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COURT OF APPEALS
STATE OF NEW YORK

MICHAEL CUTAIA,

Appellant,

-against-

NO. 25

BOARD OF MANAGERS OF 160/170 VARICK
STREET,

Respondent.

20 Eagle Street
Albany, NY
March 16, 2022

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN WILSON
ASSOCIATE JUDGE MADELINE SINGAS
ASSOCIATE JUDGE ANTHONY CANNATARO
ASSOCIATE JUDGE SHIRLEY TROUTMAN

Appearances:

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Official Court Transcriber



1 CHIEF JUDGE DIFIORE: Good afternoon, everyone.
2 Judge Rivera is appearing remotely for oral argument, and
3 the first appeal on this afternoon is calendar appeal
4 number 25, Cutaia v. Board of Managers of 160/170 Varick
5 Street.

6 Counsel?

7 MR. KOZORIZ: May it please the Court, my name is
8 Michael Kozoriz from the Law Office of James J. Toomey, and
9 I represent Trinity Church & Michilli. I respectfully
10 request three minutes for rebuttal.

11 CHIEF JUDGE DIFIORE: Three minutes?

12 MR. KOZORIZ: Yes.

13 CHIEF JUDGE DIFIORE: You may, sir.

14 MR. KOZORIZ: Many of Your Honors are familiar
15 with this case, not only from the briefs, but many of you
16 were here at the last oral argument. I would just
17 reiterate that we're not asking for any radical relief
18 here. We're simply asking this Court to bring the First
19 Department into conformity with the other three appellate
20 departments, and with this Court's decision in Nazario.

21 In this case, we have a gentleman who fell from a
22 ladder after having received an electrical shock. Because
23 he had received the electrical shock, he was awarded
24 summary judgment on his 241(6) claim, and we haven't
25 disputed that.



1 The issue in this case is whether the ladder was
2 defective, or whether it provided adequate protection.
3 There's no evidence, or at least credible evidence in
4 dispute that the ladder was inadequate. There's very
5 little evidence, or at least conflicting evidence, as to
6 whether the ladder moved, slipped, fell at all.

7 Justice - - - Judge Rivera had a question at the
8 last oral argument where she was concerned about what
9 difference did it make between what ladder Mr. Renna saw on
10 the floor, and what ladder that the plaintiff was using at
11 the time. And I just want to emphasize that the importance
12 of that distinction is that it's compelling evidence that
13 the ladder that Mr. Renna saw on the floor, which one may
14 presume is the ladder plaintiff was using and fell, was
15 not, in fact, the ladder that the plaintiff was using at
16 the time of the accident.

17 There's - - - there's evidence that there was
18 more than one ladder in the room. There's evidence that
19 the ladder that plaintiff was using did not fall, and that
20 the ladder that Mr. Renna saw after the accident on the
21 floor was not, in fact, the ladder that the plaintiff was
22 using, which would mean that the ladder did not slip, did
23 not fall.

24 JUDGE WILSON: What evidence is that? Sorry;
25 over here.



1 MR. KOZORIZ: Okay.

2 JUDGE WILSON: What evidence is that?

3 MR. KOZORIZ: The evidence is that the plaintiff
4 has no idea how he got on the floor.

5 JUDGE WILSON: No, no. I mean - - - I'm sorry.
6 Oh, okay. Go ahead.

7 MR. KOZORIZ: He has no idea how he got on the
8 floor. He couldn't recall what position the ladder was in
9 after he fell. He couldn't recall if the ladder moved
10 while he was on it.

11 JUDGE WILSON: So that's sort of not evidence.

12 MR. KOZORIZ: Well, it's not evidence in support
13 of his claim that the ladder fell.

14 JUDGE WILSON: It's not evidence of anything. It
15 - - -

16 MR. KOZORIZ: Because - - -

17 JUDGE WILSON: He doesn't remember it.

18 MR. KOZORIZ: It becomes an issue when we bring
19 Mr. Renna into the picture, and he testified that he saw a
20 ladder on the floor within a few minutes after the
21 accident. A lot of the attorneys in the case were
22 operating throughout the depositions on the assumption
23 well, that that was the ladder that the plaintiff was using
24 and it must have fell. But that ladder is incredibly
25 different in description from the ladder that plaintiff



1 himself was using.

2 The ladder that Mr. Renna saw on the floor
3 certainly did not meet the description of the ladder that
4 the plaintiff said he was using, and no one could remember
5 if there was a ladder that fit that description that
6 plaintiff was using - - -

7 JUDGE TROUTMAN: Counsel - - -

8 MR. KOZORIZ: - - - that was still erect.

9 JUDGE TROUTMAN: Counsel, shouldn't you focus on
10 what the plaintiff said when he began to do his work, that
11 is work he had to do in order to use that ladder?

12 MR. KOZORIZ: What he said about what?

13 JUDGE TROUTMAN: He indicated that this was the
14 ladder that he had to put in a position that it wasn't
15 locked, and he had to manipulate it in order to reach the
16 area to do the work.

17 MR. KOZORIZ: Right. There's no question that
18 the ladder was not used properly. And - - -

19 JUDGE GARCIA: So what's the difference what
20 ladder it is? Let's assume for purposes of this argument
21 just for right now that it is the ladder. Is that fatal to
22 your case?

23 MR. KOZORIZ: It would be fatal at the time of
24 trial. If a jury determines that that was the ladder on
25 the floor, then that's a 240 issue.



1 JUDGE GARCIA: So you're argument before this
2 Court is in its entirety that that wasn't the ladder he was
3 using, and that's the question of fact you want to - - -

4 MR. KOZORIZ: I'm saying that there's credible
5 evidence in dispute which could go either way as to whether
6 that ladder that was seen on the floor was the ladder that
7 he was using.

8 JUDGE GARCIA: And that's the only issue of fact
9 you think is here?

10 MR. KOZORIZ: Yes. If the ladder - - - even if
11 the ladder wasn't used properly, if the ladder didn't fall
12 as a result of the improper use - - -

13 JUDGE GARCIA: It doesn't matter - - -

14 MR. KOZORIZ: - - - then there's no approximate
15 cause.

16 JUDGE GARCIA: What's the difference which ladder
17 it is? I'm having trouble even understanding what the
18 relevance of the - - - which ladder it is as to your
19 argument. Because to me, it seems like there's a ladder.
20 It's leaning against the wall. We accept it's not being
21 used in its full open and locked position. He falls from a
22 ladder to the floor after being electrocuted. What
23 difference does it make which ladder it is?

24 MR. KOZORIZ: Because there's no - - - because
25 the ladder did not fail him. It was not defective, and it



1 was not - - - it was not shown to be inadequate for the
2 task that he was performing because he was thrown from the
3 ladder - - -

4 JUDGE WILSON: Wait, wait, wait, wait.

5 MR. KOZORIZ: - - - by electric shock.

6 JUDGE WILSON: It's an A-frame ladder. It's
7 meant to be used open and locked, right? And it's
8 uncontroverted, I think, that he used it folded and leaned
9 up against a wall which you're not supposed to do, because
10 that was the only way he could reach the place he had to
11 work on. Is that - - - is there contrary evidence?

12 MR. KOZORIZ: We don't dispute that.

13 JUDGE WILSON: Okay.

14 MR. KOZORIZ: However, the fact that the ladder
15 wasn't opened - - - if the ladder fell because it wasn't
16 used properly and wasn't opened, then that's a 240 case as
17 a matter of law. But if the ladder wasn't used properly,
18 and that improper use had no bearing on the accident, if it
19 didn't cause him to fall to the floor after he had the
20 electric shock, then how he used the ladder is irrelevant.

21 JUDGE GARCIA: I'm sorry; are you - - -

22 JUDGE CANNATARO: Counsel, that - - -

23 JUDGE GARCIA: I'm sorry. Are you - - - I'm just
24 having some trouble understanding then what is the
25 difference between if it's a blue ladder or if it's a



1 silver ladder. I mean, the question seems to me, the
2 ladder he used leans up against the wall. The question, I
3 think, I thought, was is it the electric shock that sends
4 him flying off the ladder and no ladder would have made any
5 difference, or is it the defective ladder or a combination
6 of some of those things?

7 So again, what difference does the actual ladder
8 make to that analysis?

9 MR. KOZORIZ: Because it's conflicting evidence
10 as to whether or not the ladder that the plaintiff was
11 using failed him. If the ladder - - - if the ladder fell
12 as a result of him being shocked, then that's a 240 case.
13 If the ladder did not fall as a result of him being
14 shocked, and stayed erect and in the same position as he
15 set it up in, then the ladder was not inadequate for the
16 task he was performing.

17 JUDGE CANNATARO: Well, to get back to your
18 opening statement where you asked the Court to bring this
19 case in line with Nazario, are you saying in Nazario - - -
20 the question of whether or not the ladder fell, how does
21 that relate to what happened in that case?

22 MR. KOZORIZ: It goes to proximate cause as to
23 whether or not any defect or inadequacy of the ladder was
24 the proximate cause of the plaintiff's accident in this
25 case.



1 JUDGE CANNATARO: I always read Nazario as
2 questioning proximate cause because of the electric shock
3 that preceded the fall, not as a question of whether a
4 ladder was open or closed. Am I misreading the case?

5 MR. KOZORIZ: No. The issue is whether or not
6 the electric shock was the cause of the accident, or the
7 fall from the ladder, or both. It's a matter of proximate
8 cause.

9 JUDGE WILSON: It could be both, right? Sorry.
10 It could be both?

11 MR. KOZORIZ: It could be both.

12 JUDGE WILSON: Yes.

13 MR. KOZORIZ: But in this case, there's disputed
14 evidence as to whether or not it was a height-related issue
15 versus - - -

16 JUDGE TROUTMAN: But Nazario, there was no expert
17 offered by the plaintiff, correct?

18 MR. KOZORIZ: In Nazario?

19 JUDGE TROUTMAN: Correct. Nazario didn't offer
20 an expert. Here, plaintiff offered an expert - - -

21 MR. KOZORIZ: Yes.

22 JUDGE TROUTMAN: - - - with respect to how the
23 accident happened and whether he was provided with the
24 proper safety device.

25 MR. KOZORIZ: But the ex - - - plaintiff's expert



1 in this case never visited the worksite. He also opined as
2 to whether or not the voltage that he sustained shocked - -
3 -

4 JUDGE TROUTMAN: But plaintiff's expert looked at
5 the record. It considered depositions and the like, the
6 size of the room, et cetera, and the defendant offered no
7 experts whatsoever.

8 MR. KOZORIZ: But there's no - - - there's no
9 testimony as to - - - as to the size of the space. We have
10 the plaintiff's testimony that he tried to open the ladder
11 in the space and that he could not. The expert never
12 visited the site. The expert opined that a scaffold could
13 possibly have prevented this accident which is speculative.
14 Plus, we have a subsequent decision by the First Department
15 that said that a scaffold under the same set of
16 circumstances was not sufficient.

17 CHIEF JUDGE DIFIORE: Thank you, Counsel.

18 MR. KOZORIZ: Thank you.

19 CHIEF JUDGE DIFIORE: Counsel?

20 MR. GRANDELLI: Good afternoon, Your Honor.

21 Louis Grandelli for the plaintiffs.

22 What Mr. Kozoriz just said about there's evidence
23 that there was one - - - more than one ladder in that room
24 is complete speculation with absolutely no support
25 whatsoever in the record.



1 One important thing that I didn't really discuss
2 last year when we argued this case, is after this accident,
3 not only did Joe Renna, the defendant's private manager,
4 find a folded ladder right under the exposed wire where
5 Cutaia was working, right in the pipes in the far end of
6 the room where he had to fold it to angle it, to reach that
7 area, the - - - his helper told Mr. Renna right away, the
8 ladder slid from under him.

9 Cutaia was taken to the hospital after that. He
10 never goes back to the scene. The defendants conducted a
11 full investigation into this incident. They did an
12 accident report which wasn't authenticated, but they
13 attempted to find out what happened. No one would
14 authenticate the statements in there, but there were people
15 listed as witnesses, including Mr. Alonzo and certain other
16 people that were present at the scene.

17 They took a picture. Mr. Renna took a picture of
18 the exposed wire, because he wanted to shift any liability
19 to the electrical contractor. But the point is they never
20 found any other ladder in that room. All the testimony - -
21 -

22 JUDGE GARCIA: But Counsel - - -

23 MR. GRANDELLI: - - - had - - -

24 JUDGE GARCIA: I take that - - - I take that
25 point. It seemed to me that the bigger issue here was



1 someone's working and there is a shock. So what if
2 someone's working up there and there's an explosion - - - I
3 know this isn't the case, but there's - - - and he's blown
4 off the ladder. Is that a 240 claim?

5 MR. GRANDELLI: No. So you had asked me last
6 year, Judge Garcia, about what happened if the floor
7 collapsed?

8 JUDGE GARCIA: Oh, yeah.

9 MR. GRANDELLI: And I love that question, and I
10 walked around for a week talking to myself; well, how did
11 they do that. That would be an - - -

12 JUDGE GARCIA: That was a better line. Yeah,
13 what happened to the - - -

14 MR. GRANDELLI: That would be unforeseeable
15 event. That wouldn't be the normal anticipated danger in
16 the work that he's doing, and the same thing with the
17 explosion. That would be an extraordinary event attenuated
18 from the foreseeable risks inherent in what Cutaia was
19 doing.

20 Cutaia is working in the ceiling. He could not
21 use the ladder in the open and intended fashion with the
22 safety clips locked. We all know that. By their own
23 admission to Judge Wilson, he said - - - he admitted that
24 Mr. Kozoriz, that this was an inadequate safety device.

25 JUDGE GARCIA: But is there a causation issue in



1 that respect, because let's say the ladder was open and
2 locked. Same facts we have here, different ladder facts,
3 right. He could open and lock the ladder. Same facts.
4 Shock. Fall. Is that a claim that you get this judgment
5 for?

6 MR. GRANDELLI: All right. So in Nazario, Judge
7 Tom gave a lengthy decision. It was concurrence here, more
8 like a dissent - - -

9 JUDGE GARCIA: Right.

10 MR. GRANDELLI: - - - but he said not only was
11 the ladder being used in its intended purpose, and not only
12 was there no record evidence of the need for another
13 device, he talks about cases, Izrailove from this court
14 from the 1980s which is an electric shock case where a
15 worker fell off the ladder, and Quackenbush was a Second
16 Department case where he says we need some record evidence
17 that this device was insufficient, which they admit that it
18 was insufficient, or the record evidence for another device
19 to have from an expert.

20 My expert reviewed all the evidence in the case
21 as Justice Troutman said. And Judge Troutman, you had a
22 case just last August while you were on the Fourth
23 Department, Miller, where, similar case where the plaintiff
24 established a prima facie case through a submission of an
25 expert affidavit, and the defendants failed to rebut that,



1 and you found that there was no question of fact, and there
2 was summary judgment for the plaintiff.

3 JUDGE GARCIA: But how do we know it's - - - this
4 is what it boils down to me, even my hypotheticals. How do
5 we know it's the ladder and not just the shock?

6 MR. GRANDELLI: Okay. So I get the whole point.
7 There's a Higgins case that discussed in the briefs. If
8 there's a shock that has such great force that it would
9 knock someone across the room and propel them, then I get
10 the argument that that could potentially be the sole
11 proximate cause of the accident, and the accident would
12 have happened no matter what device a person was on.
13 That's not the case here.

14 This was 110 volts. Their private manager said I
15 get shocked by 110 volts all the time. Doesn't really, you
16 know, cause any major injuries. If that's all that
17 happened, there's - - -

18 JUDGE CANNATARO: But Counsel, isn't the record
19 that he doesn't remember - - - the plaintiff doesn't
20 remember what happened after the electric shock? And I
21 think maybe even that he conceded that it's possible he
22 could have been launched by the shock?

23 MR. GRANDELLI: No. So that's - - - I'm sorry,
24 Your Honor. That's incorrect. What he said is he
25 remembered the shock. He doesn't remember falling to the



1 ground. He remembers being on the ground two to five feet
2 from where he was working which is completely inconsistent
3 when a propulsion theory, any thrust theory, anything like
4 in Higgins where - - - is a First Department case - - -
5 where the worker was thrust across the room where- - - it's
6 a question whether or not a scaffold or a lift or any
7 device would have protected him.

8 Another thing in this case - - -

9 JUDGE CANNATARO: But how can you make that
10 statement if his testimony is I simply don't recall
11 anything after - - - I remember the electrical shock, but
12 nothing after that.

13 MR. GRANDELLI: Okay. Because he only is a few
14 feet from where he was working. So if he wasn't propelled
15 across the room and it's just 110 volts, and you also have
16 the statement from Alonzo, the spontaneous statement at the
17 scene that the ladder slipped from under him. So that - -
18 -

19 JUDGE RIVERA: Counsel, if I can interrupt you.
20 I'm on the screen - - -

21 MR. GRANDELLI: Yes.

22 JUDGE RIVERA: - - -in blue. Okay. So I'm going
23 to ask why this matters in the same way we started out with
24 this conversation, why does it matter whether or not that
25 ladder that they found on the floor is the ladder that he



1 fell off.

2 So I thought I heard you say that if he was
3 thrown off by this electrical shock, that depending on the
4 type of electrical shock, and that there's no - - - no
5 safety device that would have prevented that, then the
6 labor law doesn't protect that. Am I understanding you
7 correctly?

8 MR. GRANDELLI: Well. 241(6) which is what we
9 have, that would protect him. There's industrial code
10 section to deal with electrical shocks. However, there - -
11 -

12 JUDGE RIVERA: Well what - - - well, what - - -
13 no, no. Why doesn't 241 - - - if indeed there is no
14 adequate safety device, doesn't then the risk of an injury
15 and the cost - - -under the labor law - - - isn't that what
16 the legislature decided - - - fall on the employer, not on
17 the employee? The employer can decide it's so risky,
18 nothing is going to protect him from the shock and they're
19 doing electrical work, right, I've got to come up with
20 something else of a way to do the electrical work rather
21 than imperil my employee's health and life?

22 MR. GRANDELLI: Well, he actually wasn't - - - he
23 wasn't doing electrical work. So a lot of the cases you
24 have in front of you, Nazario, or many of the cases that -
25 - -



1 JUDGE RIVERA: Yes, but it's in an area with
2 wiring.

3 MR. GRANDELLI: Yes.

4 JUDGE RIVERA: One must understand the potential
5 is there.

6 MR. GRANDELLI: He's a plumber, an unlicensed
7 non-OSHA trained plumber. He's doing plumbing work,
8 cutting pipes. There's a lot of electricity in the room.
9 But no indication that there is a live circuit.

10 JUDGE RIVERA: All right. So if I'm just
11 understanding you - - - sorry to interrupt you again - - -
12 your point is if there is no adequate safety device, that
13 might not be 241, but it's covered by some other labor law
14 provision. Is that what you're saying?

15 MR. GRANDELLI: Electrical shocks - - - there's
16 industrial code sections that deal with electrical hazards
17 in the workplace. 240 is completely different. Different
18 analysis. And there's, maybe, twenty cases that you have
19 in front of you where a worker gets shocked by electricity
20 whether on a ladder or a scaffold, and the inquiry always
21 is in every case - - -

22 JUDGE TROUTMAN: And here - - -

23 MR. GRANDELLI: - - - was the device adequate?

24 JUDGE TROUTMAN: Counsel? Here - - - how many
25 elevation risks was he exposed to?



1 MR. GRANDELLI: So one risk is he has to fold up
2 the ladder. So now, the ladder is not like Nazario. It's
3 not an open A-frame ladder that's stable. It's an
4 unsecured ladder. By folding it and leaning it, that
5 ladder is not secured. He has to - - - he's soldering so
6 there's a flame, he has to use hand tools to cut copper
7 pipes, solder, just use the tools from his handheld to do
8 the work, all that is dangerous. And that's why this Court
9 has said in Vukovich and Runner that elevation height
10 differentials pose an extraordinary risk to workers, and
11 that's why 240 exists.

12 If he had just gotten 110 volt shock, he would
13 have been back to work the next week. It's only because he
14 fell from that ladder because the ladder failed to protect
15 him from falling to the ground and he needed five
16 operations that he couldn't go back to work.

17 JUDGE WILSON: Let me switch subjects for a
18 minute and ask you something about the Appellate Division's
19 decision. I assume you'd like us to affirm, right?

20 MR. GRANDELLI: Excuse me? I'm sorry.

21 JUDGE WILSON: You would like us to affirm?

22 MR. GRANDELLI: Yes. Very much so.

23 JUDGE WILSON: And let's just start there.

24 So there's a - - - there's a sentence in the
25 Appellate Division's decision that says the following.



1 "Plaintiff suffered not only electric burns, but injuries
2 to his spine and shoulders that necessitated multiple
3 surgeries and are clearly attributable to the fall and not
4 to the shock presenting questions of fact as to damages but
5 not liability".

6 MR. GRANDELLI: Yes.

7 JUDGE WILSON: So were we to affirm, what do you
8 understand that sentence would mean for the balance of your
9 proceeding?

10 MR. GRANDELLI: What that means is if you are to
11 affirm that there's a finding that 240 is violated, but I
12 still have to go to trial and prove that the injuries, the
13 surgeries that Cutaia had were causally related to the
14 incident. And I think - - - that's from an O'Leary case.
15 That's where - - -

16 JUDGE WILSON: That's right. And the - - -

17 MR. GRANDELLI: - - - they got that.

18 So I - - - basically, the defendants are still
19 free to argue at trial that he hurt himself playing
20 football or it's of a degenerative nature.

21 JUDGE WILSON: Or that - - -

22 MR. GRANDELLI: - - - I still have the - - -

23 JUDGE WILSON: Aren't they free - - - are they
24 free to argue that the electrical burns are not proximately
25 caused by the fall?



1 MR. GRANDELLI: I don't think there's any
2 question that the electrical burns - - - that's a 241(6).
3 That's already been established. It's the question here is
4 whether the orthopedic injury, the injuries from falling
5 were due to a 240 violation. The 240 violation which is in
6 front of this Court, even if I win that, I still have to
7 prove at trial the injury - - - that the injuries
8 themselves were connected to that violation.

9 JUDGE CANNATARO: To the fall, or could you also
10 prove the burns?

11 MR. GRANDELLI: Well, it's both. It's just - - -
12 I mean, we discussed it. Let's - - - just like the Gordon
13 case. There were two proximate causes of this accident:
14 the electricity which precipitated him shaking, and the
15 failure to provide an adequate safety device, which is the
16 other proximate cause of the accident.

17 All we need to show is that the violation was a
18 contributing cause of the incident.

19 CHIEF JUDGE DIFIORE: Thank you, Counsel.

20 MR. GRANDELLI: Thank you, Your Honor.

21 CHIEF JUDGE DIFIORE: Counsel, your rebuttal?

22 MR. KOZORIZ: Your Honor, as Mr. Grandelli opened
23 his statement by saying that there's no evidence whatsoever
24 that there was any other than just one ladder in that room.
25 That's completely inaccurate.



1 I refer you to page 1796 of the record that was
2 presented to the First Department which this Court has,
3 there's a photograph that clearly shows more than one
4 ladder in the room.

5 One of the ladders appears to be a ten foot blue
6 fiberglass A-frame ladder.

7 Also, Mr. Grandelli said that Mr. Alonzo, the
8 plaintiff's helper, said that the ladder slipped. Well,
9 that's not accurate. We get that statement from Mr. Renna
10 himself who said that Mr. Alonzo told me that the ladder
11 slipped. However, the same day of the accident, there's an
12 incident report whereby Mr. Alonzo indicated that he did
13 not witness the accident.

14 When we took Mr. Alonzo's deposition, he had no
15 recollection of any details whatsoever of the accident.
16 This statement that the ladder slipped is merely Mr.
17 Renna's recollection of what someone told him who
18 admittedly did not witness the accident.

19 Here, you know, we have - - - the plaintiff said
20 that he was electrocuted, and that he has electrical burns.
21 This is in stark contrast to the argument he's making now
22 that this was some minor electrical shock and that he would
23 have been back to work a week later given the voltage.

24 Throughout this entire case, he complained about
25 how he went to the hospital with electrical burns, that he



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went - - - was shot off the ladder with such force that he couldn't remember what happened. All of this is in the record, and is contrary to Mr. Grandelli's rendition of the facts.

It's our position that this case falls squarely under Nazario, and that if the Court does not reverse, then I don't see how Nazario isn't also reversed. I don't see any distinguishing factors in this case that could justify a - - - an affirmance of the First Department that is not contrary to Nazario.

CHIEF JUDGE DIFIORE: Thank you, Counselor.

MR. KOZORIZ: Thank you.

(Court is adjourned)



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C E R T I F I C A T I O N

I, Ellen S. Kolman, certify that the foregoing transcript of proceedings in the Court of Appeals of Michael Cutaia v. Board of Managers of 160/170 Varick Street, No. 25 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Ellen S. Kolman

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