

After 15 Years in Court, Workers' Lawsuit Against Trump Faces Yet Another Delay

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Body

Eighteen years ago, Wojciech Kozak helped build Trump Tower, the skyscraper jewel in Donald J. Trump's real-estate empire. Today, Mr. Kozak recalls that time with nightmare memories of backbreaking 12-hour shifts and of being cheated with 200 other undocumented Polish immigrants out of meager wages and fringe benefits.

"We worked in horrid, terrible conditions," Mr. Kozak said of the six months he spent in 1980 wielding a sledgehammer and a blowtorch in demolishing the Bonwit Teller Building on Fifth Avenue to make way for Trump Tower. "We were frightened illegal immigrants and did not know enough about our rights."

Mr. Kozak, like other laborers on that job, has no hope of collecting about \$4,000 in back wages from a contracting company that began the demolition and later became insolvent. But after almost two decades, the demolition workers are still struggling to compel Mr. Trump and his business associates to compensate a union's welfare funds and thus increase pension and medical benefits for some of the Polish workers.

Mr. Kozak is now a party and witness in a class-action lawsuit that has meandered through the Federal courts for 15 years and charges that Mr. Trump owes \$4 million to the union welfare funds for the work the Poles performed. Filed in 1983, the suit has been bogged down by a torrent of motions and appeals of judicial decisions and by the deaths of a judge, a lawyer, the original lead plaintiffs, an important witness and two of Mr. Trump's co-defendants.

In an effort to resolve the tangled case -- one of the oldest on the civil dockets of the Federal District Court in Manhattan -- Judge Kevin T. Duffy last month warned lawyers for both sides to be prepared to begin a jury trial on 48 hours' notice.

But on Thursday, in a development that could delay the trial yet again, Judge Duffy ordered the case assigned to another judge. Lawyers for both sides said the 48-hour notice was still in effect, but that it was unclear when the trial would start.

Mr. Trump denies that he was aware of the working conditions at the site in 1980 or that any of the demolition workers were undocumented immigrants. He is also challenging claims that he is liable for payments to the union that were evaded by the demolition contractor.

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"All we did was to try to keep a job going that was started by someone else," Mr. Trump, in an interview, said of his company's efforts to guarantee that the demolition contractor paid wages to employees. "In fact, we helped people and it has cost a lot of money in legal fees."

Mr. Kozak and other Polish immigrants who were hired for the demolition said in interviews that they often worked in choking clouds of asbestos dust without protective equipment. They accepted the conditions because they thought the job would pay 10 times as much as they could earn in Poland, said Mr. Kozak, 56, a slightly built man who became an American citizen and joined a laborers' union.

Julian Nalepa, 63, who suffered a head injury in the demolition, said he and fellow workers were baffled by the unending suit. "It makes you think that only the rich have rights in the courts," he said.

The demolition project on Fifth Avenue and 56th Street lasted from January to June 1980. It cleared the way for an ornate 68-story glass-sheathed structure containing shops and an atrium on the lower floors and 263 condominium apartments above that originally sold for \$500,000 to \$10 million each.

The tower was financed and built by Mr. Trump's development company, the Trump Organization, and the Equitable Life Assurance Society of the United States.

According to court records and testimony, the Trump-Equitable joint venture hired Kaszycki and Sons Contractors Inc. at a fee of \$775,000 to raze Bonwit Teller's 10-story flagship department store although the contractor had little demolition experience. Demolition Workers Local 95 of the Laborers' International Union of North America had a collective bargaining agreement with the Kaszycki company, of Herkimer, N.Y., requiring it to pay specified wages to union and nonunion workers at the Trump Tower site and to make additional payments for each worker into the local's pension and medical insurance funds.

Wendy E. Sloan and Lewis M. Steel, lawyers for current and retired Local 95 members in the suit, assert that William Kaszycki, owner of the contracting company, hired about 200 Polish immigrants who were not Local 95 members and agreed to pay them \$4 to \$5 an hour on 12-hour shifts seven days a week.

The Kaszycki company, the plaintiffs said, violated the union's \$11-an-hour minimum wage scale and made payments to the local's welfare funds for only 12 to 15 employees. The contractor also failed to pay the 200 Poles their full wages, causing work stoppages and delays.

The plaintiffs contend that Mr. Trump was desperate to meet demolition and construction deadlines and that his company in May 1980 began supervising the demolition, assuming full responsibility for adhering to the union contract and for the payments to the union welfare funds.

When the suit was filed in 1983, the lead plaintiff was Harry J. Diduck, a dissident member of Local 95. Mr. Diduck had not worked at Trump Tower but maintained that that he and about 500 Local 95 members and retirees lost medical and pension benefits because Trump-Equitable and the Kaszycki company owed the union funds more than \$300,000.

After eight years of arguments and a nonjury trial on some of the issues, in 1991 Judge Charles E. Stewart of Federal District Court in Manhattan ruled that Mr. Trump and his associates conspired with Local 95's president, John Senyshyn, to withhold payments to the funds. He determined that Trump-Equitable owed \$325,415 plus interest.

Both sides, however, appealed the findings and each won partial victories. A Federal appeals court upheld most of Judge Stewart's decisions but ruled that Trump-Equitable had been denied a full opportunity to rebut the charge that the funds had been damaged by the loss of contributions for the Polish workers.

The appeals court also ruled that Judge Stewart wrongly dismissed a claim by the plaintiffs that the Trump group was responsible for payments to the funds because it had been the workers' actual employer.

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Judge Stewart died in October 1994 and the case, with new issues at stake, was assigned to Judge Duffy. But progress was further hampered by the deaths since 1991 of Mr. Diduck, the original plaintiff; Burton H. Hall, a lawyer for the plaintiffs, and Mr. Kaszycki and Mr. Senyshyn, who were co-defendants.

Before ordering lawyers to be ready for trial on two days' notice, Judge Duffy recently denied motions for further delays.

Admonishing both sides, he said, "There must be an end to all litigation: even Jarndyce v. Jarndyce ground down to a conclusion." He was referring to an estate dispute in Charles Dickens's novel "Bleak House" involving generations of the Jarndyce family that was so convoluted no one understood it.

Edwin G. Schallert, the chairman of the Federal Court Committee of the Association of the Bar of the City of New York, described the Trump case's longevity as "extraordinarily rare" for the District Court. Mr. Schallert said records show that the average civil suit in the court takes 29 months and that 90 percent of cases are tried within four years.

At different stages, Mr. Trump has retained four prominent Manhattan law firms to represent him. "The legal history of this case is a jigsaw puzzle," said Thomas A. Bolan, Mr. Trump's latest lawyer and a former partner of the late Roy M. Cohn. "We are now back to square one on the key issues."

Mr. Trump, who is expected to testify at the trial, said he had resisted efforts to settle the case out of court. "It would be cheaper, but on principle I won't," he said. "We did nothing wrong."

Ms. Sloan, the plaintiffs' lead lawyer, said she would be paid for 15 years of legal work only if her side won. The fees would be set by the court, she added, and would be paid by Mr. Trump and his co-defendants. She estimated that if the \$300,000 judgment, and accumulated interest, is upheld a second time, the payments would reach about \$4 million.

"When you are facing large firms, it tends to make the litigation protracted," said Ms. Sloan, who is a solo practitioner specializing in union and civil rights law. "But we are stubborn."

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