



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

GUADALUPE GAYTAN, Special
Administrator of the Estate of
JOSE SANCHEZ DOMINGUEZ,
Deceased,

Plaintiff,

v

WAL-MART, WAL-MART STORES, INC.,
WAL-MART REAL ESTATE BUSINESS,
ABC CORPORATION
GRAHAM CONSTRUCTION, INC., AND
D&BR BUILDING SYSTEMS, INC.,

Defendants.

DOC. 1103 NO. 536

COMPLAINT

Assigned to Judge *Peteleday*

I. PRELIMINARY STATEMENT

1. This is a civil action in which the Plaintiff seeks to recover damages as a result on an incident on January 27, 2008 in which Jose Sanchez Dominguez was injured and ultimately died while working on the construction site of the new Wal-Mart Store (Store #4358) at 1602 So. 72nd Street, in Omaha Douglas County, Nebraska.

FILED
IN DISTRICT COURT
DOUGLAS COUNTY, NEBRASKA
2008 JAN 26 PM 4:21
JOHN H. FLEND
CLERK DISTRICT COURT



II. JURISDICTION

2. This Court has jurisdiction and venue over the parties of this action as the incident in question took place in Omaha, Douglas County, Nebraska.

III. PARTIES

3. **Plaintiff, Guadalupe Gaytan** (hereinafter referred to as **Lupe**), is the Special Administrator of the Estate of Jose Sanchez Dominguez, Deceased, having been duly appointed by the County Court of Douglas County.

4. Jose Sanchez Dominguez date of birth was September 15, 1973. On January 27, 2008, he sustained the injuries resulting in his death. He was 34 years of age (hereinafter referred to as Mr. Sanchez).

5. **Defendants Wal-Mart, Wal-Mart Stores, Inc, Wal-Mart Real Estate Business, and ABC Corporation** (hereinafter collectively referred to as **Wal-Mart**) are the owners of the land and building located at 1602 So. 72nd St., Omaha, Nebraska. The legal description of it is RANCH BOWL REP 1 LOT 1 BLOCK 0 -EX STHLY 0.13 AC STRIP FOR RWY- LOT 1 IRREG APPROX 16.52 AC

6. **Defendant Graham Construction, Inc.** (hereinafter referred to as **Graham**), is a corporation duly licensed in the State of Nebraska with its principle place of business being 13210 Centennial Road, Suite 1, Omaha, Nebraska. At the time of this incident, **Graham** was the general contractor for the construction of Wal-Mart Store #4358. At all times relevant hereto, **Graham** had its

representatives, agents and employees on the jobsite; and was in overall control of the jobsite.

7. **Defendant D&BR Building Systems, Inc.** (hereinafter referred to as **D&BR**), is a corporation duly licensed in the State of Texas with its principle place of business being 8600 State Highway 19, Edgewood, Texas. At the time of this incident, Plaintiff's decedent was an employee of **Stellar Staffing** who contracted with **D&BR** to provide laborers on their worksite. **D&BR** was a sub-contractor for Graham Construction to perform work on the Wal-Mart Store #4358 construction site. **D&BR** is named as a Defendant because it, or its insurance carrier, may have a subrogation claim for workers compensation benefits.

IV. STATEMENT OF FACTS

8. On January 27, 2008 at approximately 11:45 a.m., Mr. Sanchez was employed at the construction site for the **Wal-Mart** South 72nd Street store. At said time and place the land and building were under the joint control of **Wal-Mart** and **Graham**. The construction work being done by Mr. Sanchez, deceased, was in furtherance of the contracts between **Wal-Mart** and **Graham**; **Graham** and **D&BR**.

9. Mr. Sanchez was working on the construction of the **Wal-Mart** store, a piece of metal decking gave away causing him to fall, and strike his head on a steel column/wind girt causing injury to his head. Mr. Sanchez was working between gridlines 3 and 4, and E and F in a controlled access space. As a result

of his fall, Plaintiff's decedent suffered serious and severe injuries, as set forth hereinafter, and these ultimately resulted in his death.

CAUSES OF ACTION

DEFENDANTS WAL-MART

10. Plaintiff alleges that **Wal-Mart** as owner of the land and building to be constructed entered into a contract with **Grahams**. By the terms of that contract, provisions of the "Manual of Accident Prevention in Construction" as adopted by the Associated General Contractors of America, Inc. were made applicable to the work being done at the **Wal-Mart** job construction site. **Wal-Mart** retained control and supervisory authority of the construction work while in progress. Furthermore, **Wal-Mart**, at all times relevant hereto, had representatives, agents, and employees on the job site.

11. Plaintiff alleges that **Wal-Mart** failed to exercise reasonable care in the exercise of the control which it retained within its contract with **Graham**, and that it also violated duties owed to Plaintiff's decedent and all workers on its land.

12. Plaintiff further alleges that any negligence of **Graham** and/or **D&BR** is imputable to **Defendant Wal-Mart** because the construction work being performed by Plaintiff's Decedent was work which involved inherently dangerous activities.

13. In addition to its direct negligence, **Wal-Mart** had a nondelegable duty to protect Mr. Sanchez from harm.

DEFENDANT GRAHAM

14. Plaintiff alleges that **Graham** as general contractor on the **Wal-Mart** store construction site entered into a contract with **Wal-Mart**. Furthermore, said contract also placed certain control and supervisory authority over the construction work with **Defendant Graham**. **Graham** had, at all times relevant hereto, representatives, agents and employees on the jobsite.

15. Plaintiff alleges that **Graham** failed to exercise reasonable care in the exercise of the control placed which it had in its contract with **Wal-Mart**, and that it also violated duties owed to Plaintiff's decedent and all workers on the premises.

16. In addition to it's direct negligence, **Graham** had a nondelegable duty to protect Mr. Sanchez from harm.

VI. INJURIES AND DAMAGES

17. As a direct and proximate result of the negligence of **Graham**, whether direct or imputed, Plaintiff's decedent, Jose Sanchez Dominguez, sustained blunt trauma to his head and chest. These injuries caused his death.

18. Plaintiff's decedent left surviving him his wife, Maria Magdalena Melendez, and three children, Miguel, Patricia and Luz Maria.

19. Decedent's wife and children were dependent upon him for support and maintenance. By reason of his death they have been deprived of his future

contributions for their care, support and maintenance, and they have been deprived of his aid, advice, comfort, assistance, society, and companionship.

20. That as a direct and proximate result of the negligence of Defendants, Plaintiff incurred medical expenses. Furthermore, Plaintiff incurred funeral expenses.

WHEREFORE, Plaintiff respectfully prays for judgment against Defendant **Graham** for special damages and for general damages in accordance with the laws of the State of Nebraska, that will fairly and adequately, but not excessively, compensate the decedent's Estate for damages caused by the acts and/or omissions of Defendant **Graham**, for all costs expended herein, and for such other and further relief as this Court may deem just and equitable.

GUADALUPE GAYTAN, Special
Administrator of the Estate of Jose Sanchez
Dominguez, Plaintiff,

By: 

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