

Stockhamer v St. Joseph's Hosp.

2015 NY Slip Op 32398(U)

November 20, 2015

Supreme Court, Bronx County

Docket Number: 304659/2011

Judge: Lucindo Suarez

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: I.A.S. PART 19

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PATRICIA STOCKHAMER,

Plaintiff,

- against -

DECISION AND ORDER

Index No. 304659/2011

ST. JOSEPH'S HOSPITAL, YONKERS, ST. JOSEPH'S
HOSPITAL NURSING HOME OF YONKERS, NEW
YORK, INC., PREFERRED ELEVATOR SERVICES,
LLC., and JOHN DOE ELEVATOR, INC.,

Defendants.

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PRESENT: Hon. Lucindo Suarez

Upon the notice of motion dated August 26, 2015 of defendants St. Joseph's Hospital, Yonkers and Preferred Elevator Services, LLC. and the affirmation and exhibits submitted in support thereof; plaintiff's affirmation in opposition dated November 9, 2015 and the affidavit and exhibits submitted therewith; the reply affirmation dated November 17, 2015 of defendants St. Joseph's Hospital, Yonkers and Preferred Elevator Services, LLC.; and due deliberation; the court finds:

In this personal injury action, plaintiff alleges that she was injured on October 21, 2008 when the door of an elevator at St. Joseph's Nursing Home closed on her right arm. Defendant building owner and defendant service contractor Preferred Elevator Services, LLC. ("Preferred") now move pursuant to CPLR 3212 for summary judgment dismissing plaintiff's complaint on the grounds that they did not create or have actual or constructive notice of a dangerous condition. Submitted on the motion are the pleadings and deposition transcripts.

Plaintiff testified the accident occurred as she was exiting one of the two elevators at the nursing home. She could not recall which elevator she was a passenger in or what floor the incident occurred on. She could not describe the size of the elevator cab, the size of the door opening, whether the cab

floor was tiled or carpeted, or whether the walls were made of steel or wood panels. Plaintiff entered the elevator on the ground floor with two or three other people, and the elevator door opened and closed normally at that level. When the elevator reached the upper floor, the door opened normally and the other passengers exited the cab without incident. Plaintiff also exited but the elevator door, which opened from right to left, “squoshed” her. She was “probably” looking straight ahead but never saw the door sliding towards her and was unaware of the door closing until it “smashed” her. She had not yet stepped out of the elevator when the impact occurred but was “right like where you would be walking out” and “right between the doors.” Plaintiff screamed and then stepped or walked out of the elevator. She did not try to push the door off her but just “got out as quickly as [she] could.” She did not know if the door continued to closed or if it retracted. Plaintiff assumed that she took an elevator to the lobby but did not know which elevator she took. She entered and exited that elevator without incident. Plaintiff, a social worker at the nursing home, rode the two elevators each day. She had never experienced a problem with the elevators. She never complained and she was unaware of anyone who had complained about the elevator doors before the accident.

Michael Lagnese (“Lagnese”), the director of facilities for St. Joseph’s Medical Center, testified that Preferred maintained the elevators pursuant to a service contract. There were two hydraulic passenger elevators at the nursing home, and both cabs had been modernized by non-party Prestige Elevator. Lagnese never saw the elevator doors close with force, and there were no problems with the safety edge before the accident. He was unaware of any instances where the elevator doors either closed too quickly or closed with force, and no one complained to him about either condition. The elevators were inspected annually by the City of Yonkers, and there were no violations issued as a result of those inspections. He was not aware of any prior elevator-related accidents.

Charles Marino (“Marino”) testified that he owned Preferred until he sold its assets to non-party D&D Elevator Maintenance Company in 2011. Preferred began servicing the two elevators at the

nursing home pursuant to an addendum to its contract with St. Joseph's. Both elevators at the nursing home had been modernized with new controllers, pistons, buttons, door equipment and detector edges before the date of Preferred's contract. The detector edges were electronic and had been designed so that the elevator doors remained opened in the event of a failure. Marino had no recollection of any work being performed on the detector edge. He never observed the elevator doors closing too quickly and could not recall receiving any complaints from anyone about the doors. A mechanic usually visited the nursing home a few times each week to ensure that the elevators were running. The elevator doors closed with a maximum force of thirty (30) pounds of torque and unless the doors were "slamming," the mechanic "wouldn't go check the door closing force." Annual inspections performed by the City of Yonkers tested the door closing force with a handheld scale. Time tickets were generated for each visit and for "trouble calls" made to the office. None of the time tickets Marino was shown, including one dated four days before the accident, noted a problem of elevator doors closing on passengers.

"A property owner has a nondelegable duty to maintain its building's elevators in a reasonably safe manner." *Isaac v. 1515 Macombs, LLC*, 84 A.D.3d 457, 458, 922 N.Y.S.2d 354, 355 (1st Dep't), *lv denied*, 17 N.Y.3d 708, 954 N.E.2d 1178, 930 N.Y.S.2d 552 (2011) (citations omitted). A company that agrees to maintain an elevator may be liable to a passenger for its failure to correct known conditions or for its failure to use reasonable care to discover and correct a condition it should have found. *McLaughlin v. Thyssen Dover El. Co.*, 117 A.D.3d 511, 511, 985 N.Y.S.2d 534, 535 (1st Dep't 2014). Defendants have met their burden on summary judgment. *See Cruz v. New York City Hous. Auth.*, 92 A.D.3d 6, 939 N.Y.S.2d 55 (1st Dep't 2012); *Narvaez v. New York City Hous. Auth.*, 62 A.D.3d 419, 878 N.Y.S.2d 724 (1st Dep't), *lv denied*, 13 N.Y.3d 703, 915 N.E.2d 291, 886 N.Y.S.2d 366 (2009); *Gjonaj v. Otis El. Co.*, 38 A.D.3d 384, 832 N.Y.S.2d 189 (1st Dep't 2007).

Plaintiff fails to raise a triable issue of fact in opposition. She produced no evidence of a prior similar malfunction of the elevator doors. *See Meza v. 509 Owners LLC*, 82 A.D.3d 426, 918 N.Y.S.2d

78 (1st Dep't 2011). The affidavit of her expert, Patrick A. Carrajat ("Carrajat"), lacks probative value. *See Luciano v. Deco Towers Assoc. LLC*, 92 A.D.3d 606, 939 N.Y.S.2d 48 (1st Dep't 2012); *Santoni v. Bertelsmann Prop.*, 21 A.D.3d 712, 800 N.Y.S.2d 676 (1st Dep't 2005). Carrajat stated that Preferred failed to maintain the elevators as required by the contract and failed to test the door closing force as required by the Yonkers Building Code. He opined that a properly maintained elevator equipped with a detector edge would not have struck a passenger entering or exiting the elevator absent defendants' negligence. Carrajat, though, failed to identify a condition that defendants should have observed had they exercised reasonable care. He inspected the subject elevator but did not disclose the results of his inspection. He did not state what maintenance, if any, should have been performed on the detector edge or what caused the detector edge to fail, if at all. He did not adequately explain how testing of the door closing force could have prevented the door from striking plaintiff. The failure to report the accident to the City of Yonkers has no bearing on how the accident occurred.

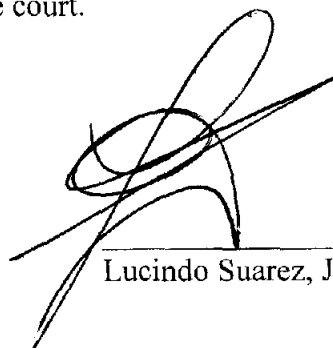
Plaintiff's reliance on the doctrine of *res ipsa loquitur* is also misplaced. *See Graham v. Wohl*, 283 A.D.2d 261, 724 N.Y.S.2d 416 (1st Dep't 2001). She has not established that the door detector was within defendants' exclusive control. *See Cox v. Pepe-Fareri One, LLC*, 47 A.D.3d 749, 850 N.Y.S.2d 559 (2d Dep't 2008).

Accordingly, it is

ORDERED, that the motion of defendants St. Joseph's Hospital, Yonkers and Preferred Elevator Services, LLC. for summary judgment dismissing plaintiff's complaint is granted.

This constitutes the decision and order of the court.

Dated: November 20, 2015



Lucindo Suarez, J.S.C.