

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 10-02343

PRESENT: CENTRA, J.P., FAHEY, LINDLEY, GORSKI, AND MARTOCHE, JJ.

ANTHONY QUARCINI, PLAINTIFF-RESPONDENT,

V

MEMORANDUM AND ORDER

NATIONAL FUEL GAS COMPANY, NATIONAL FUEL GAS CORPORATION, NATIONAL FUEL GAS SUPPLY CORPORATION, NATIONAL FUEL GAS DISTRIBUTION CORPORATION AND NATIONAL FUEL RESOURCES, INC.,
DEFENDANTS-APPELLANTS.

GOLDBERG SEGALLA, LLP, BUFFALO (MARIANNE ARCIERI OF COUNSEL), FOR DEFENDANTS-APPELLANTS.

BROWN CHIARI LLP, LANCASTER (SAMUEL J. CAPIZZI OF COUNSEL), FOR PLAINTIFF-RESPONDENT.

Appeal from a decision of the Supreme Court, Niagara County (Richard C. Kloch, Sr., A.J.), entered February 16, 2010 in a personal injury action. The decision found plaintiff to be entitled to summary judgment on liability pursuant to Labor Law § 240 (1).

It is hereby ORDERED that said appeal is unanimously dismissed without costs.

Memorandum: In this Labor Law and common-law negligence action, defendants purport to appeal from an order granting plaintiff's motion for partial summary judgment on liability with respect to the Labor Law § 240 (1) claim. The appeal must be dismissed because that order is not included in the record on appeal (see *Rodriguez v Chapman-Perry*, 63 AD3d 645), and " '[n]o appeal lies from a mere decision' " (*Pecora v Lawrence*, 28 AD3d 1136, 1137; see *Harvey v Gaulin* [appeal No. 2], 68 AD3d 1789).

Entered: May 6, 2011

Patricia L. Morgan
Clerk of the Court