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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 200 SSM 30
Sapphire Simmons, &c., et al.,
Appellants,
v.
Vito Sacchetti, et al.,
Respondents,
et al.,
Defendant.

Submitted by Arnold E. DiJoseph, III, for appellants.
Submitted by Marcy Sonneborn, for respondents
Ambassador Fuel and Oil Burner Corp. et al.
Submitted by Debra A. Adler, for respondent F&B Fuel
Oil Co., Inc.
Submitted by Max W. Gershweir, for respondents Vito
Sacchetti et al.
Met Council, Inc. et al.; Housing Conservation
Coordinators, Inc., amici curiae.

MEMORANDUM:

The order of the Appellate Division should be modified,
without costs, by denying the motion of defendants Vito Sacchetti
and TMS Management Company for summary judgment in the entirety

and the motion of defendant Ambassador Fuel and Oil Burner Corp. insofar as it sought to dismiss the cross claims against it and, as so modified, affirmed.

Triable issues of fact exist as to whether defendants Sacchetti and TMS negligently failed to maintain the apartment building's boiler and domestic hot water system in a reasonably safe condition and whether the negligence of those defendants proximately caused the infant plaintiff's injuries. Issues of fact also exist as to whether the conduct of the infant plaintiff's mother and brother constituted a superseding cause of her injuries. However, the record establishes as a matter of law that defendant Ambassador did not violate any duty owed to plaintiffs.

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On review of submissions pursuant to section 500.11 of the Rules, order modified, without costs, by denying the motion of defendants Vito Sacchetti and TMS Management Company for summary judgment in the entirety and the motion of defendant Ambassador Fuel and Oil Burner Corp. insofar as it sought to dismiss the cross claims against it and, as so modified, affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided August 31, 2010