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

No. 61 SSM 58
Larry C. Holly and Sandra Holly,
Respondents,
v.
County of Chautauqua and E.E.
Austin & Son, Inc.,
Appellants.

Submitted by Ryan K. Cummings, for appellants.
Submitted by John A. Collins, for respondents.

MEMORANDUM:

The order of the Appellate Division, insofar as
appealed from, should be reversed, with costs, and plaintiffs'
motion for partial summary judgment as to liability on their
Labor Law § 240 (1) claim denied. The certified question should
be answered in the negative.

While we agree with the Appellate Division that there

are no questions of fact regarding proximate cause, triable issues of fact do exist as to whether the scaffolding defendants supplied provided proper protection under Labor Law § 240 (1) (see Blake v Neighborhood Hous. Servs. of N.Y. City, 1 NY3d 280, 288 [2003]; Davis v Brunswick, 52 AD3d 1231, 1232 [4th Dept 2008]).

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On review of submissions pursuant to section 500.11 of the Rules, order, insofar as appealed from, reversed, with costs, plaintiffs' motion for partial summary judgment as to liability on their Labor Law § 240(1) claim denied, and certified question answered in the negative, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided January 19, 2010