

<b>Singh v United Cerebral Palsy of N.Y. City, Inc.</b>
2009 NY Slip Op 30315(U)
February 2, 2009
Supreme Court, New York County
Docket Number: 403832/05
Judge: Debra A. James
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SUPREME COURT OF THE STATE OF NEW YORK -- NEW YORK COUNTY

PRESENT: DEBRA A. JAMES  
*Justice*

PART 59

SIANNA SINGH,  
Plaintiff,

Index No.: 403832/05  
Third Party 590447/07  
Motion Date: 07/22/08

- v -

Motion Seq. No.: 005  
Motion Cal. No.: \_\_\_\_\_

UNITED CEREBRAL PALSY of NEW YORK CITY,  
INC., UNITED CEREBRAL of NEW YORK CITY  
COMMUNITY MENTAL RETARDATION SERVICES  
COMPANY, INC. and THE CITY of NEW YORK,

Defendants.

UNITED CEREBRAL PALSY of NEW YORK CITY  
INC., UNITED CEREBRAL of NEW YORK CITY  
COMMUNITY MENTAL RETARDATION SERVICES  
COMPANY, INC.

Third Party Plaintiffs,

- v -

MIRIC INDUSTRIES INCORPORATED, RELIABLE  
DOOR CORP.,

Third Party Defendants.

**FILED**  
FEB 13 2009  
COUNTY CLERK'S OFFICE  
NEW YORK

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

The following papers, numbered 1 to 5 were read on this motion for summary judgment and cross motions for summary judgment

Notice of Motion/Order to Show Cause -Affidavits -Exhibits \_\_\_\_\_  
Notices of Cross Motion/Answering Affidavits - Exhibits \_\_\_\_\_  
Replying Affidavits - Exhibits \_\_\_\_\_  
Sur Replying Affidavits-Exhibits \_\_\_\_\_

PAPERS NUMBERED	
1	_____
2, 3	_____
4, 5	_____

Cross-Motion:  Yes  No

In this action, plaintiff alleges that on December 5, 2003 she sustained injuries when her shoulder was "slammed" by an automatic sliding glass door.

Check One:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE

Plaintiff states that at that time of her injury, she was employed in the capacity of a speech pathologist, as independent contractor to defendants United Cerebral Palsy of New York City, Inc. and United Cerebral of New York City Community Mental Retardation Services Company, Inc. (referred to herein collectively as "UCP") place of employment. UCP owned the two buildings that were connected by an enclosed foot bridge where plaintiff was walking at the time of her accident. Third party defendant Miric Industries Inc. ("Miric") had no maintenance agreement with UCP and were called by UCP to repair doors on an "as needed" basis.

There is no dispute that when work on the automatic sliding doors was necessary, UCP would contact Miric to the perform the necessary services. Miric would, in turn, contact third party defendant Reliable Door Corp. ("Reliable") to carry out the actual, "hand-on" repairs. There was no regular maintenance program in effect at the UCP facility at the time of plaintiff's injury.

Defendant UCP moved for summary judgment dismissing the complaint, and thereafter Miric and Reliable cross-moved for summary judgment dismissing the third party complaint and all cross-claims against them. Plaintiff opposes UCP's motion.

The court shall deny all motions for summary judgment.

Although UCP met its initial burden establishing its

entitlement to summary judgment as it had no notice of any defect in the doors, plaintiff successfully raised a triable issue with fact to UCP's negligence. Plaintiff's expert presents evidence that UCP did not adequately inspect the doors or engage in a testing and preventive maintenance program in compliance with its non delegable duty, as a building owner, to maintain its building owner under the New York City Building Code. Such inadequacy included UCP's failure to ensure that the doors complied with the current requirements of the National Standard for Power Operated Pedestrian Doors, or to install current technology on the automatic doors in the form of a "door-mounted presence sensor".

Plaintiff also submits a copy of an invoice that establishes that UCP's caused its contractor Reliable on May 14, 2002 to "Adjusted motion sensor on tunnel. . Adjusted Operator."

Though the foregoing evidence is insufficient to establish causation, plaintiff is correct that she may invoke the doctrine of res ipsa loquitur to raise an inference as to USP's negligence at trial. As recently restated by the Third Department in Norton v Albany County Airport Authority, 52 AD3d 871, 875 (2008):

Plaintiff was 'not obligated to eliminate every alternative explanation for the event" (citation omitted), but only to 'demonstrate that the likelihood of causes other than the defendant's negligence is so reduced that the greater probability lies at

defendant's door, rendering it more likely than not that the injury was caused by defendant's negligence.' since, "plaintiff was 'not obligated to eliminate every alternative explanation for the event', but only to demonstrate that the greater probability lies at defendant's door, rendering it more likely than not that the injury was caused by defendant's negligence".

UCP opposes Reliable's cross-motion for summary judgment on the third party complaint as untimely. This court disagrees with plaintiff and finds Reliable has established good cause for its delay. Unlike in Espejo v Hiro Real Estate Co., 19 AD3d 360 (1<sup>st</sup> Dept 1005), the movant Reliable, here, interposed its motion promptly after the completion of its examination before trial.

Turning to the merits of third party defendant Miric and Reliable's cross motions, it is true that contractual liability, standing alone, will generally not give rise to tort liability in favor of a third party (Espinal v Melville Snow Contractors, Inc., 98 NY2d 136, 138 [2002]). Indeed, plaintiff has not brought an action against either third party defendant. However, third party plaintiff UCP argues that the invoice dated May 14, 2002 is evidence that Miric, by its agent Reliable breached its duty under its agreement to repair and maintain UPS's automatic doors. Since at the time of plaintiff's accident, Miric and Reliable were providing service and maintenance upon the doors at UCP's initiative and request on an "as needed" basis, and were called to provide service to one of

