors. At about 6:15 a.m., Fischer, while under the influence of alcohol, fell or jumped from a

second- or third-story window (no one saw which story it was) and landed on the sidewalk. He is paralyzed as a result.

Fischer sued Pirtle and Bosch for premises liability, alleging that Pirtle was running an after-hours club and Fischer fell from a 52-inch-square second-story window that had no glass. He alleged ordinary and gross negligence. The plaintiff claimed to be an invitee.

Two investigators from the Houston Police Department (a homicide investigator and a CSI investigator) testified for Fischer, saying that neither the second- nor the third-story window had any glass. At the time of trial, there was still no glass in the second-story window, but this fact did not come into evidence. In 2005, someone else had fallen out of that window.

Two people testified that they bought alcohol from Pirtle shortly before the incident, plaintiff's counsel noted.

The defense contended that it was a private party, not a speak-easy, and the plaintiff was a licensee, not an invitee. According to the defense, Fischer was depressed and went up to the third floor, opened a window and jumped in an effort to kill himself.

Fischer called both defendants as witnesses. The defense called no witnesses.

INJURY: Fischer was rendered a quadriplegic. He sustained a severe traumatic brain injury, multiple facial fractures and several other fractures. His paid or incurred medical bills were \$299,000. He claimed future medical expenses of \$6.5 million and future lost earning capacity of \$588,000. He sought \$12 million in actual damages and unspecified punitive damages.

RESULT: The jury found Fischer alone negligent. After the trial the jury said that it felt Fischer did not jump, but the window did have glass. One venire panel was busted because of the number of strikes for cause.

TRIAL INFORMATION:

JUDGE: Dan Hinde
DEMAND: \$2.4 million or deed to the building
OFFER: None
TRIAL LENGTH: 4 days
TRIAL DELIBERATIONS: 1.5 hours
JURY VOTE: 11-1
POST TRIAL: Plaintiff plans to file a motion for new trial.

EDITOR'S COMMENT: This report is based on information that was provided by plaintiff's counsel and defense counsel.

—John Schneider