Bradley v HWA 1290 III LLC
2017 NY Slip Op 30596(U)
February 28, 2017
Supreme Court, New York County
Docket Number: 157576/2012
Judge: Lucy Billings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 46
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MARIE BRADLEY, as Administratrix for the Estate of EDWARD BRADLEY (Deceased), and MARIE BRADLEY, Individually,

Plaintiffs

- against -

HWA 1290 III LLC, HWA 1290 IV LLC, HWA 1290 V LLC, and UNITED ELEVATOR CONSULTANTS SERVICE, INC.,

Defendants

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Index No. 157576/2012

DECISION AND ORDER

LUCY BILLINGS, J.S.C.:

I. BACKGROUND

Plaintiffs sue defendants, claiming their negligence and violations of New York Labor Law §§ 200 and 241(6), to recover damages for deceased Edward Bradley's personal injury and wrongful death and his widow plaintiff Marie Bradley's lost services sustained March 28, 2012. On that date the decedent, an employee of nonparty Schindler Elevator Corporation, was working in an elevator machine room at 1290 Avenue of the Americas, New York County, premises owned by defendants HWA 1290 III LLC, HWA 1290 IV LLC, and HWA 1290 V LLC, which contracted with defendant United Elevator Consultants Service, Inc., to modernize the premises' elevator system. The decedent, an elevator mechanic, was found dead from electrocution in the elevator machine room, also referred to as the motor room, in front of an open electrical cabinet, which housed an elevator control panel.

Defendants move for summary judgment dismissing the complaint. C.P.L.R. § 3212(b). For the reasons explained below, the court grants defendants' motion in part. C.P.L.R. § 3212(b) and (e).

II. APPLICABLE STANDARDS

A. SUMMARY JUDGMENT

To obtain summary judgment, defendants must make a prima facie showing of entitlement to judgment as a matter of law, through admissible evidence eliminating all material issues of fact. C.P.L.R. § 3212(b); Friends of Thayer Lake LLC v. Brown, 27 N.Y.3d 1039, 1043 (2016); Nomura Asset Capital Corp. v. Cadwalader, Wickersham & Taft LLP, 26 N.Y.3d 40, 49 (2015); Voss v. Netherlands Ins. Co., 22 N.Y.3d 728, 734 (2014); Vega v. Restani Constr. Corp., 18 N.Y.3d 499, 503 (2012). Only if defendants satisfy this standard, does the burden shift to plaintiffs to rebut that prima facie showing, by producing evidence, in admissible form, sufficient to require a trial of material factual issues. De Lourdes Torres v. Jones, 26 N.Y.3d 742, 763 (2016); Nomura Asset Capital Corp. v. Cadwalader Wickersham & Taft LLP, 26 N.Y.3d at 49; Morales v. D & A Food Serv., 10 N.Y.3d 911, 913 (2008); Hyman v. Queens County Bancorp, Inc., 3 N.Y.3d 743, 744 (2004). In evaluating the evidence for purposes of defendants' motion, the court construes the evidence in the light most favorable to plaintiffs. De Lourdes Torres v. Jones, 26 N.Y.3d at 763; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Cahill v. Triborough Bridge & Tunnel Auth., 4 N.Y.3d 35, 37 (2004). If defendants fail to meet their initial burden, the

court must deny them summary judgment despite any insufficiency in plaintiffs' opposition. Voss v. Netherlands Ins. Co., 22 N.Y.3d at 734; Vega v. Restani Constr. Corp., 18 N.Y.3d at 503; Smalls v. AJI Indus., Inc., 10 N.Y.3d 733, 735 (2008); JMD Holding Corp. v. Congress Fin. Corp., 4 N.Y.3d 373, 384 (2005).

B. PLAINTIFFS' RELAXED BURDEN OF PROOF IN AN ACTION FOR WRONGFUL DEATH

Plaintiffs maintain that the death of Edward Bradley, preventing him from describing the occurrence, entitles them to a relaxed burden of proof. Wingerter v. State of New York, 58 N.Y.2d 848, 850 (1983); Noseworthy v. City of New York, 298 N.Y. 76, 80 (1948); Melendez v. Parkchester Med. Servs., P.C., 76 A.D.3d 927, 928 (1st Dep't 2010); Black v. Loomis, 236 A.D.2d 338, 338 (1st Dep't 1997). See Williams v. Hooper, 82 A.D.3d 448, 449 (1st Dep't 2011); Lynn v. Lynn, 216 A.D.2d 194, 194 (1st Dep't 1995). Application of this doctrine requires plaintiffs to show facts from which defendants' negligence may be inferred, Rugova v. Davis, 112 A.D.3d 404, 405 (1st Dep't 2013); Melendez v. Parkchester Med. Servs., P.C., 76 A.D.3d at 928; Black v. Loomis, 236 A.D.2d at 338, which at this stage plaintiffs have failed to show. Therefore they are not entitled to the lesser burden of proof in the evaluation of their evidence rebutting defendants' motion. Rugova v. Davis, 112 A.D.3d at 405; Melendez v. Parkchester Med. Servs., P.C., 76 A.D.3d at 928; Lynn v. Lynn, 216 A.D.2d at 196; Santos v. City of New York, 135 A.D.2d 426, 431 (1st Dep't 1987). The doctrine is also inapplicable at this stage because the undisputed evidence in the current record shows

that defendants' knowledge of the cause of Edward Bradley's unwitnessed death is no greater than plaintiffs' knowledge of the occurrence. Walsh v. Murphy, 267 A.D.2d 172, 172 (1st Dep't 1999); Lynn v. Lynn, 216 A.D.2d at 195.

III. DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

A. VIOLATION LABOR LAW § 241(6)

Labor Law § 241(6) applies to a worker engaged in construction, demolition, or excavation. See Esposito v. New York City Indus. Dev. Agency, 1 N.Y.3d 526, 528 (2003); Nagel v. D & R Realty Corp., 99 N.Y.2d 98, 103 (2002); Garcia v. 225 E. 57th St. Owners, Inc., 96 A.D.3d 88, 91 (1st Dep't 2012); Mata v. Park Here Garage Corp., 71 A.D.3d 423, 424 (1st Dep't 2010). Concomitantly, 12 N.Y.C.R.R. § 23-1.13(b)(iii), requiring warnings about electrical hazards, and § 23-1.30, requiring adequate lighting, that plaintiffs claim defendants violated to support their violation of Labor Law § 241(6), like all the provisions of 12 N.Y.C.R.R. Part 23, protect construction, demolition, and excavation workers. Nostrom v. A.W. Chesterton Co., 15 N.Y.3d 502, 507 (2010); Peluso v. 69 Tiemann Owners Corp., 301 A.D.2d 360, 361 (1st Dep't 2003).

Construction work is defined as all:

> work of the types performed in construction, erection, alteration, repair, maintenance, painting or moving of buildings or other structures, whether or not such work is performed in proximate relation to a specific building or other structure, and includes, by way of illustration and not by way of limitation, the work of hoisting, land clearing, earth moving, grading, excavating, trenching, pipe and conduit laying, road and bridge construction, concreting, cleaning of the exterior surfaces including windows of any building or other structure under

> construction, equipment installation and the structural installation of wood, metal, glass, plastic, masonry and other building materials in any form or for any purpose.

12 N.Y.C.R.R. § 23-1.4(b)(13); Nagel v. D & R Realty Corp., 99 N.Y.2d at 102-103. See Joblon v. Solow, 91 N.Y.2d 457, 466 (1998). The work specified in this regulation, however, still must be carried out in the context of construction, demolition, or excavation to fall under Labor Law § 241(6). Esposito v. New York City Indus. Dev. Agency, 1 N.Y.3d at 528; Nagel v. D & R Realty Corp., 99 N.Y.2d at 103; Bautista v. 165 W. End Ave. Assoc., L.P., 137 A.D.3d 714, 715 (1st Dep't 2016); Caban v. Maria Estela Houses I Assoc., L.P., 63 A.D.3d 639, 640 (1st Dep't 2009).

Although elevator modernization may be considered construction work to which Labor Law § 241(6) applies, see, e.g., Franco v. Jay Cee of N.Y. Corp., 36 A.D.3d 445, 446 (1st Dep't 2007); Nevins v. Essex Owners Corp., 276 A.D.2d 315, 317 (1st Dep't 2000), defendants present evidence establishing that the decedent was not engaged in the modernization project. John Soutar, a supervisor for Schindler Elevator, the decedent's employer, attests that the decedent was the resident elevator mechanic for 1290 Avenue of the Americas, where he was assigned to perform preventive maintenance, troubleshoot malfunctions, and undertake minor repairs. Building and security personnel advised the decedent of elevator malfunctions, which he handled as he saw fit. Schindler Elevator's modernization department was completely separate from its maintenance and repair department.

The decedent bore no responsibilities for the modernization work.

Juan Melendez, a Schindler Elevator employee who worked as the decedent's helper, testified at his deposition that the decedent's job was to maintain and provide service to elevators. Melendez's testimony that he was removed as the decedent's helper and reassigned to the modernization project further illustrates that the decedent's work was unrelated to the modernization project.

This evidence is corroborated by the deposition testimony of Philip Garcia, the president of United Elevator Consultants, that an elevator mechanic's job was to maintain elevators, which included cleaning, greasing, and lubricating them; troubleshooting, which Garcia defined as fixing shutdowns; and making repairs and adjustments, which included work in the machine room. Through this combined evidence, defendants have met their initial burden of demonstrating that the decedent's work was unrelated to the modernization project. Barnes v. City of New York, 77 A.D.3d 481, 481 (1st Dep't 2010). See Bayo v. 626 Sutter Ave. Assoc., LLC, 106 A.D.3d 648, 649 (1st Dep't 2013).

If Edward Bradley was engaged in routine maintenance of elevators, Labor Law § 241(6) does not apply to his work. Moscoso v. Overlook Towers Corp., 121 A.D.3d 438, 438 (1st Dep't 2014). See Agli v. Turner Constr. Co., 246 A.D.2d 16, 24 (1st Dep't 1998). Although the evidence indicates an elevator brake fault that shut down an elevator in defendants' building March

28, 2012, before Edward Bradley was found dead, no admissible evidence establishes that he was called to investigate or repair that malfunction or that he even was informed of it. Assuming nonetheless that the decedent's work with the elevator control panel was not routine, but constituted repair of a malfunction within the definition of construction work to which Labor Law § 241(6) would apply, see Esposito v. New York City Indus. Dev. Agency, 1 N.Y.3d at 528; Bautista v. 165 W. End Ave. Assoc., L.P., 137 A.D.3d at 715; Caban v. Maria Estela Houses I Assoc., L.P., 63 A.D.3d at 640; Cohen v. Columbia Univ. in City of N.Y., 44 A.D.3d 533, 533 (1st Dep't 2007), his repair work was not connected with the modernization project and thus was not in the context of that project's construction, demolition, or excavation. Nagel v. D & R Realty Corp., 99 N.Y.2d at 101-102; Morales v. Avalon Bay Communities, Inc., 140 A.D.3d 533, 534 (1st Dep't 2016); Bautista v. 165 W. End Ave. Assoc., L.P., 137 A.D.3d at 715; Martinez v. Bauer, 121 A.D.3d 495, 496 (1st Dep't 2014). See DeSimone v. City of New York, 121 A.D.3d 420, 421 (1st Dep't 2014).

Although plaintiffs rely on the decedent's log book to demonstrate his work on the modernization project, the entries indicate only that the decedent was occasionally in the presence of United Elevator Consultants and Schindler Elevator employees from the modernization project, not that he worked on it, and thus fail to raise a factual issue that he was engaged in such work. See Bayo v. 626 Sutter Ave. Assoc., LLC, 106 A.D.3d at

649. Nor does any evidence indicate that he otherwise was engaged in construction, demolition, or excavation. Butler v. Quest Prop. Mgt. V. Corp., 95 A.D.3d 678, 679 (1st Dep't 2012); Coyago v. Mapa Props., Inc., 73 A.D.3d 664, 664-65 (1st Dep't 2010).

B. VIOLATION OF LABOR LAW § 200 AND NEGLIGENCE

Labor Law § 200 codifies the duty of owners and general contractors of a construction site and their agents to maintain site safety. Rizzuto v. L.A. Wegner Contr. Co., 91 N.Y.3d 343, 352 (1998); Comes v. New York State Elec. & Gas Corp., 82 N.Y.2d 876, 877-78 (1993). Unlike Labor Law § 241(6), Labor Law § 200 does not require the decedent to have been engaged in construction. Mejia v. Levenbaum, 30 A.D.3d 262, 263 (1st Dep't 2006); Agli v. Turner Constr. Co., 246 A.D.2d at 24. If a dangerous condition arising from a contractor's work caused the decedent's injury and death, defendant owners and their general contractor or agent may be liable for negligently allowing that condition and violating Labor Law § 200, if they supervised or exercised control over the activity that caused his injury. Rizzuto v. L.A. Wegner Contr. Co., 91 N.Y.2d at 352; Comes v. New York State Elec. & Gas Corp., 82 N.Y.2d at 877; Maggio v. 24 W. 57 APF, LLC, 134 A.D.3d 621, 626 (1st Dep't 2015); Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d 139, 144 (1st Dep't 2012). See Ocampo v. Bovis Lend Lease LMB, Inc., 123 A.D.3d 456, 457 (1st Dep't 2014); Francis v. Plaza Constr. Corp., 121 A.D.3d 427, 428 (1st Dep't 2014). If a dangerous condition on the work site

caused the injury, liability depends on defendants' creation or actual or constructive notice of the condition. Maggio v. 24 W. 57 APF, LLC, 134 A.D.3d at 626; Cappabianca v. Skanska USA Bldg. Inc., 99 A.D.3d at 144.

The parties agree that the decedent's right bicep, the right side of his torso, and his chest were in contact with a transformer in the electrical cabinet and were burned from electrocution. Plaintiffs allege that the absence of a cover around the transformers in the electrical cabinet where the decedent was working, the inadequate lighting in the machine room, and the reassignment of the decedent's helper created dangerous working conditions known to defendants. Defendants fail to demonstrate that the uncovered transformers and the lighting did not create dangerous conditions readily observable to defendants.

1. The Uncovered Transformers in the Electrical Cabinet

Douglas Smith, an inspector for the New York City Department of Citywide Administrative Services, who investigated the death, conducted testing with Schindler Elevator that detected no loose wires, no voltages that were stray, high, or otherwise out of control, nor anything out of the ordinary in the electrical cabinet. While Smith in his deposition testimony concluded that the electrical cabinet lacked any defect in design, was safe for mechanics to perform troubleshooting inside it, and served as the cover for the transformers, he was not qualified as an expert. Mahai-Sharpe v. Riverbay Corp., 126 A.D.3d 573, 573 (1st Dep't

2015); Schechter v. 3320 Holding LLC, 64 A.D.3d 446, 451 (1st Dep't 2009). Even were Smith qualified as an expert, he failed to demonstrate how the electrical cabinet complied with accepted industry standards and practices, to establish that it was in a safe condition. Leone v. BJ's Wholesale Club, Inc., 89 A.D.3d 406, 407 (1st Dep't 2011); Boyle v. City of New York, 79 A.D.3d 664, 665 (1st Dep't 2010); McGuire v. 3901 Independence Owners, Inc., 74 A.D.3d 434, 435 (1st Dep't 2010).

Jon Halpern, defendants' expert engineer, attests that the electrical cabinet complied with a manufacturing standard and was safe for a mechanic to troubleshoot inside the cabinet. These conclusions, however, rely on hearsay evidence that the New York City Department of Buildings found no design defects in the electrical cabinet when it was installed and that the investigator did not issue any notices of code violations relating to the cabinet after Edward Bradley's death. San Andres v. 1254 Sherman Ave. Corp., 94 A.D.3d 590, 592 (1st Dep't 2012); Goldin v. Riverbay Corp., 67 A.D.3d 489, 490 (1st Dep't 2009). Since the assumption that the decedent was troubleshooting when he died is unsupported, the conclusion that the cabinet was safe for troubleshooting lacks relevance. Feliciano v. St. Vincent De Paul Residence, 139 A.D.3d 463, 464 (1st Dep't 2016); Barone v. Dello Russo Laser Vision Med. Care, PLLC, 139 A.D.3d 418, 419 (1st Dep't 2016); Wallace v. City of New York, 138 A.D.3d 509, 510 (1st Dep't 2016); Strojek v. 33 E. 70th St. Corp., 128 A.D.3d 490, 491 (1st Dep't 2015).

In sum, defendants maintain that the electrical cabinet itself guarded against persons coming in physical contact with the transformers within the cabinet. While the cabinet may have served as a cover over the transformers from above, once a mechanic was inside the cabinet, defendants concede that nothing served as a barrier or other protection against contact with the transformers. Finally, no evidence indicates that any warning was placed in the machine room or that any warning or protective gear was provided to elevator mechanics to guard against electrocution.

2. The Lighting

The conflict between Melendez's testimony that the lighting in the motor room was poor and Smith's testimony that the lighting there was adequate leaves a factual issue, dependent on credibility, Velez v. City of New York, 134 A.D.3d 447, 447 (1st Dep't 2015), whether the lighting was inadequate and thus created a dangerous working condition. Auliano v. 145 E. 15th St. Tenants Corp., 129 A.D.3d 469, 470 (1st Dep't 2015); Joachim v. AMC Multi-Cinema, Inc., 129 A.D.3d 433, 434 (1st Dep't 2015); Eyssallem v. Engel, 309 A.D.2d 594, 594 (1st Dep't 2003). New York City Fire Department Captain Jeffrey Facinelli, who responded to the scene of the decedent's electrocution, and Smith in their deposition testimony recalled discovery of a small light near the decedent. Smith admitted that such a light may have been used to illuminate a dark area of the electrical cabinet. This testimony further raises a factual issue whether the

decedent lacked visibility of the electrical components in the machine room and thus whether inadequate lighting contributed to his electrocution. See Lee v. New York City Tr. Auth., 138 A.D.3d 579, 579 (1st Dep't 2016); Miano v. Battery Place Green LLC, 117 A.D.3d 489, 490 (1st Dep't 2014).

3. Defendants' Notice

Richard Wallace, a property manager at 1290 Avenue of the Americas since June 2007 and the HWA 1290 defendant owners' agent, testified at his deposition that United Elevator Consultants was an elevator engineering consultant that defendant owners hired to develop specifications for the elevator modernization performed by Schindler Elevator at the premises. No one from either United Elevator Consultants or Schindler Elevator reported to Wallace that the lighting in the machine room was inadequate or did not comply with applicable codes. Nor did the City of New York or United Elevator Consultants report any deficiencies or hazards in the machine room after inspections. This evidence demonstrates the HWA 1290 defendants' lack of actual notice of the deficient and hazardous conditions alleged by plaintiffs: the lack of covers for the transformers and the inadequate lighting. Nepomuceno v. City of New York, 137 A.D.3d 646, 646-47 (1st Dep't 2016); Graham v. YMCA of Greater N.Y., 137 A.D.3d 546, 547 (1st Dep't 2016); Brooks-Torrence v. Twin Parks Southwest, 133 A.D.3d 536, 536 (1st Dep't 2015); Green v. Gracie Muse Rest. Corp., 105 A.D.3d 578, 578 (1st Dep't 2013).

Melendez testified that United Elevator Consultants

inspected the machine room, elevators, and elevator pits only once per year. Wallace testified that United Elevator Consultants inspected the elevators quarterly. Garcia testified that United Elevator Consultants inspected the work on the elevators as it was completed to ensure conformity with United Elevator Consultants' specifications, but did not observe routine maintenance, and was not in the building daily.

Defendants fail to establish that none of them owed any duty to determine whether the elevator machine room was so constructed that, during maintenance, troubleshooting malfunctions, or repair of a building elevator, an elevator mechanic or a tool he was holding foreseeably would come in inadvertent physical contact with an exposed live electrical component. Nor do defendants support a conclusion that such inadvertent contact by the decedent was improbable or that his contact with the live transformers was willful. Even if United Elevator Consultants' functions were limited to the elevator system's modernization, the consultant surely owed a duty to assure that the modernized system, which included the machine room, was safe.

The limited scope of United Elevator Consultants' inspections, the conflicting testimony regarding their frequency, and the absence of evidence of the other defendants' inspections leave issues whether transformer covers were lacking and the lighting was inadequate in the electrical cabinet and whether those conditions remained long enough for defendants to discover them. O'Connor v. Restani Constr. Corp., 137 A.D.3d 672, 673

(1st Dep't 2016); Joachim v. AMC Multi-Cinema, Inc., 129 A.D.3d at 434; Ladingnon v. Lower Manhattan Dev. Corp., 128 A.D.3d 534, 535 (1st Dep't 2015); Beltran v. Navillus Tile, Inc., 108 A.D.3d 414, 415 (1st Dep't 2013). See Nepomuceno v. City of New York, 137 A.D.3d at 647; Brooks-Torrence v. Twin Parks Southwest, 133 A.D.3d at 536. Assuming those conditions were dangerous, defendant owners, moreover, fail to demonstrate that they did not create those conditions when they constructed the electrical cabinets and installed the lighting. Jimenez v. City of New York, 117 A.D.3d 535, 536 (1st Dep't 2014); Perez v. New York City Hous. Auth., 114 A.D.3d 586, 586 (1st Dep't 2014); O'Halloran v. City of New York, 78 A.D.3d 536, 537 (1st Dep't 2010).

4. Removal of the Helper

The final alleged deficiency that created hazardous working conditions for the decedent is the removal of Melendez as the decedent's helper. Plaintiffs rely on § 6.4.1 of the contract between the HWA 1290 defendants and Schindler Elevator requiring it to assign a mechanic and a helper to perform elevator maintenance for the building.

To recover for breach of a contract as third party beneficiaries, plaintiffs, at trial or upon their motion for summary judgment, must establish that this contract provision was intended for the mechanic's benefit and that this benefit was sufficiently immediate as to impose a duty on the contracting parties to compensate the mechanic if he lost this benefit.

Mandarin Trading Ltd. v. Wildenstein, 16 N.Y.3d 173, 181-82 (2011); Mendel v. Henry Phipps Plaza W., Inc., 6 N.Y.3d 783, 786 (2006); Edge Mgt. Consulting, Inc. v. Blank, 25 A.D.3d 364, 368 (1st Dep't 2006); LaSalle Natl. Bank v. Ernst & Young, 285 A.D.2d 101, 108 (1st Dep't 2001). The benefit to the mechanic, a nonparty to the contract, must be evident from the face of the contract. LaSalle Natl. Bank v. Ernst & Young, 285 A.D.2d at 108. See Adelaide Prods., Inc. v. BKN Intl. AG, 38 A.D.3d 221, 226 (1st Dep't 2007). The contract's terms are the best evidence of an intent to bestow a benefit on a nonparty to the contract. National Bank Ltd. v. Security Mgt. Co. Ltd., 29 A.D.3d 408, 408 (1st Dep't 2006); 767 Third Ave. LLC v. ORIX Capital Mkts., LLC, 26 A.D.3d 216, 218 (1st Dep't 2006); 243-249 Holding Co. v. Infante, 4 A.D.3d 184, 185 (1st Dep't 2004); Alicea v. City of New York, 145 A.D.2d 315, 318 (1st Dep't 1988).

Defendants show that the contract was not intended for any nonparty's benefit. Article 19 of the contract provides:

> Except as otherwise provided herein, no provision of this Contract shall in any way inure to the benefit of any third party (including the public at large) so as to constitute any such person as a third party beneficiary of this Contract or of any one or more of the terms hereof or otherwise give rise to any cause of action in any person not a party hereto.

Aff. of Richard Sabatini Ex. W, at 10. Thus the contract expressly precludes nonparties to the contract as third party beneficiaries. Adelaide Prods., Inc. v. BKN Intl. AG, 38 A.D.3d at 226; Rahim v. Sottile Sec. Co., 32 A.D.3d 77, 80 (1st Dep't 2006); 767 Third Ave. LLC v. ORIX Capital Mkts., LLC, 26 A.D.3d

at 218; Greece Cent. School Dist. v. Tetra Tech Engrs., Architects & Landscape Architects, P.C., 78 A.D.3d 1701, 1702 (4th Dep't 2010). Plaintiffs do not claim any other basis on which defendants owed a duty to assign the decedent, who was not their employee, a helper to provide safe working conditions.

IV. CONCLUSION

Based on the evidence and applicable legal principles set forth above, the court grants defendants' motion for summary judgment to the limited extent of dismissing plaintiffs' claims based on violations of Labor Law § 241(6) and 12 N.Y.C.R.R. §§ 23-1.13(b)(iii) and 23-1.30 and on removal of Edward Bradley's helper, but otherwise denies defendants' motion. C.P.L.R. § 3212(b) and (e). The parties shall appear for a pretrial conference May 26, 2017, at 9:30 a.m., in Part 46. 22 N.Y.C.R.R. § 202.26.

DATED: February 28, 2017

LUCY BILLINGS, J.S.C.