

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

ESTATE OF BENJAMIN RIVERA-AVILA, Itself and on Behalf of Surviving Spouse MARIA PEREZ REYES and Surviving Children CHRISTIAN RIVERA, JOSELIN RIVERA, JUAN DE DIOS RIVERA, JOSE MANUEL RIVERA-PEREZ and SHAILA RIVERA-PEREZ,

Plaintiff,

v.

ROBERT CRAMER, BRIAN JACOB, SCOTT DOUGHTY, JACOB BRANAN, CRAMER AND ASSOCIATES, INC., ALL-AMERICAN SCAFFOLD, LLC dba ALL-AMERICAN SCAFFOLD BY BRANDSAFWAY, ALL-AMERICAN SCAFFOLD, and BRANDSAFWAY, LLC,

Defendants.

Case No. LACL152422

**AMENDED
PETITION AND
JURY DEMAND**

COME NOW Plaintiff Estate of Benjamin Rivera-Avila (Ben) and for its Petition against Defendants Robert Cramer (Cramer), Brian Jacob (Jacob), Scott Doughty (Doughty), Jacob Branana (Branan), Cramer and Associates, Inc. (CA), All-American Scaffold, LLC (AAS), and BrandSafway LLC state as follows:

Introduction

1. On February 6, 2020, while working for CA under the supervision of Cramer, Jacob, Doughty, and Branana, Ben fell from a scaffolding improperly erected by a person who was not qualified or supervised as required by OSHA regulations and died. Through these failures Cramer, Jacob, Doughty and Branana, as co-employees,

were grossly negligent which is an exception to the Workers' Compensation Act. ICA § 85.20.

2. The scaffolding, provided by AAS, had several design defects and lacked sufficient instructions and warnings, rendering it liable for Ben's death.

Parties & Relevant Individuals

3. Plaintiff Estate of Benjamin Rivera-Avila (Ben) is the probate estate of decedent, Benjamin Rivera-Avila.

4. Decedent Benjamin Rivera-Avila (Ben) was at all times hereto a resident of Altoona, Iowa and an employee of Cramer and Associates, Inc.

5. Juan De Dios Rivera (Juan) is an adult son of Ben who resides in Altoona, Iowa, and who has petitioned the Polk County Probate Court to be appointed Administrator of the Estate of Ben.

6. Maria Perez Reyes (Maria) at all times hereto was the spouse of Ben and a resident of Altoona, Iowa.

7. Christian Rivera (Christian) is an adult daughter of Ben and a resident of Harvard, Illinois.

8. Joselin Rivera (Joselin) is an adult daughter of Ben and a resident of Harvard, Illinois.

9. Jose Manuel Rivera-Perez (Jose) is an adult son of Ben and a resident of Altoona, Iowa.

10. Shaila Rivera-Perez (Shaila) is a minor daughter of Ben and a resident of Altoona, Iowa.

11. Defendant Robert Cramer (Cramer) at all times hereto was the President of Cramer and Associates, Inc. and the supervisor of Ben.

12. Defendant Brian Jacob (Jacob) at all times hereto was the Project Manager of Cramer and Associates, Inc. and the supervisor of Ben.

13. Defendant Scott Doughty (Doughty) at all times hereto was the Safety Director of Cramer and Associates, Inc. and the supervisor of Ben.

14. Defendant Jacob Branan (Branan) at all times hereto was the Foreman of Cramer and Associates, Inc. and the supervisor of Ben.

15. Defendant Cramer and Associates, Inc. (CA) at all times hereto was an Iowa for-profit corporation with its home office at 3100 SW Brookside Dr., Grimes, IA 50111 and the employer of Ben, Cramer, Jacob, Doughty and Branan.

16. Defendant All-American Scaffold, LLC dba All-American Scaffold By BrandSafway (AAS) is an Iowa for-profit corporation with a Polk County location at 51 Washington Ave., Des Moines, Iowa 50314, from which it provides, among other things, scaffolding to assist in construction projects.

17. Defendant BrandSafway, LLC (BS) is a foreign limited liability company authorized to do business in the state of Iowa, with its global headquarters located at 1325 Cobb International Dr., Suite A-1, Kennesaw, GA 30152.

Jurisdiction and Venue

18. Jurisdiction is proper as the amount in controversy exceeds the statutory limits for small claims court.

19. Venue is proper in Polk County, Iowa as Defendants are located in the county and the events that support this cause of action occurred in the county.

General Factual Allegations

20. On February 6, 2020 on I-80 at mile-marker 133 in Des Moines, Iowa at approximately 8:20 am, while on the job for CA, Ben fell 30 feet from scaffolding to his death.

21. The Project Manager for this jobsite was Jacob, the Safety Director was Doughty and its Foreman was Branam.

22. Prior to this tragedy, CA had identified 22 people to serve as the Competent Person to be on the job site when scaffolding was present, as required by OSHA.

23. Ben was not one of these people.

24. Branam was a Competent Person and signed the document memorializing it.

25. The document regarding Competent Persons was also signed by Cramer.

26. The document stated: "OSHA requires a Competent Person to be present when workers are involved in the following activities.... Scaffolding (1926.451)."

27. Branam was the Competent Person for the project Ben was working on when he fell and died.

28. Shortly prior to the accident, Ben was ordered by Cramer, Jacob, Doughty and/or Branam to erect the scaffolding.

29. None of the 22 Competent Persons identified by CA supervised the erection of the scaffolding, including Branam.

30. The scaffolding had only been used by the employees on that project a few times prior to Ben's death.

31. Neither Cramer, Jacob, Doughty or Branan ascended, or was otherwise exposed to, the scaffolding as erected by Ben prior to his death.

32. On April 20, 2020, Iowa OSHA (OSHA) issued a citation to CA, noting several, serious violations.

33. Item 1 was Serious Violation IAC 875- Chapter 26, 1926.451(a)(6) for failing to construct the scaffold in accordance with the design by a qualified person.

34. Under Item 1, OSHA identified Ben had been pulling a heavy weight over the top of a guardrail that had been "installed backwards," and the guardrail eventually came loose, causing his fall.

35. Item 2 was Serious Violation IAC 875-Chapter 26, 1926.451(g)(4)(i), under which OSHA identified that the midrail in the ladder access area was hanging vertically, which may have contributed to Ben's fall.

36. Item 3 was Serious Violation IAC 875-Chapter 26, 1926.451(g)(4)(vii) for allowing the guardrail system to be subject to a force applied downward of 200 pounds.

37. Under Item 3, OSHA identified the "Safway Guardrail Posts had been installed backwards," the top guardrail came loose, and this caused Ben's fall.

38. Item 4 was Serious Violation IAC 875-Chapter 26, 1926.451(f)(7) for erection of a scaffold by a person not trained and experienced and under the supervision and direction of a competent person.

39. Under Item 4, OSHA identified the improper installation of the Safway Guardrail Posts, this “incorrect assembly was not discerned,” and that the guardrail came loose, causing Ben’s fall.

40. Item 5 was Serious Violation IAC, 1926.454(b)(2), for failing to have each employee trained by a competent person to recognize the hazards associated with scaffolding, and, therefore, Ben “failed to discern the incorrect assembly.”

41. For these violations, CA was penalized \$53,040.00.

42. The scaffolding was provided to CA by AAS.

43. The scaffolding, Safway CGGRP “G” lock, has an asymmetrical nature, such that it is actually easier to use on the jobsite if it is installed *incorrectly*, because correct installation interferes with the ladder.

44. The scaffolding provided also failed to meet the requirements of 29 CFR 1926.451(g)(4)(vii) which requires a handrail to be able to withstand 200 pounds of force in any horizontal direction.

45. Safway CGGRP was expressly designed to only withstand such force if the G was oriented toward the scaffold.

46. The Safway CGGRP’s design was also defective as it allowed the presence of ice to interfere with the G locking tab.

47. The Safway CGGRP provided by AAS also had corrosion on the G portion of the post and locking tab, which inhibited its operation, which was a design defect.

48. The scaffolding also lacked prohibitory signage that would have prevented the improper installation.

49. For example, having a simple metal label with the words “Working Platform This Side” along with an arrow would have directed installation in accordance with the Safway CGGRP “G” lock instruction manual.

50. Other prohibitory signage that would have prevented improper installation would contain warnings.

51. Such warning signs are commonly used, and could be as simple as “This Side Must Face Away From Scaffold” or “This Side Should Not Be Visible From the Scaffold,” or



**IF YOU CAN READ THIS
FROM SCAFFOLD
POST IS
BACKWARDS**

**Count I
Gross Negligence
Defendants Cramer, Jacob, Doughty and Branan**

52. Plaintiff incorporates and realleges each allegation above into this Count I.

53. At all times relevant hereto, as leaders and supervisors of a construction firm, including as a President, Project Manager, Safety Director and Foreman/Competent Person, each individual Defendant was aware of OSHA regulations regarding scaffolding.

54. In particular, each was aware that scaffolding had to be erected by a qualified person – a Competent Person.

55. Each was aware that scaffolding had to be constructed strictly in accordance with its design.

56. Each was aware that ladder midrails had to be horizontal.

57. Each was aware that the guardrail system would have a maximum downward force capacity.

58. Each was aware that scaffolding had to be erected by a person who was trained and experienced.

59. Each was aware that even with that training and experience, the person erecting the scaffolding had to be under the supervision of a Competent Person.

60. Each was aware that a person who was not trained or experienced may be unable to discern an incorrect assembly of a scaffold.

61. Each was aware that even a trained and experienced person may require the expertise of a Competent Person to properly discern if an assembly was incorreced assembled.

62. Each was aware that a person who was not supervised by a Competent Person would fail to recognize the hazards associated with an incorrectly assembled scaffold.

63. Each was aware that the scaffolding had only been used by CA employees a few times before February 6, 2020.

64. Each was aware that workers would be on the scaffolding 20-30 feet in the air, and any fall from such a height would result in death.

65. Each was aware that incorrect assembly of scaffolding had a probable risk of injury from its failing.

66. Yet, each consciously failed to ensure the scaffolding was properly erected by a trained and experienced person under the supervision of a Competent Person.

67. As a direct and proximate result of the individual defendants' failures, Ben suffered traumatic personal injuries and death.

68. At all times material hereto, the individual defendants acted wantonly and recklessly and were grossly negligent as to the rights and safety of Ben.

WHEREFORE, Plaintiff prays for judgment against the individual defendants in amounts that will fully and fairly compensate it for its injuries, for punitive damages in an amount sufficient to punish and deter them and others from such conduct in the future, for interest allowed by law, and for the costs of this action.

Count II
Vicarious Liability
Defendant Cramer and Associates, Inc.

69. Plaintiff incorporates and realleges each allegation above into this Count III.

70. At all times relevant hereto, during each act of gross negligence by the individual defendants set out in Count I, each was acting within the scope and course of his employment with CA.

71. At all times relevant hereto, during each act of gross negligence by the individual defendants set out in Count I, each act was of the same general nature as that authorized or incidental to the conduct authorized, and it was intended to accomplish the purpose of the employment.

72. Plaintiff has been injured as set out above.

73. At all times relevant hereto, CA knew or had reason to know that the individual defendants were not properly supervising scaffold erection, were not ensuring trained and experienced persons were erecting scaffolds and were not ensuring Competent Persons were supervising the installations, resulting in the damages to Plaintiffs.

WHEREFORE Plaintiff prays for judgment against the individual defendants in amounts that will fully and fairly compensate it for its injuries, for punitive damages in an amount sufficient to punish and deter them and others from such conduct in the future, for interest allowed by law, and for the costs of this action.

Count III
Products Liability – Design Defect
Defendant All-American Scaffold, LLC

74. Plaintiff incorporates and realleges each allegation above into this Count III.

75. As set out above, the Safway CGGRP had defects in design, to wit:

- a. It was actually easier to use at a jobsite if it was installed *incorrectly* because correct installation interferes with the ladder;
- b. It failed to meet the requirements of 29 CFR 1926.451(g)(4)(vii) that a handrail be able to withstand 200 pounds of force in any horizontal direction;
- c. It allowed the presence of ice to interfere with the G locking tab; and
- d. It allowed corrosion to interfere with the G locking tab

76. That the scaffold would be installed incorrectly, resulting in it failing and personal injuries to its occupants, was a foreseeable risk of harm.

77. That the G lock would fail to withstand the force of a man with improper installation was a foreseeable risk of harm.

78. That the G lock would fail to withstand the force of a man due to ice interference or corrosion was a foreseeable risk of harm.

79. Each of these foreseeable risks of harm could have been reduced or avoided by a different design that:

- a. Was easier to use if installed properly;
- b. Complied with 29 CFR 1926.451(g)(4)(vii); and
- c. Was not susceptible to ice and corrosion interference.

80. Plaintiff has been injured as set out above.

81. At all times, AAS acted wantonly and recklessly and wholly disregarded the rights and safety of Ben.

WHEREFORE, Plaintiff prays for judgment against Defendant AAS in amounts that will fully and fairly compensate it for its injuries, for punitive damages in an amount sufficient to punish and deter it and others from such conduct in the future, for interest allowed by law, and for the costs of this action.

Count IV
Products Liability – Failure to Warn
Defendant All-American Scaffold, LLC

82. Plaintiff incorporates and realleges each allegation above into this Count IV.

83. As set out above, inadequate instructions and warnings were employed with the Safway CGGRP provided by AAS.

84. That persons would be injured by the improper installation of the scaffold was a foreseeable risk of harm.

85. These foreseeable risks of harm could have been reduced or avoided by the provision of reasonable instructions or warnings, such as:

- a. Written instructions such as “Working Platform This Side” with an arrow to direct proper installation;
- b. Warning signs, such as “This Side Must Face Away from Scaffold”; and
- c. Warning signs indicating: “If You Can Read This From Scaffold, Post is Backwards”.

86. Plaintiff has been injured as set out above.

87. At all times, AAS acted wantonly and recklessly and wholly disregarded the rights and safety of Ben.

WHEREFORE, Plaintiff prays for judgment against Defendant AAS in amounts that will fully and fairly compensate it for its injuries, for punitive damages in an amount sufficient to punish and deter it and others from such conduct in the future, for interest allowed by law, and for the costs of this action.

Count V
Products Liability – Rental of Defective Equipment
Defendants All-American Scaffold and BrandSafway, LLC

88. Plaintiff incorporates and realleges each allegation above into this Count V.

89. Defendant AAS and BS rented defective equipment which resulted in an injury due to the following failures:

- a. Failure to train;

- b. Failure to warn; and
- c. Failure to maintain.

90. Plaintiff has been injured as set out above.

91. At all times, AAS and BS acted wantonly and recklessly and wholly disregarded the rights and safety of Ben.

WHEREFORE, Plaintiff prays for judgment against Defendants AAS and BS in amounts that will fully and fairly compensate it for its injuries, for punitive damages in an amount sufficient to punish and deter it and others from such conduct in the future, for interest allowed by law, and for the costs of this action.

Count VI
Loss of Spousal Consortium
All Defendants

92. Plaintiff incorporates and realleges each allegation above into this Count VI.

93. At all times relevant hereto, Maria was the spouse of Ben.

94. As set out above, Ben was injured and died as a result of the tortious conduct of the Defendants.

95. As a direct and proximate result of the injuries to and death of Ben, Maria has lost the companionship, comfort, guidance, affection and aid of her spouse, as well as his general usefulness, industry and attention within the home and family.

WHEREFORE, Plaintiff prays for judgment against the individual defendants in amounts that will fully and fairly compensate it for Maria's loss of consortium, for interest allowed by law, and for the costs of this action.

/s/Jeff Lipman

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