

Cause No. 2014-585-4

Raquel Suarez, Lucila Suarez, and Raquel Suarez, Individually, and on behalf of the Estate of Jose Dario Suarez, Deceased.	§ § § §	In the District Court of
vs.	§ §	McLennan County, Texas
Baylor University, Derr and Isbell Construction, LLC, and Flintco, LLC	§ §	<u>170TH</u> Judicial District

Petition For Temporary Restraining Order

Petitioners Raquel Suarez, Lucila Suarez, and Raquel Suarez, Individually, and on behalf of the Estate of Jose Dario Suarez, Deceased (“Suarez Family”), seek the issuance of a temporary restraining order against Baylor University, Derr and Isbell Construction, LLC, and Flintco, LLC (“TRO Defendants”), and for cause of action would show the Court the following:

I.

Discovery in this case is to be conducted under a Level 3 discovery control plan pursuant to Texas Rule of Civil Procedure 190.3.

II.

Raquel Suarez is the surviving spouse of Jose Dario Suarez, Deceased, and is a resident of the State of Texas.

Lucila Suarez is a surviving daughter of Jose Dario Suarez, Deceased, and is a resident of the State of Texas.

Raquel Suarez is a surviving daughter of Jose Dario Suarez, Deceased, and is a resident of the State of Texas.

Defendant, Baylor University, is a Texas non-profit entity engaged in business in the State of Texas and may be served by serving its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

Derr and Isbell Construction, LLC is a Texas limited liability corporation engaged in business in the State of Texas and may be served by serving its registered agent, Robert W Derr, 3900 Tarrant Main, Euless, TX 76040

Defendant, Flintco, LLC, is a Texas limited liability corporation engaged in business in the State of Texas and may be served by serving its registered agent, CT Corporation System, 1999 Bryan St., Suite 900, Dallas, Texas 75201-3136.

III.

Baylor University is constructing a \$260 million new football stadium.¹ Since construction started, the project, its sponsorship, the construction and its completion date remain the subject of substantial media attention.² The school hosts periodic tours giving media access to the construction. At a recent tour, the media was told that the stadium is 60% complete. To this end, the school also posts a countdown on its website indicating how many days remain until the stadium will open. Further, Baylor provides live video

¹ <http://www.baylor-stadium.com/impact/>

² Cornered between the north bank of the Brazos River and I-35, the new stadium is expected to be a spectacle for over 42 million drivers a year. (See Baylor's website at <http://www.baylor-stadium.com/stadium-facts/>). The renditions for the project were well publicized, illustrating marine access to the stadium. The plans also show a sleek pedestrian bridge over the Brazos which will span nearly three football fields in length.

streaming of the construction via its website's stadium cam.³ ESPN featured a story drawing national attention to these cameras.⁴

Baylor hired Flintco, LLC as the general contractor to build its football stadium. Flintco, LLC has engaged various subcontractors, including Derr and Isbell Construction, LLC.

On January 28, 2014, Derr and Isbell Construction, LLC employee, Jose Dario Suarez, was strapped into equipment performing work on the pedestrian bridge. The equipment somehow fell into the Brazos River, bringing Mr. Suarez and his co-worker down with it. Mr. Suarez's co-worker managed to detach himself from his work harness that tied him to the equipment, but Mr. Suarez did not break free, resulting in his death by drowning.

Investigations to the cause of the incident are ongoing. Construction continues.⁵

IV.

The Suarez family brings this Petition for Temporary Restraining Order to ensure that all evidence relevant to their claims remains well-preserved. Important physical evidence, as well as documentary evidence, is now in the possession and control of the TRO Defendants.

Baylor owns the land where the incident occurred, and where presumably all or much of the relevant evidence was situated, and may still be situated. This includes, but is

³ <http://www.baylor-stadium.com>; <http://www.baylorbears.com/sports/m-footbl/stadium-cam.html>

⁴ David Ubben, ESPN.com - New stadium changes perception of Baylor, (April 9, 2013). (<http://espn.go.com/blog/big12/print?id=65780>). The cameras appear to be situated from a vantage point across the Brazos River, on the south bank, on or nearby the Baylor Law Center.

⁵ <http://www.baylor-stadium.com>

not limited to, all of the construction equipment and tools involved in Mr. Suarez's fatal incident, as well as the clothing and PPE being worn by Mr. Suarez at the time. Further, Baylor owns video cameras that were taking video and still photographs of the construction site at the time this fatality occurred. Accordingly, on information and belief, Baylor possesses video footage, and still photographs, of the fatality site as of the time of the incident. Indeed, it is likely Baylor possesses video footage of the incident as it occurred. In addition, Baylor presumably has copies of important construction documents setting forth the responsibilities assumed by the various construction entities it hired for this project.

Derr and Isbell Construction, LLC and Flintco, LLC should also possess or control much of the construction equipment and tools involved in the fatality, as well as the clothing and PPE being worn by Mr. Suarez at the time of his death. Further, these construction companies should have important documentary evidence, such as papers concerning the screening, hiring, training and supervision of Mr. Suarez and the other construction workers on the football stadium project, documents concerning maintenance and inspections of the equipment in question, as well as daily job reports and other common construction industry papers generated on a high-profile project such as this one.

The Suarez Family requests injunctive relief from this Court against Baylor University, Derr and Isbell Construction, LLC, and Flintco, LLC, to preserve material evidence which at this time is in jeopardy of being discarded, altered, or destroyed.

In addition, the Suarez Family requests the opportunity to have their counsel and other representatives immediately inspect the entire construction site, including the area

where this fatality occurred. The Suarez Family requests the Court order Baylor University and/or any other entity or entities in control of the premises to immediately cease all construction activities and to make the site available for this inspection.

Prayer

The Suarez family therefore requests the Court sign an *ex-parte* temporary restraining order restraining Baylor University, Derr and Isbell Construction, LLC, and Flintco, LLC, from damaging, modifying, altering, selling or disposing of, in any way, any of the following:

1. The construction equipment and tools involved in Mr. Suarez's fatal incident;
2. The clothing and PPE being worn by Mr. Suarez at the time of the incident;
3. Video and other cameras that were in place and taking video and photographs of the construction site;
4. Video footage, and still photographs, of the fatality site as of the time of the incident and at all other times construction was ongoing;
5. Construction documents setting forth the responsibilities assumed by the various construction entities Baylor hired for this project;
6. Documentation concerning the screening, hiring, training and supervision of Mr. Suarez and the other construction workers on the football stadium project;
7. Documentation concerning maintenance and inspections of the equipment in question;

8. Daily job reports and other common construction industry papers generated on a large-scale construction project such as this one;
9. Any and all other relevant evidence.

The Suarez family further requests the opportunity to immediately inspect the entire construction site, including the area where this fatality occurred.

Respectfully submitted,

VB Attorneys, PLLC

/s/ Vuk S. Vujasinovic

Vuk S. Vujasinovic (lead attorney)

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**Attorneys for Raquel Suarez, Lucila Suarez and
Raquel Suarez, Individually, and on behalf of the
Estate of Jose Dario Suarez, Deceased**

A copy of this application has been forwarded to the following addresses:

Via Fax: 254.710.3435

Baylor University

1 Bear Place, Unit 97043
Waco, Texas 76798-7043

Baylor University Registered Agent:

C T Corporation System
1999 Bryan Street, Suite 900
Dallas, Texas 75201-3136

Via Fax: 512.891.7229

Flintco, LLC

8100 Cross Park Drive
Austin, Texas 78754-5249

Flintco, LLC Registered Agent:

C T Corporation System
1999 Bryan St., Ste. 900
Dallas, Texas 75201-3136

Via Fax: 817.571.4544

Derr and Isbell Construction, LLC

3900 Tarrant Main Street
P.O. Box 637
Eules, Texas 76039

Derr and Isbell Construction, LLC

Registered Agent:

Robert W Derr
3900 Tarrant Main
Eules, Texas 76040

/s/ Vuk S. Vujasinovic

Vuk S. Vujasinovic (lead attorney)

Cause No. _____

Raquel Suarez, Lucila Suarez, and Raquel
Suarez, individually, and on behalf of the
Estate of Jose Dario Suarez, Deceased.

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In the District Court of

McLennon County, Texas

_____ Judicial District

vs.


Baylor University, Derr and Isbell
Construction, LLC, and Flintco, LLC

AFFIDAVIT

BEFORE ME, the undersigned authority, on this day personally appeared Kenneth
Fenelon, who swore on oath that the following facts are true:

“I am an attorney for Plaintiffs, the Suarez family, in this case. I have read the
Petition For Temporary Restraining Order which accurately represents the facts
and information known to me. Injunctive Relief is necessary based upon my
sincere belief that material evidence is in danger of being destroyed. I am
authorized to make this affidavit and to apply for injunctive relief on behalf of
the Plaintiffs.”

Further Affiant sayeth not.



Kenneth B. Fenelon, Jr.

SUBSCRIBED AND SWORN TO before me on the 18th day of February, 2014.





Notary Public, State of Texas

Cause No. _____

Raquel Suarez, Lucila Suarez, and Raquel	§	In the District Court of
Suarez, Individually, and on behalf of the	§	
Estate of Jose Dario Suarez, Deceased	§	
	§	
vs.	§	McLennan County, Texas
	§	
Baylor University, Derr and Isbell	§	
Construction, LLC, and Flintco, LLC	§	_____ Judicial District

Temporary Restraining Order

1. After considering the Petitioner's ("the Suarez family") application for temporary restraining order, the pleadings, the affidavits, and the arguments of counsel, the Court finds there is evidence that harm is imminent to the Suarez family, and if the Court does not issue the temporary restraining order, the Suarez family faces immediate and irreparable injury because crucial evidence will be discarded, altered, or destroyed.

2. An *ex parte* order, without notice to Baylor University, Derr and Isbell Construction, LLC, and Flintco, LLC ("TRO Defendants") was necessary because there is not enough time to give notice to TRO Defendants, hold a hearing and issue a restraining order before the irreparable injury, loss or damage occurs.

3. Therefore, the Court restrains **Baylor University, Derr and Isbell Construction, LLC and Flintco, LLC** from:

- a) Damaging, modifying, altering, selling or disposing of, in any way, the construction equipment and tools involved in Mr. Suarez's fatal incident;
- b) Damaging, modifying, altering, selling or disposing of, in any way, the clothing and PPE (Personal Protective Equipment) being worn by Mr. Suarez at the time of the incident;
- c) Damaging, modifying, altering, selling or disposing of, in any way, documentary evidence, such as papers concerning the screening, hiring, training and supervision of Mr. Suarez and the other construction workers on the football stadium project;
- d) Damaging, modifying, altering, selling or disposing of, in any way, construction documents setting forth the responsibilities assumed by the various construction entities working on this project;

- e) Damaging, modifying, altering, selling or disposing of, in any way, documents concerning maintenance and inspections of the equipment in question; or
- f) Damaging, modifying, altering, selling or disposing of, in any way, daily job reports and other common construction industry papers generated on a high-profile project such as this one.
- g) Damaging, modifying, altering, selling or disposing of, in any way, video footage, and still photographs, of the fatality site as of the time of the incident and as of any other time the construction project was ongoing;
- h) Damaging, modifying, altering, selling or disposing of, in any way, video and other cameras that were in place and taking video or photographs of the construction site at any time construction was ongoing; or
- i) Damaging, modifying, altering, selling or disposing of, in any way, any other relevant evidence.

4. It is further ordered that counsel and other representatives of the Suarez Family may inspect the entire construction site, including the area where the fatality occurred, no later than _____, 2014. Baylor University and/or any other entity or entities in control of these premises are ordered to immediately cease all construction activities and to make the site available for this inspection by the Suarez Family.

5. This order does not authorize destructive testing; and further,

6. The Court Orders that the Clerk issue notice to TRO Defendants that the hearing on Petitioner's Application for Temporary Injunction is set for _____, 2014, at ____m. The purpose of the hearing shall be to determine whether this Temporary Restraining Order should be made a Temporary Injunction.

7. The Suarez family encloses a bond in the amount of \$_____.

8. THE COURT GIVES NOTICE TO TRO DEFENDANTS THAT ANY VIOLATIONS OF THIS ORDER MAY BE CONSIDERED CONTEMPT OF COURT AND MAY BE PUNISHED WITH CONFINEMENT IN COUNTY JAIL AND/OR A FINE.

This order expires on _____, 2014.

JUDGE PRESIDING

