

September 12, 2016

An ALM Publication

NORTHEAST

DALLAS COUNTY

PREMISES LIABILITY

Assault — Inadequate or Negligent Security

Patron, not bartender, knocked out plaintiff, nightclub argued

VERDICT **Defense**

CASE Juan Guerra v. TSOSB, Inc. d/b/a Escapades 2010, No. DC-13-13926-K

COURT Dallas County District Court, 192nd, TX

JUDGE Craig Smith

DATE 8/17/2016

PLAINTIFF ATTORNEY(S) Jesse R. Showalter, Hernandez, Browning & Showalter, Dallas, TX

DEFENSE ATTORNEY(S) Spencer G. Markle, Markle DeLaCruz LLP, Houston, TX

FACTS & ALLEGATIONS On Sept. 8, 2013, plaintiff Juan Guerra, 31, a shipping and receiving clerk, and his wife, plaintiff Bianca Guerra, 30, a bank employee, were drinking and dancing with a friend at Escapades 2010, a Dallas nightclub. At about 2:15 a.m., a bartender was picking up and removing drinks as required by state guidelines, and the bartender and the plaintiffs' friend started arguing about it. At some point, someone struck Guerra on the back of the head, knocking him out, and Guerra sustained a brain injury. He claimed that the person who hit him was an unidentified Escapades employee.

The club is owned and operated by TSOSB Inc., and the premises is owned by First NDF LLC and managed by CBF Management Corp. Schahrouz Ferdows was sole owner of TSOSB, sole manager of First NDF and sole director of CBF.

Guerra and his wife sued TSOSB Inc., operating as Escapades 2010, as well as CBF, First NDF and Ferdows for premises liability.

The plaintiffs claimed that Guerra was acting as a peacemaker and trying to break up the fight when he was knocked out.

The plaintiffs further alleged that Guerra had to intervene in the fight because the club's security was inadequate. Three security guards were on duty that night, and the club's head of security and manager testified that they needed four or five.

The defense contended that Guerra was assaulting the bartender from behind with his fists and that Mrs. Guerra had taken off her 6-inch heels and was striking the bartender with them. The man who hit Guerra was Raphael Manzanaras, a customer, the defense argued. Manzanaras testified that he was the one who hit Guerra,

and three other customers and an employee all testified that the person who struck Guerra was a customer.

Plaintiffs' counsel argued that, more likely than not, Manzanaras was not even at the club that night and had been induced to "take the fall" for the nightclub and testify falsely. According to plaintiffs' counsel, Manzanaras had worked at the club in the past, knew many of the current employees and had been friends with the bartender for more than 20 years. Plaintiff's counsel noted that Manzanaras was not mentioned on the manager's incident report and that no club employees mentioned Manzanaras in their depositions.

INJURIES/DAMAGES *brain damage; head; memory, impairment; speech/language, impairment of; traumatic brain injury; unconsciousness*

Guerra was taken by ambulance to the emergency room. He was diagnosed with a traumatic brain injury, permanent memory loss and loss of the senses of smell and taste.

He was unconscious for 30 minutes. He was admitted to intensive care and discharged home after three days. He underwent four months of speech therapy and missed five weeks of work.

He claimed that, because of his injuries, he is at an increased risk of developing Alzheimer's disease.

Guerra sought \$2,800 for five weeks' lost wages, as well as damages for past and future physical pain and mental anguish and past and future physical impairment. His wife sought damages for mental anguish as a bystander.

RESULT The jury found negligence by Guerra, assault by the responsible third party and comparative responsibility of 50 percent on each. The jury awarded damages of \$2,800, for Guerra's lost wages only, but because TSOSB was not negligent, Guerra took nothing.

Defense counsel said Manzanaras was a credible witness.

DEMAND \$200,000
OFFER \$30,000

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 3 hours
Jury Vote: 10-2

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiffs' counsel did not respond to the reporter's phone calls.

—John Schneider