

SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. ROLANDO T. ACOSTA
Justice

PART 61

Jose Francisco Gomez,
Et Al.

INDEX NO. 101817/05

MOTION DATE _____

- v -
FAT INT'L (Flushing, NY)
LIC, Et. Al.

MOTION SEQ. NO. 7

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...
Answering Affidavits — Exhibits _____
Replying Affidavits _____

PAPERS NUMBERED	
1	(A-J)
2-3	(A-B)
4	(A)

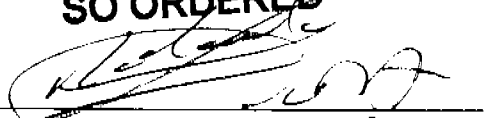
Cross-Motion: Yes No

UNFILED JUDGMENT

Upon the foregoing papers, it is ordered that ~~this motion~~ and notice of entry cannot be served based hereon. To obtain entry, counsel or authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B)

MOTION IS DECIDED IN ACCORDANCE WITH THE ATTACHED MEMORANDUM DECISION.

SO ORDERED


ROLANDO T. ACOSTA J.S.C.
J.S.C.

Dated: 6/25/07

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 61

Jose Francisco Gomez and Amado Plovio Livicura,

Plaintiffs,

– against –

F & T Int'l (Flushing, New York) LLC, Top 8
Construction Corp., Diamond Point Excavating
Corp., All-Safe Height, Scaffold & Equipment Corp.,
and 3805 and 3729 Main Street, LLC,

Defendants.

Diamond Point Excavating Corp.,

Third-Party Plaintiff,

– against –

Prestige Carting Corporation,

Third-Party Defendant.

F & T Int'l (Flushing, New York) LLC and Top 8
Construction Corp.,

– against –

Prestige Carting Corporation,

DECISION/ORDER

Index No. 101817/05

Seq. No. 5

Present:

Rolando T. Acosta
Supreme Court Justice

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk
and notice of entry cannot be served based hereon. To
obtain entry, counsel must appear in person at ti.
11/17/05

Third-Party

Index No. 590751/05

Second Third-Party
Index No 590987/05

3805 and 3729 Main Street, LLC,

Third Third-Party Plaintiff,

Third Third-Party
Index No. 590987/05

– against –

Prestige Carting Corp.

Third Third-Party Defendant.

The following documents were considered in reviewing plaintiffs' motion for partial summary judgment pursuant to Labor Law 240(1) against F & T Int'l (Flushing, New York) LLC and Top 8 Construction Corp.:

Papers	Numbered
Order to Show Cause and Affirmation	1 (Exhibits A-J)
Affirmation in Opposition	2 (Exhibits A-B)
Affirmation in Opposition	3
Reply Affirmation	4 (Exhibit A)

On February 4, 2005, plaintiffs (employees of Prestige) were demolishing the remaining portion of the third floor, which was approximately eight feet by four feet and was in between beams that supported the floor. The concrete slab was standing as an island, supported by beams on four sides. When plaintiffs reached the slab by walking ten feet on exposed beams, three sides of the slab had already been cut and separated from the supporting beams. Gomez was using a jackhammer on what was left of the concrete floor while Livicura used wire cutters. Although there was testimony that ropes had been secured on beams for protection, plaintiff were not provided with harnesses on the date of the accident, nor was there any indication in the record that they were instructed in the proper use of ropes and harnesses. In fact, it appears that the only protection given to plaintiffs on the date of the accident were hard hats. Thus when the slab suddenly tipped, plaintiffs fell

to the floor below. Gomez suffered multiple fractures to his vertebrae, requiring spinal fusion, and resulting in paraplegia, and Livicura sustained bilateral wrist fractures, necessitating surgery to his right hand.

On these facts, plaintiffs have clearly established their prima facie entitlement to summary judgment on liability pursuant to Labor Law 240(1). Thus, the burden shifted to F&T Int'l and Top 8 to raise triable issues of fact, which they have failed to do. F&T Int'l's and Top 8's assertions to the contrary, there is no record support for their allegations that plaintiffs were the sole proximate cause of the accident, Blake Neighborhood Housing Services of New York City, 1 N.Y.3d 280 (2003), or that they were recalcitrant workers who refused to use the safety devices that were provided. Stolt v General Foods Corp., 81 N.Y.2d 918, 920 (1993). Accordingly, based on the foregoing, it is

ADJUDGED that plaintiffs Jose Francisco Gomez and Amado Plovio Livicura are granted partial summary judgment on liability pursuant to Labor Law 240(1) against F & T Int'l (Flushing, New York) LLC and Top 8 Construction Corp.; and it is further

ORDERED that the action proceed to trial on damages.

This constitutes the Decision, Judgment and Order of the Court.

Dated: June 25, 2007

ENTER

SEARCHED
[Handwritten signature]
ROLANDO T. AGOSTA
JESOC

UNFILED JUDGMENT
This judgment has not been entered by the County Clerk and notice of entry cannot be served based hereon. To obtain entry, counsel or a authorized representative must appear in person at the Judgment Clerk's Desk (Room 41B)