

NEW YORK

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CONSTRUCTION

Fall from Height, Construction - Trip and Fall, Construction - Labor Law, Damages - Indemnification, Construction - Scaffolds and Ladders

Worker paralyzed in 12-foot fall from scaffolding

VERDICT **\$10,000,000**

CASE Hugo Nunez v. Laurence Levy, LFP 1020
PWB, LLC., Tritec Building Co. Inc. & North
Fork Bancorporation, Inc.,
No. 114538/03

COURT New York Supreme, NY

JUDGE Barbara A. Kapnick

DATE 3/12/2007

PLAINTIFF

ATTORNEY(S) David B. Golomb (lead), Law Offices of David
B. Golomb, New York, NY
Roy Jaghab, Jaghab & Jaghab & Jaghab, P.C.,
Mineola, NY

DEFENSE

ATTORNEY(S) James A. Edwards, Ahmuty, Demers &
McManus, New York, NY (LFP 1020
PWB, LLC., Laurence Levy, North Fork
Bancorporation, Inc, Tritec Building Co. Inc.)
John V. Fabiani, Fabiani, Cohen & Hall,
New York, NY (Diamond Demolition Inc.)

FACTS & ALLEGATIONS On Aug., 8, 2003, plaintiff Hugo Nunez, 29, a construction worker, was employed as a day laborer for Diamond Demolition Inc., to help rebuild a bank in Port Washington. On his third day of working, Diamond sent him with a foreman and three to four other laborers to demolish and remove a 2-ton steel bank vault door. The crew was instructed by the foreman to place two to three old tires on the floor in front of the vault door. One of the workers was then instructed by the foreman to climb a ladder and cut the two hinges of the bank vault door with a cutting torch. As the top hinge was nearly cut through the door tore loose and fell at an angle striking Nunez at the mid-shin of his right leg. The leg was eventually amputated.

Nunez sued the site's owner, Laurence Levy; Levy's company, LFP 1020 PWB, LLC; the project's general contractor, Tritec Building Co. Inc.; and the site's lessee, and North Fork Bancorporation Inc. He alleged that the defendants violated the labor law.

Tritec Building. impleaded the employer and Diamond Demolition, Inc., alleging that Diamond was liable for the Industrial Code violations and chose the method of demolition.

Plaintiff's counsel claimed the defendants violated Industrial Code § 23-3.3(b) (3) which requires guarding of any loosened

materials during hand demolition to prevent them from falling. Counsel argued that the code was violated because nothing was used to support the door. Counsel further argued that the defendants violated Industrial Code § 23-3.3 (c) which requires periodic inspections during hand demolition by a designated inspector who is required to stop workers from proceeding if hazards are presented by failure to support or secure loosened materials. Counsel argued that the code was violated because there was no designated inspector, the hazards presented were not observed and the workers were allowed to continue working. He claimed that the code violations established that the site was not properly safeguarded, in violation of Labor Law § 241(6).

Defense counsel contended that the demolition of the building had essentially been completed before removal of the door was begun and hence, the Industrial Code sections were not applicable and that the Diamond foreman was the inspector required by the Industrial Code.

INJURIES/DAMAGES *amputation, below-the-knee; crush injury, leg* Following the accident, Nunez was rushed to North Shore University Hospital, in Manhasset. The bones in his right leg were crushed from the mid-shin down to his feet with soft tissues torn. Later that morning, he underwent a below-the-knee amputation of his right leg and was discharged after two weeks. He spent approximately three months in outpatient rehabilitation and currently walks with a prosthesis.

Nunez claimed that he is no longer able to work or engage in any sports activities that he used to play and is socially limited. He has not worked since the incident and complains of “phantom” pain from the missing limb and of frequent pain in the stump and on its surface. Nunez asked the jury for \$5 million in past pain and suffering and \$5 million in future pain and suffering.

Defense counsel contended that while the injury was severe, Nunez had made an excellent recovery and ambulated well.

RESULT: The jury found that defendants violated each of the two Industrial Code sections and failed to exercise reasonable care. The court granted the motion by defendant/third-party plaintiff Tritec Building Co for an order of common law indemnification against third-party defendant Diamond Demolition.

The jury found that Nunez’s damages totaled \$10 million.

HUGO NUNEZ	\$5,000,000 past pain and suffering
	\$5,000,000 future pain and suffering
	\$10,000,000
DEMAND	\$4,500,000
OFFER	None
INSURER(S)	American International Group Inc. for Diamond Demolition Travelers Property Casualty Corp. for Levy, LFP 1020 PWB, North Fork Bancorporation and Tritec Building
TRIAL DETAILS	Trial Length: 7 days Jury Deliberations: 3 hours Jury Vote: 6-0 Jury Composition: 1 male, 5 female
PLAINTIFF	
EXPERT(S)	Ronald B. Dokell, demolition, Houston, TX
DEFENSE	
EXPERT(S)	None Reported

POST-TRIAL Defense counsel has moved for dismissal, a reduction of damages and a new trial.

EDITOR’S NOTE This report is based on information that was provided by plaintiff’s and defense counsel.