



ARCHITECTURE ■ LEGAL QUESTIONS

Balcony lawsuit ensnares Austin architect

Sinclair Black denies fault in 2004 incident that left woman paralyzed

By Barry Harrell

AMERICAN-STATESMAN STAFF

On a Texas summer night more than six years ago, Lou Ann Smith and Karen Gravley stepped onto the third-story balcony of an Inks Lake home they were visiting.

The balcony collapsed beneath them, broke away

Lou Ann Smith lives with her husband, Jay, in McKinney, northeast of Dallas. She said she felt the balcony shudder a bit before it fell.

Larry Kolvoord/AMERICAN-STATESMAN

Sunday exclusive

This story appears first in our Sunday print edition. It will be available to our online readers Monday on statesman.com.

from the house and sent the women plummeting more than 20 feet to the ground. The balcony, weighing an estimated 3,000 pounds, was attached to the house with 3/4-inch nails, not the bolts that the architect's design had specified, photos and court testimony would later show.

That July 2004 accident left Smith, 53, paralyzed from the waist down. It also set off a court battle that has spawned accusations of wrongdoing against

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J.C. Schmeil TRIAL EVIDENCE PHOTO PROVIDED BY SPIVEY & GIBBO

A photo used in evidence at the trial shows the balcony that fell, injuring Karen Gravley and Lou Ann Smith, in 2004. Attorneys for the Smith family say it shows that no joist hangers or bolts were used in attaching the balcony to the Inks Lake home. The photo was taken by J.C. Schmeil, architect Sinclair Black's intern at the time.

BALCONY: Builder, subcontractor, Black sued after collapse

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one of Austin's best-known architects and civic leaders, Sinclair Black, and resulted in a jury verdict that some in the architectural industry say could have a chilling effect on their profession.

Black designed the house and, according to the language in his contract, which was entered as an exhibit at the trial, was paid an additional fee

comment made through the Austin attorney who represented them in the lawsuit.

The Maxfields hired Nash Builders, a Horseshoe Bay company, as general contractor. Steven Nash of Nash Builders hired Stephen Rodriguez, a subcontractor from Kingsland, to do the framing.

The plans included a third-story balcony. On July 19, 2004, about a year after the home was finished, the



William Coltharp TRIAL EVIDENCE PHOTO PROVIDED BY SPIVEY & GIBBO

After its collapse, the 3,000-pound balcony rests on the lawn. Smith and Gravley fell more than 20 feet and were pitched forward when the balcony struck a stone wall. Gravley broke a toe and finger, but Smith damaged her spinal column.

ter on North Lamar Boulevard, the AMLI Downtown apartment complex and the Austin Nature Center.

Black might, however, be best-known for his community involvement. He is a longtime champion of improving the downtown streetscape and thoughtful, human-scaled development of the city's core. A longtime environmental advocate, he also was co-author of "Austin Creeks," a study of Austin's natural waterways that helped lead to the completion of the Shoal Creek hike-and-bike trail and plans to redevelop the area along Waller Creek.

In 2004, when Gravley received an invitation to use the home on Inks Lake — the homeowner's brother, Donnie Maxfield, is her cousin by marriage, she said — she took along her friend Smith and Smith's children Rachel (then 12) and Grayson (then 9) and another friend, Ann Sowleja.

On the night they arrived, "Lou Ann had never been there before, so I said, 'Hey, let me show you around right quick,'" Gravley said in an interview. "I said, 'Let me show you the view from the balcony.'"

Stepping through the French doors, Gravley moved to the left to give Smith room to step out. Smith walked out onto the balcony, took a look around and turned to tell her

within 10 days to stabilize her spinal column, her husband said.

"We pretty much knew then," Jay Smith said, "that she was not ever going to walk again."

There is no real dispute as to why the balcony fell: It wasn't attached to the house the way Black's design dictated.

Black's design called for the balcony to be attached with bolts beneath the balcony and inside the wall structure and for there to be "internal support structures," court documents show.

But photos and testimony showed that instead of bolts, the ledger board that supported the balcony was attached to the house with nails.

Rodriguez, the subcontractor who built the balcony, testified in a deposition that he used nails, about 20 of them, instead of bolts because "there were no bolts" at the job site.

Rodriguez testified that Steven Nash was aware that he was using nails instead of bolts.

Rodriguez also testified that he had started using a cantilever technique — in which the joists that supported the balcony extended inside the home's wall and were attached there. Rodriguez said Nash told him to change it, because the plans called for the joists to be attached to the exterior wall, using metal joist hangers.



Sinclair Black did not agree to a settlement and went to trial.

as did his then-intern, J.C. Schmeil. Black testified he reviewed photos of the balcony and didn't notice any problems.

The Maxfields' contract with Black also required that he sign off on the contractor's pay applications as assurance that "the quality of workmanship and materials used conforms with the contract documents." Black testified that he did sign off on the applications.

While Nash Builders and the homeowners settled before trial, the Smiths said none of the offers they received from Black were acceptable, so they moved forward with the trial.

On June 9, 2009, a Travis County jury found Black 10 percent responsible for the balcony's fall and ordered him to pay \$410,531.19 in damages.

In his appeal, Black argues that his contract with the Maxfields did not require him or his employees to inspect the framing work on the house. The appeal cites a part of the contract that states "... The architect shall not be required to make exhaus-

to "observe, supervise and inspect" the construction and help the owners guard against "defects and deficiencies."

Black visited the construction site several times and took photos. He testified that he didn't report any problems with the balcony because he didn't notice any problems.

The Smith family and Gravelly sued following the accident. The contractor and the homeowners settled before trial. Black did not agree to a settlement and went to trial. A Travis County jury last year found him 10 percent liable for the accident, assessing him about \$410,000 in damages. Black has appealed that verdict.

Shortly after the accident, Black transferred millions of dollars worth of assets to limited liability partnerships, financial documents show.

In June of this year, the Smith family filed a second lawsuit against Black, alleging that the transfers were an attempt to move his assets beyond the reach of any legal judgment.

At that time, Black had not posted a surety bond with the court, which often is required to ensure damages will be paid if an appeal is unsuccessful. Black has since deposited a \$445,000 cashier's check with the 345th District Court, but the second lawsuit has not been withdrawn.

Black declined to comment for this story, on the advice of his lawyers.

In a deposition, he said his role wasn't to investigate the contractor, but rather to observe "how the building goes together generally."

In his appeal, Black said his legal duty was to the homeowners, not to visitors to the house.

Black's appeal also argues that allowing the jury's verdict to stand would have "potentially disastrous consequences for architects" and could "lead to skyrocketing architectural malpractice premiums and increased construction costs ultimately to be borne by the citizens of Texas."

The Texas Society of Architects, an affiliate of the American Institute of Architects, is joining with the Texas Council of Engineering Companies to file a friend of the court brief siding with Black's appeal, said Austin attorney William Allensworth, who is preparing the brief.

The story of the Inks Lake home's balcony collapse is complex, but there is a baseline of fact, and it is this:

A California couple, Robert and Katherine Maxfield, contracted with Black to design a vacation home on Inks Lake, near Burnet. Their contract also called for Black to observe the construction, for which they paid him an additional \$16,900, according to court documents. The Maxfields did not respond to a request for

balcony collapsed when Gravelly and Smith stepped onto it.

On Aug. 20, 2004, the Smith family and Gravelly filed suit against Nash Builders, the subcontractor and Black and his firm. Last year, a Travis County jury ruled Nash Builders was 70 percent to blame for the balcony collapse, the subcontractor 20 percent and Black and his firm 10 percent.

Nash settled for \$1.4 million before the trial and the homeowners paid a settlement of \$250,000. Rodriguez, who had no insurance, was dropped from the suit.

The jury assessed the damages to the Smiths at about \$4 million.

While Black filed his appeal on Feb. 24, 2010, it wasn't until late July that he deposited the check with the court in place of a surety bond.

Black, 70, has had a distinguished 40-plus-year career and testified he had never before been sued over his work.

Black has designed some of Central Texas' best-known buildings, teaches architecture at the University of Texas and has received hundreds of honors, including the 2006 Athena Medal from the Congress for the New Urbanism. Stefanos Polyzoides, co-founder of that group, praised Black as "a true prophet in his hometown."

Among the buildings designed by Black and his firm, Black + Vernoy, are the Central Market shopping cen-

ter, how beautiful it was.

But, Smith said, she felt the balcony shudder "kind of like when you step in an elevator and ... there's a little give, like it's not quite going to be there."

Then, she said, "there was a moment when there wasn't anything under my feet."

As the nails that attached it to the house pulled free, the balcony's front end plummeted toward stone steps beneath it, Smith and Gravelly said. The platform bounced off a stone wall above the steps and spun forward, flinging the women toward the sloped lawn, they said. Smith said she landed 35 to 40 feet from the house.

Gravelly said she suffered a broken toe and finger, but her friend fared much worse. "I came down on top of (the balcony) and I guess I landed on my bottom, and that's what did most of my damage," Smith said in an interview.

She was flown by helicopter to Austin's University Medical Center Brackenridge, where doctors found that, in addition to a punctured lung, a dislocated hip and a ruptured spleen, Smith's spinal column was damaged at the C-5 vertebra in her neck and the L-1 vertebra in her lower back, said Jay Smith, Lou Ann Smith's husband. The L-1 vertebra "was pulverized," said Jay Smith, a McKinney tax preparer, in an interview.

Lou Ann Smith had four surgeries

However, joist hangers were not used, testimony showed; the joists were attached directly to the ledger board.

With no dispute that the balcony wasn't built as designed, the question the Smiths ask is: Why didn't someone realize it wasn't safe?

In addition to designing the home, Black signed a contract with the homeowners in which he agreed to "observe, supervise and inspect the construction of the residence; to endeavor to guard against defects and deficiencies in the work; and to determine if the work is performed in accordance with the contract documents."

In pretrial depositions, Black said that "our role is to observe that process and notify the owner of any inconsistencies or discrepancies that we might have knowledge of."

The Maxfields' house was built in an area that doesn't require construction to be approved by building inspectors. The Maxfields testified they believed Black's role was to ensure the home was built as planned.

Black disputed that in a deposition, saying, "We're not there investigating the contractor. We're there observing how the building goes together generally."

Black testified that he visited the site several times and took photos.

one or continuous on-site inspections to check the quality or quantity of the work."

Allensworth, who teaches construction law at the University of Texas Law School and is a partner in the firm of Allensworth and Porter, said if the jury's verdict against Black stands, it will have a chilling effect on architects.

"If you are going to make the architect categorically liable for any defects in construction, do you think the architect's fee is going to be 6 percent of the construction costs, or is his fee going to be 45 percent? And if his fee is 45 percent, isn't everybody going to say, 'I don't need no stinking architect?'" Allensworth said. "Are architects going to be involved in the construction (process) at all, and will houses be better built or worse built because there's no architects around?"

"If this was a design defect, I don't think there would be any question that there would be liability," he said. "This is not that case. This is allegedly a sin of omission. In the benefit of hindsight, there were things that could have or should have been spotted. But (Black) in this case was not hired to be out there full time; he was hired to be out there some. And if you are out there some rather than all the time, there is stuff that's going to be missed. As happened in this case, the contractor didn't build it in accordance with plan and specifications. Is that the architect's fault?"

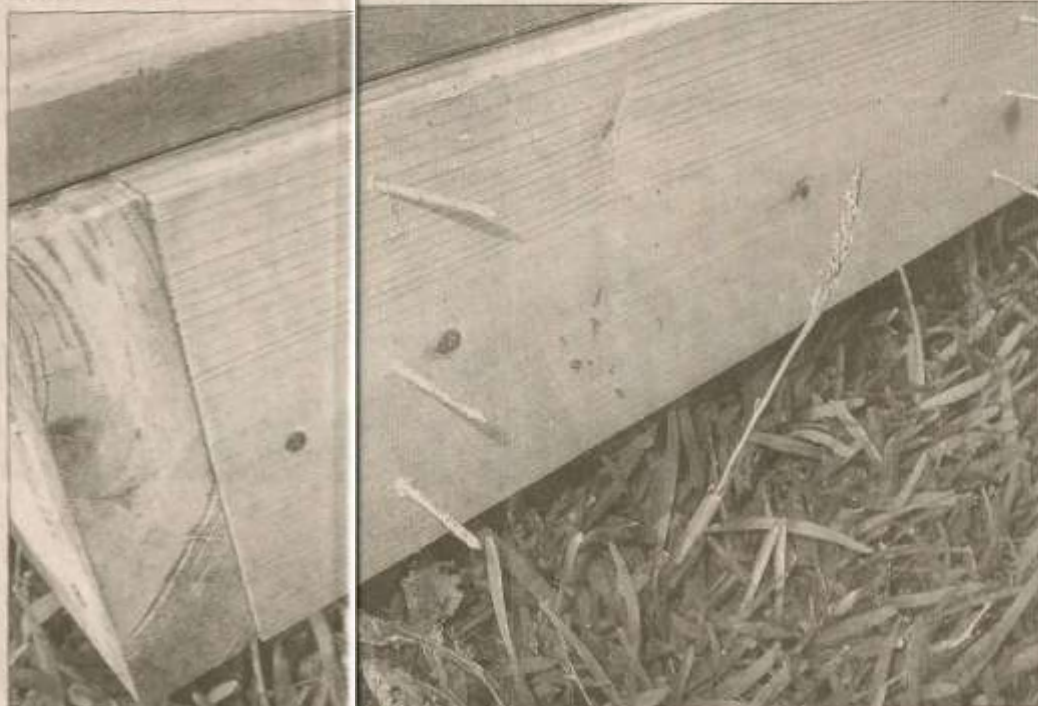
Yvonne Castillo, general counsel for the Texas Society of Architects, said in a written statement in support of Black's appeal that "unless the project's owner retains the architect to provide more extensive services, the architect's on-site duties are limited and do not include exhaustive or continuous on-site inspections to check the quality of the construction work performed by the contractor. ... The architect cannot be expected to guarantee the quality of the contractor's work, however, unless the architect has agreed to provide the additional services that would be necessary to enable the architect to provide that assurance."

The Smiths' legal fight with Black took another turn on June 9 of this year, when they filed their second suit against him, claiming that after the accident, Black realized he would be sued and started trying to protect his assets.

According to court testimony, Black learned about the accident a few days after it occurred.

Financial documents provided by Black for a deposition this past April 15 show that in the months after the balcony collapsed, Black transferred millions of dollars of assets into two lim-

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BALCONY: Verdict could affect future for other architects, experts assert

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ited partnerships, Austin JSB Ltd. and 721 Congress Ltd.

The suit asks that the transfers be voided and seeks the original \$410,000 in damages, plus an additional \$820,000 in punitive damages — double the amount of the jury verdict.

Among the assets transferred, according to Black's financial documents, were his ownership stake in Metropolitan Water Co. LP and Drilling Info Inc., an Austin company that provides information for the oil and gas industry. As of June 30, 2008, his stakes in those firms had a combined es-



Robert Calzada AMERICAN STATESMAN

timated value of more than \$20 million, according to Black's financial documents.

Brad Wiewel, an Austin attorney who specializes in asset protection and estate planning,

said the protections of a limited partnership don't apply if you wait until you fear you will be sued to move your assets.

"Once a lawsuit is pending, expected or threatened, you

can't take non-exempt assets and move them into sheltering entities to try and reduce your exposure," Wiewel said. "It's like trying to get life insurance after you leave the oncologist's office. You can't get it then."

More than six years after the balcony's collapse, the pieces of the saga are still in flux.

The Smiths are still waiting

to collect the damages they were awarded from Black. Their second suit against him is ongoing. Denise Tomlinson, the attorney representing the Smiths in the second suit, declined to say how that case will proceed, but said of Black: "We don't think his filing (of a cashier's check) changes what he did."

Black's appeal of the jury's verdict is pending with the 3rd

Court of Appeals. Oral arguments are set for Oct. 6.

Black continues to teach architecture at UT and to operate his architectural firm.

Lou Ann Smith spends her days in a wheelchair, waiting for resolution to the case and remembering that the last unaided step she ever took was onto the balcony of an Inks Lake vacation home.

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