In The Matter Of:

DEMETRO v. DORMITORY AUTHORITY

May 16, 2018

Bronx Supreme Court

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Min-U-Script® with Word Index

| | | 3616 |
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| 1 | SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF BRONX: CIVIL DIVISION - PART IA-16 | |
| 2 | LOUIS DEMETRO and NANCY DEMETRO, | |
| 3 | · · | |
| 4 | -versus- | |
| 5 | Index # 16277-2006 | |
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| 7 | ,,,,,,,,,,,,,,, | |
| 8 | <pre>INC., CENTER SHEET METAL, INC., BLUE DIAMOND SHEET METAL, INC., and METAL-FAB, INC.,</pre> | |
| 9 | Defendant(s) | |
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| 10 | DORMITORY AUTHORITY OF THE STATE OF NEW YORK, BOVIS LEND LEASE LMB, INC. and CENTER SHEET METAL, INC., | |
| 11 | Third-Party Plaintiffs | |
| 12 | | |
| 13 | -versus- Index # 86001-2007 | |
| 13 | IIIdex # 80001-2007 | |
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| 2 | DORMITORY AUTHORITY OF THE STATE OF NEW YORK, BOVIS LEND LEASE LMB, INC., and CENTER SHEET METAL, INC., |
| 3 | |
| 4 | Fifth Third-Party Plaintiffs |
| 5 | -versus- |
| | JOHNSTON BOILER COMPANY, |
| 6 | Fifth Third-Party Defendant(s) |
| 7 | May 16, 2018 851 Grand Concourse |
| 8 | Bronx, New York 10451 |
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| 10 | |
| | D. D. D. D. J. Warrangh la Divitors a Gome |
| 11 | B E F O R E : Honorable FAVIOLA A. SOTO, |
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| 25 | |

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| 1 | (Whereupon, the jury enters the courtroom) |
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| 2 | THE COURT: Jury entering. Foreperson remaining |
| 3 | standing. |
| 4 | THE CLERK: In the case of Louis Demetro and Nancy |
| 5 | Demetro versus Dormitory Authority of the State of New York, |
| 6 | Bovis Lend Lease, LMB, Inc., The Cannon Corporation d/b/a |
| 7 | Cannon Design, Martin Associates, Inc., Center Sheet Metal, |
| 8 | Inc, Metal-Fab Inc., Blue Diamond Sheet Metal, Inc., L.P. |
| 9 | Gans Sales Company, Inc., Analytical and Combustion Systems, |
| 10 | and Johnston Boiler Company. Index 16277 of 2006 in and for |
| 11 | the Supreme Court of the State of New York, County of |
| 12 | Bronx. |
| 13 | Question number one, was the defendant Dormitory |
| 14 | Authority of the State of New York negligent? |
| 15 | THE FOREMAN: No. |
| 16 | THE CLERK: What vote? |
| 17 | THE FOREMAN: Five to one. |
| 18 | THE CLERK: Question number three, was the |
| 19 | defendant Bovis Lend Lease, LMB negligent? |
| 20 | THE FOREMAN: Yes. |
| 21 | THE CLERK: What vote? |
| 22 | THE FOREMAN: Six zero. |
| 23 | THE CLERK: Question number four, was the |
| 24 | defendant Bovis' negligence a substantial factor in causing |
| 25 | the accident? |

Verdict

| | 3620 |
|----|---|
| 1 | THE FOREMAN: Yes. |
| 2 | THE CLERK: What vote? |
| 3 | THE FOREMAN: Five one. |
| 4 | THE CLERK: Question number five, was the |
| 5 | defendant Cannon Corporation negligent? |
| 6 | THE FOREMAN: Yes. |
| 7 | THE CLERK: What vote? |
| 8 | THE FOREMAN: Six zero. |
| 9 | THE CLERK: Question number six, was the defendant |
| 10 | Cannon's negligence a substantial factor in causing the |
| 11 | accident? |
| 12 | THE FOREMAN: Yes. |
| 13 | THE CLERK: What vote? |
| 14 | THE FOREMAN: Six zero. |
| 15 | THE CLERK: Question number seven, was the |
| 16 | defendant Martin Associates, Inc. negligent? |
| 17 | THE FOREMAN: Yes. |
| 18 | THE CLERK: What vote? |
| 19 | THE FOREMAN: Six zero. |
| 20 | THE CLERK: Question number eight, was the |
| 21 | defendant Martin's negligence a substantial factor in |
| 22 | causing the accident? |
| 23 | THE FOREMAN: Yes. |
| 24 | THE CLERK: What vote? |
| 25 | THE FOREMAN: Six zero. |

3621 THE CLERK: Question number nine, was the 1 2 defendant Center Sheet Metal, Inc. negligent? THE FOREMAN: Yes. 3 THE CLERK: What vote? 4 5 THE FOREMAN: Six zero. 6 THE CLERK: Question number ten, was the defendant 7 Center Sheet Metal Inc.'s negligence a substantial factor in 8 causing the accident? 9 THE FOREMAN: No. THE CLERK: What vote? 10 THE FOREMAN: Six zero. 11 12 THE CLERK: Question number 11, was the defendant Metal-Fab, Inc. negligent? 13 14 THE FOREMAN: No. 15 THE CLERK: What vote? 16 THE FOREMAN: Six zero. THE CLERK: Question number 13, was the defendant 17 18 Blue Diamond Sheet Metal, Inc. negligent? THE FOREMAN: No. 19 THE CLERK: What vote? 20 THE FOREMAN: Six zero. 21 22 THE CLERK: Question number 15, was the defendant 23 L.P. Gans negligent? 24 THE FOREMAN: No. 25 THE CLERK: What vote?

3622 THE FOREMAN: Six zero. 1 2 THE CLERK: Question number 17, was the defendant Analytical Combustion Systems, Inc. negligent? 3 4 THE FOREMAN: No. 5 THE CLERK: What vote? 6 THE FOREMAN: Six zero. 7 THE CLERK: Question number 19, was the defendant Johnston Boiler COMPANY negligent? 8 9 THE FOREMAN: No. THE CLERK: What vote? 10 THE FOREMAN: Six zero. 11 12 THE CLERK: Question number 21, was the plaintiff Louis Demetro negligent? 13 14 THE FOREMAN: No. 15 THE CLERK: What vote? THE FOREMAN: Six zero. 16 17 THE CLERK: Number 23, apportion the percentage of 18 liability between party/parties that you found to be negligent and whose negligence was a substantial factor in 19 20 causing the accident. The total amount of liability must add up to 100 21 22 percent. 23 THE CLERK: DASNY? 24 THE FOREMAN: Zero. 25 THE CLERK: Bovis?

Verdict

| | 3623 |
|----|---|
| 1 | THE FOREMAN: 25. |
| 2 | THE CLERK: Cannon? |
| 3 | THE FOREMAN: 25. |
| 4 | THE CLERK: Martin? |
| 5 | THE FOREMAN: 50. |
| 6 | THE CLERK: Center Sheet Metal? |
| 7 | THE FOREMAN: Zero. |
| 8 | THE CLERK: Metal-Fab? |
| 9 | THE FOREMAN: Zero. |
| 10 | THE CLERK: Blue Diamond Sheet Metal? |
| 11 | THE FOREMAN: Zero. |
| 12 | THE CLERK: L.P. Gans? |
| 13 | THE FOREMAN: Zero. |
| 14 | THE CLERK: Analytical Combustion? |
| 15 | THE FOREMAN: Zero. |
| 16 | THE CLERK: Johnston? |
| 17 | THE FOREMAN: Zero. |
| 18 | THE CLERK: Louis Demetro? |
| 19 | THE FOREMAN: Zero. |
| 20 | THE CLERK: What was your vote? |
| 21 | THE FOREMAN: Six zero. |
| 22 | THE CLERK: Number 24, state of amount awarded to |
| 23 | plaintiff Louis Demetro for the following items of damages, |
| 24 | if any, up to the date of your verdict? If you decide not |
| 25 | to make an award, write no. |

Verdict

| | 3624 |
|----|--|
| 1 | A, pain and suffering. |
| 2 | THE FOREMAN: One million five hundred thousand. |
| 3 | THE CLERK: What vote? |
| 4 | THE FOREMAN: Five one. |
| 5 | THE CLERK: B, medical expenses? |
| 6 | THE FOREMAN: 100,000 dollar. |
| 7 | THE CLERK: What vote? |
| 8 | THE FOREMAN: Five one. |
| 9 | THE CLERK: C, lost earnings? |
| 10 | THE FOREMAN: One million sixty thousand. |
| 11 | THE CLERK: What vote? |
| 12 | THE FOREMAN: Six zero. |
| 13 | THE CLERK: Number 25, state the amount awarded to |
| 14 | plaintiff Louis Demetro for the following item of damages, |
| 15 | if any to be incurred in the future. If you decide not to |
| 16 | make an award write none. |
| 17 | A, pain and suffering? |
| 18 | THE FOREMAN: One million five hundred thousand. |
| 19 | THE CLERK: What vote? |
| 20 | THE FOREMAN: Five one. |
| 21 | THE CLERK: B, medical expenses? |
| 22 | THE FOREMAN: Two hundred seventy-five thousand. |
| 23 | THE CLERK: What vote? |
| 24 | THE FOREMAN: Five to one. |
| 25 | THE CLERK: C, lost earnings? |

| 1 | THE FOREMAN: One million dollars. |
|----|--|
| 2 | THE CLERK: What vote? |
| 3 | THE FOREMAN: Five to one. |
| 4 | THE CLERK: Number 26, if you have made any award |
| 5 | for amounts intended to compensate the plaintiff Louis |
| 6 | Demetro for damages to be incurred in the future in question |
| 7 | 23 above, then for each item for which an award is made, |
| 8 | state the period of years of which such amount is intended |
| 9 | to provide compensation. |
| 10 | A, pain and suffering? |
| 11 | THE FOREMAN: 20 years. |
| 12 | THE CLERK: What vote? |
| 13 | THE FOREMAN: Six zero. |
| 14 | THE CLERK: B, medical expenses? |
| 15 | THE FOREMAN: 20 years. |
| 16 | THE CLERK: What vote? |
| 17 | THE FOREMAN: Six zero. |
| 18 | THE CLERK: C, lost earnings? |
| 19 | THE FOREMAN: Eight years. |
| 20 | THE CLERK: What vote? |
| 21 | THE FOREMAN: Six zero. |
| 22 | THE CLERK: Number 27, state the amount awarded to |
| 23 | the plaintiff Nancy Demetro, if any, for her claim of loss |
| 24 | of services and consortium. If you decide not to make an |
| 25 | award, write none. |

| 1 | What is the amount indicated? |
|----|--|
| 2 | THE FOREMAN: 500 thousand. |
| 3 | THE CLERK: What vote? |
| 4 | THE FOREMAN: Five to one. |
| 5 | THE CLERK: Your verdict has been recorded. |
| 6 | THE COURT: Ladies and Mr. Mendoza, you came, you |
| 7 | saw, you conquered. You came to this court months ago, you |
| 8 | listened to all the evidence. You were able to go in the |
| 9 | back and deliberate and agree towards a verdict. By agreeing |
| 10 | and coming up with a verdict, you have fulfilled your |
| 11 | obligation as jurors in the State of New York. |
| 12 | I want to thank you as the Judge of the Court to |
| 13 | say what a pleasure it was to have you in my courtroom. When |
| 14 | you come back to serve, I will not be here because I am |
| 15 | retiring. You will all be in my hearts. You are now |
| 16 | excused. |
| 17 | I will take you down stairs on the second floor |
| 18 | and get you proof of service. |
| 19 | MR. KUTNER: Would you mind asking if they don't |
| 20 | mind sticking around. |
| 21 | THE COURT: The attorneys may want to speak to |
| 22 | you. You don't have to, but it is important for them to get |
| 23 | your prospective. It helps them in their career and how to |
| 24 | approach jurors in the future. |
| 25 | Attorneys, if you want to speak to the jurors, |

| 1 | speak to them in the hallway. |
|------------|---|
| 2 | You are now excused. |
| 3 | (Whereupon, the jury exits the courtroom) |
| 4 | THE COURT: All right, all motions. The attorneys |
| 5 | have 60 days from today to make post trial motions. |
| 6 | MR. KUTNER: Just to protect the record, I want to |
| 7 | make a motion to set aside the verdict as contrary to the |
| 8 | law, the facts and as against the weight of the evidence. |
| 9 | THE COURT: Denied. |
| LO | MR. KUTNER: Renew all motions that were made at |
| 11 | the closing of plaintiff's proof? |
| 12 | THE COURT: Whatever I ruled, denied. |
| 13 | MR. KUTNER: We were going to ask for 60 days. |
| L 4 | MR. WINIKOW: I join in the same motions that |
| 15 | Mr. Kutner made. |
| 16 | THE COURT: Do you want to make them in 60 days? |
| 17 | MS. OWENS: Everything is preserved? Execution of |
| 18 | the judgment is stayed? |
| 19 | THE COURT: 60 days until I make a decision. |
| 20 | MR. WINIKOW: Your Honor, just so we are clear, |
| 21 | entry of judgment will be stayed until the motion is |
| 22 | decided? |
| 23 | THE COURT: That's what the CPLR says. |
| 24 | MR. WINIKOW: I would like to request a collateral |
| 25 | source hearing. |

| 1 | THE COURT: Try to arrange that and if you have a |
|----|---|
| 2 | problem, contact me and I will schedule a hearing. |
| 3 | MR. KUTNER: I was making that motion verbally and |
| 4 | my understanding is that I have 60 days to submit papers in |
| 5 | support of my oral application? |
| 6 | MR. KALMAN: All post trial motions on papers in |
| 7 | 60 days? |
| 8 | THE COURT: Thank you all. You did a wonderful |
| 9 | job. |
| 10 | MR. KUTNER: Your Honor, I wanted to address that |
| 11 | there are contractual indemnification claims by DASNY and |
| 12 | possibly Bovis pursuant to the items of the contract that |
| 13 | were written between DASNY and Martin and DASNY and Cannon. |
| 14 | I just want to preserve my right to make my application to |
| 15 | the Court with the other motions with respect to the Court's |
| 16 | determination as to the applicability of the indemnification |
| 17 | provisions and the recovery of defense costs and attorneys' |
| 18 | fees as against those entities. |
| 19 | THE COURT: All motions within 60 days. Hopefully, |
| 20 | you can settle that issue amongst yourselves. |
| 21 | (Whereupon, the case is adjourned for post trial motions) |
| 22 | Certified to be a true and accurate transcription of the stenographic notes |
| 23 | ADRIANNE TIRADO |
| 24 | VANESSA MOORE |
| 25 | VICTORIA EFFEREN |

| | Bronx (1) | COURT (12) | entering (1) | |
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