SUPREME COURT OF THE STATE OF NEW YORK **Index No.:102242/11**
COUNTY OF RICHMOND DCM PART 3 **Motion No.:003**

LOUISE DUDLEY,

Plaintiff

DECISION & ORDER

HON. JOSEPH J. MALTESE

against

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,
AFCO AVPORTS MANAGEMENT, LLC, and
SCHINDLER ELEVATOR CORPORATION,

Defendants

The following items were considered in the review of the following motion for summary judgment.

Papers	Numbered
Notice of Motion and Affidavits Annexed	1
Answering Affidavits	2
Replying Affidavits	3
Exhibits	Attached to Papers

Upon the foregoing cited papers, the Decision and Order on this Motion is as follows:

The defendants, Port Authority of New York and New Jersey ("Port Authority") and AFCO AvPorts Management, LLC ("AvPorts") move for summary judgment dismissing the plaintiff's complaint. The motion is granted.

Facts

This is an action to recover for personal injuries allegedly sustained as a result of an elevator accident. The plaintiff alleges that on April 5, 2011 as she entered passenger Elevator No. 2 at Newark Airport, the door quickly closed and struck her. The plaintiff claims that she was caused to fall as a result of being struck by the elevator door. As a result of the fall the plaintiff alleges that she sustained a comminute fracture of her right shoulder with impaction and rotation; loss of range of motion of her right shoulder; and faces potential surgery.

On January 1, 2009 AvPorts entered into an agreement with the Port Authority to be the managerial custodian of Terminal A. In that capacity AvPorts engaged the co-defendant Schindler Elevator Corporation ("Schindler") to be the exclusive provider of maintenance for the various elevators at Terminal A. Deposition testimony taken of Schindler employees indicate that daily inspections took place of all of the elevators in Terminal A. Glenn Gurbisz, a Schindler employee for 39 years, testified that on the date in question he inspected Elevator No. 2 in accordance with his daily duties. As part of that inspection he visually checked the door closing speed, and found it to be in working order. Moreover, he testified that in the three years he was assigned to Newark Airport he never recalled a problem with the door closing speed for Elevator No. 2.

While Elevator No. 2 had several work orders associated with it in the months prior to the alleged incident, they consisted of general maintenance. Documentation shows that these work orders resulted in the following: installation of new contacts; repair of door locks, replacement of a broken fuse; repair of a main breaker; and the replacement of a rubber roller cover. None of these repairs are related to the closing function of the elevator doors.

The defendants now move to dismiss the plaintiff's complaint arguing that the plaintiff cannot demonstrate notice of an allegedly hazardous condition.

Discussion

A motion for summary judgment must be denied if there are "facts sufficient to require a trial of any issue of fact (CPLR §3212[b]). Granting summary judgment is only appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact. "Moreover, the parties competing contentions must be viewed in a light most favorable to the party opposing the motion".[1] Summary judgment should not be granted where there is any

[1] *Marine Midland Bank, N.A., v. Dino*, et al., 168 AD2d 610 [2d Dept 1990].

doubt as to the existence of a triable issue or where the existence of an issue is arguable.[2] As is relevant, summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law.[3] On a motion for summary judgment, the function of the court is issue finding, and not issue determination.[4] In making such an inquiry, the proof must be scrutinized carefully in the light most favorable to the party opposing the motion.[5]

In order to state a cause of action for negligence as to real property a plaintiff must demonstrate that the defendant failure to maintain the property in a reasonably safe condition that was the proximate cause of the plaintiff's damages.[6] Moreover, the plaintiff must demonstrate that ". . . defendant's negligence was a substantial cause of the events which produced the injury."[7] Consequently, there must be evidence that a dangerous or defective condition existed, and that the defendant created the condition or had actual or constructive notice of the condition.[8]

Here, the defendants demonstrated a prima facie entitlement to a judgment as a matter of law. In reviewing a case with similar facts, the Appellate Division, First Department reversed a trial court's denial of summary judgment where the elevator maintenance employee submitted

---

[2] *American Home Assurance Co., v. Amerford International Corp*., 200 AD2d 472 [1st Dept 1994].

[3] *Rotuba Extruders v. Ceppos,,* 46 NY2d 223 [1978]; *Herrin v. Airborne Freight Corp.,* 301 AD2d 500 [2d Dept 2003].

[4] *Weiner v. Ga-Ro Die Cutting,* 104 AD2d 331 [2d Dept 1984]. *Aff'd* 65 NY2d 732 [1985].

[5] *Glennon v. Mayo,* 148 AD2d 580 [2d Dept 1989].

[6] *See, Downey v. Beatrice Epstein Family Partnership, L.P.,* 48 AD3d 616 [2d Dep't 2008].

[7] *Outlaw v. Citibank, N.A.*, 35 AD3d 564 [2d Dep't. 2006].

[8] *See, Acevedo v. N.Y.C. Transit Auth*., 97 AD3d 515 [2d Dep't. 2012].

sworn testimony that the elevator car in question was inspected regularly and did not show signs of disrepair.[9] Consequently, it is incumbent on the plaintiff to demonstrate the existence of an issue of fact.

In opposition, the plaintiff directs the court's attention to the work orders associated with Elevator No. 2 in the months prior to the plaintiff's fall. But these work orders are distinguishable from those found in the *Camaj v. East 52nd Partners*[10] case; and in *Dykes v. Starrett City, Inc.*[11] In those cases the work orders demonstrated a history of malfunction, that was similar to the alleged cause of a plaintiff's injury. Here, the prior work orders relate to general upkeep and maintenance, and not the closing mechanism that allegedly caused the plaintiff's fall. Therefore, the plaintiff has failed to come forward with any fact that would indicate that the movant, landowner and its property manager, had actual or constructive knowledge of any hazardous condition with respect to Elevator No. 2.

Accordingly, it is hereby:

ORDERED, that the motion for summary judgment dismissing the plaintiff's complaint made by Port Authority of New York and New Jersey and AFCO AvPorts Management, LLC is granted; and it is further

ORDERED, that the complaint is severed and dismissed as to the Port Authority of New York and New Jersey and AFCO AvPorts Management, LLC and the Clerk is directed to enter judgment accordingly; and it is further

---

[9] *See, Santoni v. Bertelsmann Prop., Inc.*, 21 AD3d 712 [1st Dep't 2005].

[10] 215 AD2d 150 [1st Dep't 1995].

[11] 74 AD3d 1015 [2d Dep't 2010].

ORDERED, that the remaining parties shall return to DCM Part 3, 130 Stuyvesant Place, 3rd Floor, on **Monday, June 17, 2013 at 9:30 a.m.** for a Pre-Trial Conference.

ENTER,

DATED: May 16, 2013

Joseph J. Maltese
Justice of the Supreme Court