

Thursday, March 18, 2010

Lawyers Weekly, Inc.

[Try 4 Free](#) | [Subscriber Services](#) | [Our Newspapers](#) | [Other Products](#) | [Advertise](#) | [Help](#)

SUBSCRIBE

And Get Web Benefits

REGISTER

For Website Benefits

From the August 24, 2009 South Carolina Lawyers Weekly.

Order a **REPRINT**
of this Story

🔑 Subscribers Only

RESOURCES

[Archives](#) 🔑
[Daily Alert](#) 🔑
[Practice Area Alert](#)
 🔑
[Specialty Pages](#) 🔑
[Judicial Profiles](#) 🔑
[S.C. Statutes](#)
[S.C. Law Firms](#)
[South Carolina Bar](#)
[Today's Calendar](#)
[Technology](#)
[Other Resources](#)

ABOUT S.C. LAWYERS WEEKLY

[Editorial Staff](#)
[Press Room](#)
[Contact Us](#)
[Submit Letters](#)
[Submit Verdicts](#)

LEGAL CLASSIFIEDS

[Jobs](#)
[Experts](#)
[Lawyer to Lawyer](#)
[Real Estate](#)
[ADR](#)
[Legal Products & Services](#)

News Story

Man settles after broken railing led to injuries

By **FRED HORLBECK**, Senior Staff Writer

A Texas man who claimed he fell from the third-floor balcony of an Isle of Palms beach house after a railing gave way has settled for \$700,000 in a premises liability lawsuit against the home's owner.

Tim Cline and his wife, Cassidy Cline, settled on Aug. 8 after suing in a Charleston County court for negligence, violation of the S.C. Residential Landlord and Tenant Act and loss of consortium.

The lawsuit said Cline's injuries in the Aug. 17, 2007, fall included a herniated disc, three broken ribs and knee and elbow injuries.

Cline and family members were on vacation and were grilling on the balcony when the railing collapsed, said David [Yarborough](#), a Charleston attorney who represented the plaintiffs.

"He had a pot of water that he was going to dump over the side, and when he leaned against that railing, it just completely gave way," [Yarborough](#) told South Carolina Lawyers Weekly.

"Luckily, he landed in some sand and pine straw rather than on the wooden boardwalk or on concrete," he said.

The complaint alleged that the railing was in a "rotten, unstable condition" and that the defendants "had actual and constructive notice of the defective and hazardous conditions of the premises."

[Yarborough](#) said the homeowner had bought the property five months before the plaintiff's fall.

An inspection report said paint on handrails on the home's front and rear porches were in poor condition and recommended further evaluation and replacement of damaged materials, according to [Yarborough](#).

The defendants failed to properly maintain the house, especially the porch railings, the complaint alleged.

"When you buy a home and use it as an investment vehicle to make yourself money and you offer it for rent, you, as the homeowner, have the highest duty of care and you have an obligation to inspect the premises and the home to look for hidden dangers to make sure that the home is safe," [Yarborough](#) said.

"And you have to anticipate that people are going to lean against balcony rails," he said.

A lawyer for the defense, P. Gunnar Nistad, did not comment on the case after receiving a request from Lawyers Weekly.

The case is *Cline v. Beachside Vacations LLC et al.*, civil action No. 07-CP-10-5513. The suit was filed in the Charleston County Court of Common Pleas.

Challenges

Cline, who incurred about \$17,600 in past medical bills, has made a "tremendous recovery" but suffers from severe back pain as a result of the herniated disc, Yarborough said. But the extent of his apparent recovery was a potential concern as far as trial strategy.

"That was going to be the challenge at trial: To show that he still has these injuries and this pain that he suffers from, because he looks remarkably well. He never missed a day of work," he said.

The plaintiffs' preliminary assessment envisioned about \$2 million in actual damages, including \$576,000 for future medical care costs and about \$631,000 for future pain and suffering. As for punitives, \$2 million to \$10 million was the estimated range.

In mediation, they settled for \$700,000, in part because Cline's \$17,600 in past medical costs were relatively low, Yarborough said.

"We were very happy with that offer and did not feel that it was a number that we could turn down in light of the fact that Mr. Cline appears to be doing as well as he is," he said.

"The client made the decision to accept the money. They were going to net almost \$400,000 and they wanted to put this matter behind them rather than put the decision in the hands of a jury," he said.

And if the matter had gone to trial?

"A conservative Charleston County jury could come in and look at this and ... could award him \$300,000 and think they were giving him the moon," Yarborough said.

Verdict Report

Brief statement of claim: Negligence; violation of S.C. Code Ann. Sect. 27-40-10 et. seq. (S.C. Residential Landlord and Tenant Act); loss of consortium.

Principal injuries (in order of severity): L5 superior endplate fracture resulting in herniated disc at L5-S1; right knee tibial plateau fracture; three broken ribs

Special damages: There were no lost wages, but plaintiffs had \$17,651 in past medical bills. Also, a life-care plan prepared by an expert for the plaintiffs showed the possibility of \$462,000 in future pain and medical costs, and the plaintiffs' treating orthopedist testified that the plaintiff would likely need surgery at a cost of \$110,000 within the next 10 years if conservative treatment failed and his pain related to the herniated disc persisted.

Tried or settled: Settled

County and court where tried or settled: Charleston County Court of Common Pleas

Case name and number: *Timothy Cline and Cassidy Murphy Cline v. Beachside Vacations, LLC, and Jonathan A. Overton*, civil action No. 07-CP-10-5513

Date concluded: Aug. 8, 2009

Name of judge: n/a

Amount: \$700,000

Insurance carrier: Great Lakes Reinsurance

Expert witnesses, areas of expertise and hometown: Building code compliance/failure analysis/safety expert: John Phillips of Engineering Design and Testing, Charleston; physical medicine and rehabilitation expert: Gregory Jones, M.D., of Charleston; economist: Oliver Wood of Columbia.

Attorney for plaintiff: David B. Yarborough Jr. of Pierce Hems Sloan & McLeod, Charleston

Other useful info: This was a premises liability lawsuit against the homeowner and the rental company. A family from Texas rented a beachfront house on the Isle of Palms for a two-week vacation. The plaintiffs claimed that Tim Cline was grilling out on the third-floor balcony one evening when he leaned against the balcony rail. The rail completely gave way, they claimed, and Cline fell to the ground below, suffering several fractured ribs, a vertebral compression fracture and a herniated disc. The plaintiffs said nails in the porch railings had disintegrated because of the salt air at the beach. They alleged that the homeowner had purchased the home just five months earlier for \$3.5 million and that he was put on notice of the deteriorated condition of the porch rails by an inspection report. He made a conscious decision, they claimed, to defer maintenance until the following "off season" so as not to lose out on summer rentals that were already booked.

Submitted by: David B. Yarborough Jr.

© 2009 Lawyers Weekly Inc., All Rights Reserved.

Order a **REPRINT**
of this Story

[User Agreement For Subscriber-Only Online Benefits](#) | [Help](#) | [Our Privacy Policy](#)
Send any questions or comments to comments@lawyersweekly.com

Subscriber Services: 1-800-451-9998 Technical Support: 1-800-451-9998

© Copyright 2010 Lawyers Weekly, Inc. All Rights Reserved



Lawyers Weekly does not use spyware; however, we link to a number of other sites and do not take responsibility for any spyware they may use.