Neglia v Fedcap Rehabilitation Servs., Inc.
2022 NY Slip Op 33572(U)
October 14, 2022
Supreme Court, New York County
Docket Number: Index No. 159920/2017
Judge: Alexander Tisch
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 18
---x
CHRISTOPHER NEGLIA and KATHLEEN NEGLIA,

Plaintiffs,

-against- Index No: 159920/2017

FEDCAP REHABILITATION SERVICES, INC. and
GERTZ PLAZA ACQUISITION 2, LLC,

Defendants.
---x

ALEXANDER M. TISCH, J.:

Motion sequence numbers 001 and 002 have been consolidated for disposition.

In motion sequence 001, defendants Fedcap Rehabilitation Services, Inc. (Fedcap) and Gertz Plaza Acquisitions 2, LLC (Gertz) move, pursuant to CPLR 3212, for an order granting summary judgment and dismissing plaintiffs Christopher Neglia and Kathleen Neglia's (collectively known as "plaintiffs") complaint on the issue of liability pursuant to Labor Law §§ 200, 240 (1), 241 (6) and common law negligence.

In motion sequence 002, plaintiffs move, pursuant to CPLR 3212, for an order granting summary judgment as against defendants on the issue of liability pursuant to Labor Law § 240 (1).

FACTUAL ALLEGATIONS

Christopher Neglia's deposition

Plaintiff Christopher Neglia (plaintiff) testified that he worked as an HVAC technician for Unified Air, an HVAC company, from 2015 to 2016. Plaintiff had been working at the subject location at 92-31 Union Hall Street in Jamaica, New York, for at least once a month prior to his accident on August 11, 2016. Plaintiff maintains that the floor on which he was working

was occupied by a company named Fedcap. Plaintiff would conduct regular maintenance or repair work depending upon whether a service call was placed. Plaintiff testified that the premises would have had a service contract with Unified Air, but that he was unaware of the contractual terms of the agreement.

Plaintiff was aware that Unified Air was sending someone to the premises monthly for routine maintenance on HVAC units. The work would include changing filters and belts. Plaintiff recalls that he was at the subject location for emergency calls twice and for maintenance calls once or twice. Plaintiff believes that one of the emergency calls was for a broken belt.

On the date of the accident, plaintiff was sent to the location at Fedcap by his dispatcher who told him that there was a water leak and to report to that location after performing maintenance work at another location. When plaintiff arrived at the premises, Josh Steele (Steele), a worker at Fedcap, told him that there was a water leak and directed plaintiff to a ceiling tile which was wet. He maintains that Steele would not provide him with any instructions or advice other than pointing him in the direction of what was not working.

Steele provided plaintiff with a green, eight-foot ladder, which was owned by Fedcap. Plaintiff did not notice any problems with the ladder. Prior to August 11, 2016, Steele provided plaintiff with ladders on every occasion when he was at the premises. He maintains that the contractors would supply the ladders because Unified Air did not bring them, and that he never utilized his own ladder at the premises. Prior to August 11, 2016, plaintiff did not recall having any complaints about the ladders.

Plaintiff proceeded up the ladder and removed the tile to observe the cause of the leak. Once he ascended up the ladder, he noticed that the pump was defective and leaking water. Plaintiff took the model and serial number of the pump and descended to go match the model

and serial number with pumps at the supply house. After locating a new pump, plaintiff proceeded up the ladder, removed the old pump, and installed the new pump. Plaintiff recalls sealing the pump with Teflon tape while on the third step from the top of the ladder, which was about six feet from the ground. Upon sealing the pump, plaintiff's next memory was that he was located on the ground with people standing around him. He does not recall why he fell or why the ladder collapsed, as there was no instability and the ladder did not shake. Plaintiff lost consciousness and regained it while located on the ground.

Plaintiff maintains that following his accident, he noticed staff were present from Fedcap and that tiles were located on the ground. After staying at the location for about 20 to 25 minutes, plaintiff contacted the dispatcher.

Plaintiff recalls observing photographs of the subject ladder days after the accident. In the photographs, it appeared that the ladder buckled on its own. At his deposition, plaintiff reviewed an accident report drafted by Connie Granato (Granato) which states that it was unknown what caused plaintiff's accident, but that the ladder buckled on both sides. Plaintiff also reviewed photographs which may have been taken by someone on August 11, 2016, and which showed the subject ladder with a twisted support and that appears to be broken. Plaintiff maintains that he never heard of Gertz and did not speak with anyone who was a representative of the owner.

Plaintiff's affidavit

Plaintiff submits an affidavit dated December 21, 2020. Plaintiff states that on August 11, 2016, he fell from a ladder six to ten feet to the ground below while working as an HVAC technician for Unified Air at a job site located at 92-31 Union Hall Street in Jamaica, New

York.[1] Plaintiff states that on the day of his accident, he reported to the Fedcap reception area on the fourth floor. Plaintiff was responding to a complaint of a leak in the ceiling and had been sent there by the dispatcher at Unified Air. An employee of Fedcap named Josh met him at the location and brought him to the room where the ceiling work was located.

Plaintiff states that his assignment was to determine the source of the ceiling leak and repair the leak. Plaintiff needed to open the ceiling to access the HVAC unit. Josh brought him an eight-foot, A-frame ladder to utilize. After examining the unit, plaintiff determined that the condensate removal pump in the air conditioning system needed to be replaced because it was cracked and water was coming out of the bottom of the pump.

Plaintiff states that after he determined the problem, he noted the model and serial number of the condensate pump and left the jobsite to obtain a replacement from a supply house. He maintains that the type of pump does not commonly need to be replaced, so he did not have one when he arrived at Fedcap. After getting the pump from the supply house, plaintiff brought it back to the jobsite and installed it with Teflon tape.

Plaintiff testified that the last thing he recalls before finding himself on the floor was that he was starting to seal the new motor with Teflon tape. He maintains that the ladder appeared like its supports had buckled.

Joshua Steele's deposition

Steele testified that he works for Fedcap as lead maintenance person at 92-31 Union Hall Street. He maintains that Unified Air was an air conditioning maintenance company which in 2016 would maintain the air conditioners at Fedcap and would visit the premises once a month

[1] Plaintiff does not explain why the testimony at his deposition listed the address as 92-11 Union Hall Street, and not 92-31 Union Hall Street.

unless a major incident occurred. If an incident occurred, Steele would contact his supervisor, Donald Burton (Burton), who would then contact Unified Air. Steele recalls that on August 11, 2016, staff members were complaining that the air conditioning unit in the ceiling was leaking and staining ceiling tiles. Steele contacted Burton who contacted Unified Air.

Steele maintains that on August 11, 2016, plaintiff was sent to Fedcap. When plaintiff arrived, Steele expected plaintiff to perform a maintenance check. When he arrived, plaintiff asked Steele if he had a ladder. Steele provided plaintiff with an eight-foot ladder which was owned by Fedcap and purchased earlier in the year. Steele had tested the ladder's sturdiness around the first day which he received it, and never utilized it again. Prior to August 11, 2016, Steele was unaware of any problems with the ladder and it did not appear damaged. Steele told plaintiff that the ceiling had a leak and pointed out the problem.

Steele left the room in which plaintiff was working and returned after he heard that someone had fallen off of the ladder. Granato, who worked in the same unit where plaintiff was working, told Steele that plaintiff had fallen. When Steele entered the room he found plaintiff sitting on the floor. Plaintiff told Steele that he fell and landed on a table. Steele never learned what caused plaintiff to fall.

Steele recalls that prior to August 11, 2016, he would have to sign a service order for Unified Air after they finished work maintaining the units. He was not sure if Fedcap received a service order for the work that day. After the accident, the ladder was held by Steele for two years before it was thrown away. Steele testified that it was his understanding that plaintiff was at the premises on the subject day to perform routine maintenance. Steele did not recall plaintiff indicating that the ladder was unsteady or that he experienced problems which made him fall.

Joshua Steele's affidavit

Steele submits an affidavit dated December 14, 2020, which states that he works for Fedcap, a not-for-profit organization that provides vocational training and employment resources. In August of 2016, Steele was employed as a maintenance staff person at 92-31 Union Hall, Jamaica, Queens. At that location, Fedcap leased office space on the fourth floor of Gertz Plaza retail shopping mall.

Steele states that in August of 2016, he was personally aware of the maintenance work routinely performed on Fedap's HVAC system at the premises. Prior to August 11, 2016, United Air Industries, which the Court notes Steele referred to in his deposition as Unified Air Industries, sent one or two of its employees once a month to perform routine maintenance on the HVAC equipment at the premises, without being requested by Fedcap. Steele states that on August 11, 2016, plaintiff was the worker who performed this task and was to service the HVAC systems in more than one room. He observed plaintiff perform routine monthly maintenance work over five times before August 11, 2016.

Steele states that on August 11, 2016, plaintiff was at the premises for a monthly maintenance visit, and not because of any emergent problem. Upon his arrival, Steele directed plaintiff to the subject room where there was a minor leak in the air conditioning system located in the drop ceiling. Steele maintains that this was not an emergent problem, that plaintiff was not at the location to address the specific condition, and that addressing this issue with the air conditioning system was part of the routine maintenance he was expected to perform.

Steele states that he provided plaintiff with a ladder because plaintiff indicated that he did not have one available. The ladder was aluminum, A-frame, and eight feet high. Steele personally tested the ladder the first or second day after its delivery. The ladder was sturdy, and

in good working condition. The locks did not buckle, opened and closed without any difficulty, and had rubberized feet which stabilized the ladder.

Steele states that after providing the plaintiff with the ladder, he did not provide any instructions concerning the work and did not exercise any control over the means and methods of his work. Before his accident, Steele had only one interaction with plaintiff in which he asked plaintiff how everything was. Steele relied upon plaintiff's judgment to take the necessary steps to perform the routine maintenance work and was not supervising his work in any way.

Steele was advised that plaintiff had fallen. When Steele arrived at the subject room, he found plaintiff sitting alone with the ladder that had two damaged metal buckles/locks. Plaintiff told Steele that he had fallen, but did not tell him what caused the fall.

Sam Bajtel's deposition

Sam Bajtel (Bajtel) testified that he is a property manager that works for Gertz which manages a property located at the dual address of 92-31 Union Hall Street and 162-10 Jamaica Avenue. Fedcap was a tenant of the premises.

Bajtel maintains that Gertz did not repair or maintain the air conditioning unit for Fedcap, as the lease stated that the tenant was responsible for their own maintenance. He did not know if Fedcap employed a company which maintained their own HVAC system. Bajtel was not familiar with Unified Air but was aware that Steele was a maintenance worker for Fedcap. He believed that any branch plumbing would be the tenants' responsibility, which included the HVAC system.

Bajtel maintains that on August 11, 2016, Gertz did not go into Fedcap's space or property and did not provide Fedcap with tools, equipment, or ladders. In 2016, the maintenance personnel for Gertz would not enter the space leased by Fedcap. Bajtel did not have any

knowledge of any complaints about the HVAC system or leaking within the three months prior to August 11, 2016.

Sam Bajtel's affidavit

Bajtel submits an affidavit dated December 16, 2020, which states that he is an employee of Gertz and manages the building located at the dual address of 162-10 Jamaica Avenue and 92-31 Union Hall Street in Jamaica, Queens. The tenants on the fourth floor were Fedcap and Goodwill Industries. In August of 2016, Goodwill Industries and Fedcap provided maintenance for the fourth floor.

Bajtel states that he never entered Fedcap's leased space prior to the subject accident. He states that because Fedcap provided its own maintenance, no staff from Gertz would have entered the leased space in the normal course of business. Bajtel was not aware of any leaking issues from the HVAC system in August of 2016 and had no knowledge of any accidents. Neither he nor any employee or representative of Gertz supervised or directed the plaintiff's work. Bajtel was not aware of any complaints regarding the HVAC system prior to the subject accident which is the subject of the litigation and never had any discussions with Fedcap. Bajtel states that Gertz never provided Fedcap with any ladders on or prior to August 11, 2016.

According to the lease, the landlord was responsible for core plumbing, and any branch plumbing was the responsibility of Fedcap. Bajtel maintains that Gertz had no responsibility for maintaining the HVAC system located within a dropped ceiling of Fedcap's space.

DISCUSSION

Summary Judgment standard

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any

material issues of fact from the case." *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metropolitan Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006).

Labor Law § 200

Defendants contend that the plaintiffs' complaint must be dismissed. In the complaint, plaintiffs allege a violation of Labor Law § 200. Labor Law § 200 (1) states, in pertinent part, as follows:

> "[a]ll places to which this chapter applies shall be so constructed, equipped, arranged, operated and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places. All machinery, equipment, and devices in such places shall be so placed, operated, guarded, and lighted as to provide reasonable and adequate protection to all such persons . . . ."

Liability pursuant to Labor Law § 200 may be based either upon the manner in which the work is performed or actual or constructive notice of a dangerous condition inherent in the premises. *Jackson v Hunter Roberts Constr., L.L.C.*, 205 AD3d 542, 543 (1st Dept 2022). In order to find an owner or his agent liable under Labor Law § 200 for defects or dangers arising from a subcontractor's method or materials, it must be shown that the owner or agent exercised some supervisory control over the injury-producing work. *See Rizzuto v L.A. Wenger Contr. Co.*, 91 NY2d 343, 352 (1998); *Winkler v Halmar Intl., LLC*, 206 AD3d 508, 510 (1st Dept 2022); *Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 143-144 (1st Dept 2012).

When the accident arises from a dangerous condition on the property, the proponent of a Labor Law § 200 claim must demonstrate that the defendant created or had actual or constructive notice of the allegedly unsafe condition that caused the accident. *See Bayo v 626 Sutter Ave.*

Assoc., LLC, 106 AD3d 648, 648 (1st Dept 2013); *Murphy v Columbia Univ.*, 4 AD3d 200, 202 (1st Dept 2004).

Defendants contend that it is undisputed that they maintained no control, authority, or supervision over plaintiff's work and that they had no notice of an unsafe condition which caused plaintiff's injury.

Here, the testimony supports defendants' contention that they did not provide any supervision over plaintiff's work or have any notice of an unsafe condition. Plaintiff was an employee of Unified Air and testified that Steele, from Fedcap, would not provide him with any instructions or advice other than pointing him in the direction of what was not working. Steele testified that after providing plaintiff with the ladder, he did not give any instructions concerning the work and did not exercise any control over the means and methods of his work. Furthermore, prior to August 11, 2016, Steele was not aware of any problems or complaints with the ladder and testified that it did not look damaged in any way.

With regard to Gertz, plaintiff testified that he never heard of Gertz and did not speak with anyone who appeared to be a representative of the owner. Bajtel states that neither he nor any employee or representative of Gertz supervised or directed plaintiff's work. Bajtel was not aware of any complaints regarding the HVAC system prior to the subject accident and Gertz did not provide any equipment to Fedcap including ladders.

Here, defendants meet their burden and demonstrate that there are no material issues of fact in dispute as to whether they exercised supervisory control over the injury-producing work or whether they had actual or constructive notice of an issue with the subject ladder. In opposition, plaintiffs fail to oppose defendants' argument regarding the allegations of common

law negligence and a violation of Labor Law § 200 and fail to present evidentiary facts in admissible form as to whether Labor Law § 200 was violated.

Therefore, because defendants have met their burden and plaintiffs fails to demonstrate otherwise, the part of defendants' motion seeking summary judgment dismissing plaintiffs' claims for common law negligence and a violation of Labor Law § 200 must be granted.

Labor Law § 240 (1)

Defendants contend that they are entitled to summary judgment as to plaintiffs' allegation of a violation of Labor Law § 240 (1).

Labor Law § 240 (1) provides in part:

> "[a]ll contractors and owners and their agents, except owners of one and two-family dwellings who contract for but do not direct or control the work, in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure shall furnish or erect, or cause to be furnished or erected for the performance of such labor, scaffolding, hoists, stays, ladders, slings, hangers, blocks, pulleys, braces, irons, ropes, and other devices which shall be so constructed, placed and operated as to give proper protection to a person so employed."

"Tenants who either contract for or control and supervise the work may be held liable" pursuant to Labor Law § 240 (1). *Rizo v 165 Eileen Way, LLC*, 169 AD3d 943, 946 (2d Dept 2019). The Court of Appeals has held that a property owner may be liable for violating Labor Law § 240 (1) even if a tenant of the building contracted for work without an owner's knowledge. *Sanatass v Consolidated Inv. Co., Inc.*, 10 NY3d 333, 335 (2008). Furthermore, "[n]ot every worker who falls at a construction site, and not every object that falls on a worker, gives rise to the extraordinary protections of Labor Law § 240 (1). Rather, liability is contingent upon the existence of a hazard contemplated in section 240 (1) and the failure to use, or the inadequacy of, a safety device of the kind enumerated therein." *Narducci v Manhasset Bay*

Assoc., 96 NY2d 259, 267 (2001), *citing Ross v Curtis-Palmer Hydro-Elec. Co.*, 81 NY2d 494, 501 (1993).

Defendants argue that plaintiff was performing routine maintenance and was not performing a repair, and therefore the claims pursuant to Labor Law § 240 (1) must be dismissed. They argue that plaintiff was involved in required routine maintenance of an HVAC unit, that plaintiff was injured while replacing a pump in that system, that the pump had a limited life span, and that the subject air conditioning was working in the room despite a leak. Defendants contend that the task was performed pursuant to a contract for monthly maintenance on the HVAC system and that it was not part of a larger construction, renovation, or repair project. Defendants contend that the task was completed by unscrewing a few bolts and applying tape on the piping and that the pump was designed to be replaced.

In opposition, plaintiffs contend that the task which plaintiff was performing was not routine maintenance, but was repair work and is therefore an activity protected under Labor Law 240 § (1). Plaintiffs contend that plaintiff was performing a repair to an air conditioner unit located inside the ceiling of the premises and was responding to a complaint when he was injured. They argue that the air conditioner had caused a leak that stained the ceiling tiles, and that plaintiff was dispatched to Fedcap by Unified Air specifically to repair the leak. Plaintiffs argue that plaintiff inspected the area of the leak and determined that he needed to replace the condensate removal pump, a repair that he characterized as rare. Plaintiffs conclude that as plaintiff was repairing a part of the building and not engaged in routine maintenance, the protections of Labor Law § 240 (1) apply.

"Section 240 (1) applies where an employee is engaged in the erection, demolition, repairing, altering, painting, cleaning or pointing of a building or structure. Although repairing is

among the enumerated activities, we have distinguished this from routine maintenance." *Esposito v New York City Indus. Dev. Agency*, 1 NY3d 526, 528 (2003) (internal quotation marks omitted); *see also Lopipero v MTA Long Is. Rail Rd.*, 178 AD3d 813, 814 (2d Dept 2019) (holding Labor Law § 240 (1) does not include routine maintenance which falls outside of construction work. Routine maintenance involves work in which components are replaced due to wear and tear). The Court of Appeals has held that "section 240 (1) does not cover routine maintenance done outside the context of construction work . . . routine maintenance for purposes of the statute is work that does not rise to the level of an enumerated term such as repairing or altering." *Prats v Port Auth. of N.Y. & N.J.*, 100 NY2d 878, 882 (2003).

"Where something has gone awry, however, requiring repair, section 240 (1) is applicable." *Parente v 277 Park Ave. LLC*, 63 AD3d 613, 614 (1st Dept 2009); *see also Washington-Tatum v City of New York*, 205 AD3d 976, 977-978 (2d Dept 2022); *Hamm v Review Assoc., LLC*, 202 AD3d 934, 936 (2d Dept 2022).

Here, the submitted testimony from the deposed individuals and the affidavits raise a question of fact as to whether plaintiff was engaged in a repair, which is an enumerated activity pursuant to Labor Law § 240 (1), or whether he was engaged in routine maintenance due to wear and tear.

Steele states that on August 11, 2016, plaintiff was at the premises for a monthly maintenance visit, and not because of any emergent problem. Steele states that upon plaintiff's arrival, he directed plaintiff to the subject room where he states that there was a minor leak in the air conditioning system located in the drop ceiling which had caused a stain on part of the ceiling. Steele states that plaintiff was not at the location to address a specific condition, and that

addressing this issue with the air conditioning system was part of the routine maintenance he was expected to perform.

However, Steele's testimony conflicts with that of plaintiff. Plaintiff states in his affidavit that he was responding to a complaint of a leak in the ceiling and had been sent there by the dispatcher at Unified Air. Plaintiffs reference records from Unified Air which refer to the visit to the subject location by plaintiff as a "service call." (NYCEF DOC. NO. 62). Plaintiff states that his assignment was to determine the source of the ceiling leak and repair it. He determined that the condensate removal pump needed to be replaced because it was cracked and water was coming out of the bottom case of the pump. Plaintiff states that the type of pump does not commonly need to be replaced, so he did not have one when he arrived at Fedcap.

It remains unclear from the conflicting testimony if plaintiff's work was an emergency call. It further remains unclear whether the type of crack which plaintiff noticed was from the course of normal wear and tear or was more substantial. Therefore, as it remains disputed and unclear whether the work which plaintiff conducted was considered to be repair work or maintenance work, and as this determination impacts the potential applicability of Labor Law § 240 (1), the Court denies plaintiffs' motion and the part of defendants' motion seeking summary judgment as to Labor Law §240 (1).

Labor Law § 241 (6)

Defendants contend that they are entitled to summary judgment as to plaintiffs claim that Labor Law § 241 (6) was violated. Defendants argue that plaintiff was performing maintenance work to an HVAC system and is therefore not entitled to the protections of Labor Law § 241 (6) pursuant to the statute.

Labor Law § 241 (6) provides, in pertinent part:

> "[a]ll contractors and owners and their agents, . . . when constructing or demolishing buildings or doing any excavating in connection therewith, shall comply with the following requirements:
>
> * * *
>
> (6) All areas in which construction, excavation or demolition work is being performed shall be so constructed, shored, equipped, guarded, arranged, operated and conducted as to provide reasonable and adequate protection and safety to the persons employed therein or lawfully frequenting such places . . . ."

"The legislative intent of section 241 (6) is to ensure the safety of workers at construction sites." *Morris v Pavarini Constr.*, 22 NY3d 668, 673 (2014). Labor Law § 241 (6) imposes a nondelegable duty on owners and contractors to provide reasonable and adequate protection for workers and to comply with specific safety rules which have been set forth by the Commissioner of the Department of Labor. *St. Louis v Town of N. Elba*, 16 NY3d 411, 413 (2011). In order to demonstrate liability pursuant to Labor Law § 241 (6), it must be shown that the defendant violated a specific, applicable regulation of the Industrial Code, rather than a provision containing only generalized requirements. *Nostrom v A.W. Chesterton Co.*, 15 NY3d 502, 507 (2010).

The Appellate Division, First Department, has held that when a plaintiff was not involved in construction, excavation or demolition as contemplated in that statute, claims pursuant to Labor Law § 241 (6) must fail. *See Esposito*, 305 AD2d 108, 108 (1st Dept 2003), *affd* 1 NY3d 526 (holding plaintiff's claim of a violation of Labor Law § 241 (6) must fail since "plaintiff was not involved in construction, excavation or demolition as contemplated in that statute"); *see also Joy v City of New York*, 17 AD3d 300, 300 (1st Dept 2005).

Here, although plaintiffs list violations of the Industrial Code in the bill of particulars, plaintiffs do not move for summary judgment in their favor as to those sections of the Industrial Code and do not oppose the part of defendants' motion for summary judgment seeking to dismiss the violation of Labor Law § 241 (6). Therefore, as plaintiffs fail to demonstrate that the

defendant violated a specific, applicable regulation of the Industrial Code during the course of construction, excavation or demolition work, the allegations of plaintiff are deemed abandoned and/or conceded and the part of defendants' motion seeking summary judgment as to Labor Law § 241 (6) must be granted. *See Genovese v Gambino*, 309 AD2d 832, 833 (2d Dept 2003) (holding that as plaintiff did not oppose the part of defendants' motion for summary judgment regarding the claim wrongful termination, such claim was deemed abandoned).

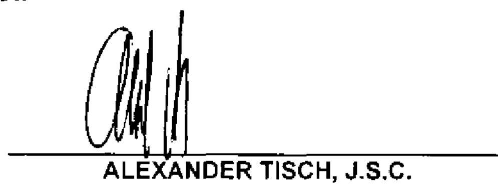
CONCLUSION

Accordingly, it is hereby ORDERED that the part of defendants' Fedcap Rehabilitation Services, Inc. and Gertz Plaza Acquisitions 2, LLC motion for summary judgment is granted in part, and plaintiffs' claims for common law negligence and violations of Labor Law §§ 200 and 241 (6) are hereby dismissed (motion sequence no. 1); and it is further

ORDERED that the part of the same motion by defendants seeking summary judgment as to the alleged violation of Labor Law § 240 (1) is denied; and it is further

ORDERED that plaintiffs Christopher Neglia and Kathleen Neglia's motion for summary judgment as to the alleged violation of Labor Law § 240 (1) is denied (motion sequence no. 2).

This constitutes the decision and order of the Court.



10/14/2022
DATE

ALEXANDER TISCH, J.S.C.

CHECK ONE:	☐ CASE DISPOSED		☒ NON-FINAL DISPOSITION		
	☐ GRANTED	☐ DENIED	☒ GRANTED IN PART		☐ OTHER
APPLICATION:	☐ SETTLE ORDER		☐ SUBMIT ORDER		
CHECK IF APPROPRIATE:	☐ INCLUDES TRANSFER/REASSIGN		☐ FIDUCIARY APPOINTMENT		☐ REFERENCE