Moranska v Affinia Manhattan Hotel
2019 NY Slip Op 31624(U)
June 7, 2019
Supreme Court, New York County
Docket Number: 151527/2014
Judge: Gerald Lebovits
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. GERALD LEBOVITS** **PART** **IAS MOTION 7EFM**

Justice

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INDEX NO. 151527/2014

STANISLAWA MORANSKA,

MOTION DATE 07/20/2018

Plaintiff,

MOTION SEQ. NO. 006

- v -

AFFINIA MANHATTAN HOTEL, 371 SEVENTH AVENUE CO., LESSEE LLC,
DHG MANAGEMENT COMPANY, LLC,
P.S. MARCATO ELEVATOR CO., INC.

DECISION AND ORDER

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164

were read on this motion for SUMMARY JUDGMENT.

Raphaelson & Levine Law Firm, P.C., (Andrew J. Levine, of counsel) for plaintiff.
Lester Schwab Katz & Dwyer, LLP, (Harold J. Derschowitz and Joshua Cole Zimring of counsel), for Defendants, Affinia Manhattan Hotel, 371 Seventh Avenue Co., Lessee LLC, and DHG Management Company, LLC.
Gottlieb, Siegel & Schwartz, LLP, (Lauren M. Solari, Jaime Sarah Hyman, and Michael H. Gottlieb of counsel) and *Fullerton Beck, LLP* (Eileen R. Fullerton of counsel) for defendant, Marcato Elevator Co., Inc.

Gerald Lebovits, J.

Plaintiff, a resident of Hudson County, New Jersey, commenced this personal injury action on February 20, 2014 (verified complaint, dated February 19, 2014 [complaint], ¶ 1) (NYSCEF Doc. No. 1).

Defendants 371 LLC and DHG (Affinia Defendants) owned the building known as the Affinia Manhattan Hotel (Premises), located at 371 Seventh Avenue, in the County, City and State of New York (June 27, 2016 Decision/Order, at 1 [NYSCEF Doc. No. 97]). 371 LLC hired defendant Marcato to perform elevator maintenance and repair work at the Premises (*id.*).

This action arises from an incident on March 7, 2013, in which plaintiff, while employed as a housekeeper by DHG, was injured while exiting an allegedly misleveled elevator at the Premises, which she claims caused her to trip and fall (*id.*). In the complaint, plaintiff asserts that she was injured due to defendants' negligence in their ownership, maintenance and repair of the

Premises, which caused a service elevator at the Premises to mislevel, tripping her and causing her injury as she exited that elevator.

In their answers, defendants generally deny plaintiff's allegations and assert several affirmative defenses against her. Affinia Defendants also assert four cross claims against Marcato, for common-law indemnification, contribution, contractual indemnification, and for their coverage as insureds or additional insureds under Marcato's primary and/or excess/ umbrella insurance policies, which Marcato was required to procure for them under the terms of their service contract. Marcato also asserts a cross claim against Affinia Defendants, contending that it did not injure plaintiff and that any injury plaintiff may have suffered was caused by one or both Affinia Defendants and/or plaintiff.

In motion sequence number 006, Affinia Defendants move by notice dated April 4, 2018, for an order:

> (1) pursuant to CPLR 3212, granting summary judgment to Affinia Defendants and the Affinia Manhattan Hotel, dismissing the complaint and all cross claims asserted against them;
> (2) pursuant to CPLR 3212 and Workers' Compensation Law Sections 11 and 29 (6), granting DHG summary judgment and dismissing the complaint and all cross claims asserted against DHG; and
> (3) conditionally granting summary judgment to Affinia Defendants, pursuant to CPLR 3212 against defendant Marcato, on their first cross-claim for common law indemnification and/or their third cross-claim for contractual indemnification, as set forth in their verified answer, dated April 2, 2014.

By notice dated April 6, 2018, plaintiff cross-moved for an order, pursuant to CPLR 3212, granting her partial summary judgment against Affinia Defendants and Marcato on the issue of liability, premised on the doctrine of res ipsa loquitur.

By notice dated April 6, 2018, Marcato cross-moved for an order, granting it summary judgment pursuant to CPLR 3212, dismissing the cause of action asserted against it in the complaint and all cross claims made against it or, in the alternative, denying Affinia Defendants' motion for summary judgment.

A. Affinia Defendants' Motion

In their attorney's 48-page affirmation[1] submitted in support of their motion for summary judgment, Affinia Defendants assert that they are entitled to summary judgment, dismissing the

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[1] Under Rule 14 of the Rules of the Justices of the Supreme Court, Civil Branch, New York County, papers submitted on motions are limited in length. Memoranda of law are limited to 30 pages and affidavits and affirmations are each limited to 25 pages. Limitations under these rules should not be exceeded without prior leave of court for good cause shown. Under either measure, Affinia Defendants' "briefermation" violates Rule 14.

complaint as asserted against them, because they did not create or have actual or constructive notice of the defective condition alleged to have caused plaintiff's injuries. Affinia Defendants also contend that plaintiff's employer, defendant DHG, is entitled to summary judgment as matter of law because New York's Workers' Compensation Law bars her from maintaining a cause of action against it for a workplace accident, especially as she has not only filed a claim for, but has already collected, workers' compensation benefits. Affinia Defendants also assert that they are entitled to summary judgment on their third-party claims against Marcato for common-law and contractual indemnification.

In opposition, plaintiff states that she does not oppose the motion for summary judgment asserted on behalf of defendant DHG based on New York's Workers' Compensation Law (Krakower affirmation in opposition [Krakower opposition aff] [NYSCEF Doc. No. 152]), but she otherwise opposes the motion, arguing 371 LLC and Marcato are liable for her injuries because

(1) they had notice of the misleveling problem because plaintiff testified that, in the year prior to her accident, she had seen the elevator mislevel 5 times;
(2) the prior elevator mislevelings plaintiff claims that she witnessed were a dangerous condition and 371 LLC and Marcato were unreasonable for not fixing it; and
(3) even if 371 LLC and Marcato had no notice, they would be liable under the doctrine of res ipsa loquitur because
(a) the malfunctioning elevator was under their "exclusive control"
(b) elevator misleveling is the type of inherently dangerous condition that is unlikely to occur in the absence of negligence; and
(c) there is no evidence that plaintiff contributed in any way to the misleveling condition.

Marcato opposes Affinia Defendants motion in conjunction with its cross motion, discussed below.

B. Plaintiff's Cross Motion for Partial Summary Judgment

In her cross motion, e-filed April 6, 2018 (NYSCEF Doc. No. 131-132), plaintiff argues that she is entitled to partial summary judgment against Affinia Defendants and Marcato on the issue of liability because, under the doctrine of res ipsa loquitur, they had "exclusive control" of the elevator when it allegedly malfunctioned (affirmation of Jason S. Krakower, Esq., in support of plaintiff's cross motion [Krakower aff] [NYSCEF Doc. No. 132], ¶ 6, citing, *inter alia*, *Morejon v Rais Constr. Co.*, 7 NY3d 203, 209 [2006]). Plaintiff further argues that she is entitled

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The Uniform Rules for the Supreme Court and the County Court also direct attorneys *not* to include legal argument in affidavits and affirmations (*see* 22 NYCRR § 202.8 (c) ["Affidavits shall be for a statement of the relevant facts and briefs shall be for a statement of the relevant law"]). The court has not rejected the parties' submissions for breach of these rules in this instance. Counsel, however, should note that it is within the court's discretion to reject non-compliant papers *sua sponte*.

to summary judgment under the doctrine of res ipsa loquitur because the occurrence – that is, the elevator misleveling – would not ordinarily occur in the absence of negligence, and no act or negligence on her part contributed to the happening of the event (*id.*).

Affinia Defendants oppose plaintiff's cross motion (*see* affirmation of Harold J. Derschowitz, Esq. in opposition [Derschowitz opposition aff] [NYSCEF Doc. No. 146]), contending that plaintiff fails to make out any of the three elements to the res ipsa loquitur doctrine.

Affinia Defendants argue that plaintiff cannot rely on res ipsa loquitur because she failed to show her accident was the type that would not ordinarily occur in the absence of another's negligence, or that Affinia Defendants had exclusive control of the elevator. Further, noting her admission that she did not look down to the floor of the elevator before she attempted to exit (*see* affirmation of Harold J. Derschowitz, Esq. in support [Derschowitz aff.] [NYSCEF Doc. No. 107] exhibit Q, transcript of deposition of Stanislawa Moranska [Moranska tr.] [NYSCEF Doc. No. 124], at 116:4-11),[2] Affinia Defendants argue that, even if plaintiff's allegations were accepted as true, they would still not rule out the possibility that plaintiff's injury may have been caused by her own actions (Derschowitz opposition aff ¶ 6, citing *Graham v Wohl*, 283 AD2d 261 [1st Dept 2001]).

Marcato also opposes plaintiff's cross motion. In its opposition (NYSCEF Doc. No. 148), Marcato argues plaintiff cannot make out its prima facie case for negligence and cannot make out the elements of res ipsa loquitur, which would permit an inference of negligence to be drawn. More importantly, Marcato contends that plaintiff cannot show it had notice of any elevator defect or that plaintiff knows for certain what caused her injuries.

C. Defendant Marcato's Opposition and Cross Motion

In its cross motion and opposition to the Affinia Defendants' motion, Marcato asserts the cause of action in the complaint and the cross claims asserted against it must be dismissed, and Affinia Defendants' motion with respect to it must be denied, because no prima facie case of negligence has been made out against Marcato. Marcato also requests, if its cross motion is denied, that the portion of Affinia Defendants' motion seeking a conditional summary judgment order on their claims for common law and contractual indemnification, must also be denied.

Marcato asserts that it is entitled to summary judgment, dismissing the complaint, because it did not have actual or constructive notice of the claimed defect, and plaintiff cannot rely on res ipsa loquitur to make up for her lack of notice evidence because she cannot show with any certainty what caused her injuries and has not eliminated within reason all possible causes other than defendants' negligence.

In its cross-motion, Marcato took no position with respect to Affinia Defendants' motion for summary judgment with respect to DHG, on the ground that remedies under the Workers' Compensation Law constitute plaintiff's sole recourse against DHG, as her employer.

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[2] References to deposition transcripts are formatted "page number: line number(s)."

Affinia Defendants oppose Marcato's cross motion, contending that Marcato is responsible for any liability to plaintiff arising from her accident, and is otherwise obligated to provide common-law or contractual indemnification to Affinia Defendants for any liability they face for losses in the action, including attorney's fees.

Summary Judgment Standard

"The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case. Failure to make such showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985] [internal citations omitted]).

To prevail, the movant must produce evidentiary proof in admissible form sufficient to warrant granting summary judgment in its favor (*GTF Mktg. v Colonial Aluminum Sales,* 66 NY2d 965, 967 [1985]). Once the movant makes its showing, the burden shifts to the opposing party, to submit proof in admissible form sufficient to show that a question of fact exists, requiring trial (*Kosson v Algaze,* 84 NY2d 1019, 1020 [1995]).

In deciding the motion, the court must view evidence in the light most favorable to the nonmovant (*Prine v Santee*, 21 NY3d 923, 925 [2013]). Party affidavits and other proof must be examined carefully "because summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue" (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978] [citation and internal quotation marks omitted]). Still, "only the existence of a bona fide issue raised by evidentiary facts and not one based on conclusory or irrelevant allegations will suffice to defeat summary judgment" (*id.).*

Discussion

Cause of Action Against DHG

As a threshold matter, plaintiff states that she does not oppose Affinia Defendants' motion for summary judgment with respect to DHG, seeking dismissal of her cause of action against DHG based upon New York's Workers' Compensation Law (Krakower aff, ¶ 2).

Affinia Defendants allege that plaintiff was employed by DHG on the date of her accident and that her accident occurred at the Premises, during her employment (*see* Derschowitz aff, ¶¶ 3, 13-15). Neither plaintiff nor Marcato take issue with these allegations.

Under New York law, "[t]he sole and exclusive remedy of an employee against his employer for injuries in the course of employment is compensation benefits" (*Gonzales v Armac Indus., Ltd.*, 81 NY2d 1, 8 [1993] citing Workers' Compensation Law §§ 11, 29 [6] and *Billy v Consolidated Mach. Tool Corp.,* 51 NY2d 152, 156 [1980]).

As Affinia Defendants have shown on this issue that no question of fact exists and that they are entitled to judgment as a matter of law, summary judgment is hereby granted to DHG (*see* Siegel, NY Prac § 281 [6th ed] [even where opposing party does not respond, "movant must still make the usual showing needed for summary judgment, which is that there is no issue of fact and that the movant is entitled to judgment as a matter of law"], citing *Liberty Taxi Mgt., Inc. v Gincherman*, 32 AD3d 276 [1st Dep't 2006]).

Accordingly, summary judgment is granted to DHG and that facet of the complaint is hereby dismissed.

Causes of Action Against 371 LLC and Marcato

To prevail on a negligence claim, "a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom" (*Pasternack v Lab. Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016] [citation and internal quotation marks omitted]).

> "A landowner has a duty to maintain its property in a reasonably safe condition in view of all the circumstances, including the likelihood of injury to third parties, the potential seriousness of the injury and the burden of avoiding the risk. In order to recover damages for an alleged breach of this duty, the plaintiff must first demonstrate that the defendant created or had actual or constructive notice of the hazardous condition which precipitated the injury. The plaintiff must also show that the defendant's negligence was a proximate cause of the injuries. To do so, the negligence must be a substantial cause of the events which produced the injury"

(*Boderick v RY Mgt. Co., Inc.*, 71 AD3d 144, 147 [1st Dept 2009] [citations omitted]).

Representatives of Affinia Defendants testified at deposition that, prior to plaintiff's March 7, 2013 accident, they never witnessed any elevator at the Premises malfunction. They further testified that they never received any complaint or notice from others about any elevator malfunction before plaintiff's accident (*see* Derschowitz aff exhibit R [Regina Yorio deposition tr, at 21:7-21] [NYSCEF Doc. No. 125] and exhibit T [Oscar Gomez, Jr. deposition tr, at 27:23-28:2] [NYSCEF Doc. No. 127]).

Marcato's representative, Andrew Trapani, testified that, among other things, Marcato alone was responsible for the maintenance and repair of the elevators at the Premises in March 2013, and that Marcato assigned a mechanic to the Premises to provide on-call repair services and regularly scheduled preventative maintenance, as well as safety and efficiency surveys and inspections. Mr. Trapani asserts that elevator leveling was part of preventative maintenance services Marcato performed. Mr. Trapani stated that, prior to plaintiff's March 7, 2013 accident, he is not aware of any elevators at the Premises ever misleveling (*see* affirmation of Lauren M. Solari, Esq. [Solari aff] [NYSCEF Doc. No. 134] exhibit I [NYSCEF Doc. No. 143] [Andrew Trapani deposition tr., at 19:23-20:3, 21:5-12, 22:2-22, 23:13-20, 25:17-26:3, 32:3-33:9, 34:17-24, 37:18-38:15, 43:7-20, 44:13-24, 47:6-48:16, 50:15-22, 51:24-25, 52:3-19, 53:13-54:11, and 55:12-18). Furthermore, the written service call reports prepared by the Marcato mechanic

assigned to the Premises show no incident of an elevator misleveling prior to March 7, 2013 (*see id.*, at 55:12-18 and Solari aff exhibit J [NYSCEF Doc. No. 144] [Marcato "BIN History" Reports for Premises from March 7, 2011 to March 7, 2013]).

Thus, Affinia Defendants and Marcato have "demonstrated their prima facie entitlement to summary judgment by showing that they did not have actual or constructive notice of an ongoing misleveling condition and did not fail to use reasonable care to correct a condition of which they should have been aware" *Isaac v 1515 Macombs, LLC,* 84 AD3d 457, 458 [1st Dept], *lv. denied* 17 NY3d 780 [2011] [citations omitted]).

Plaintiff failed to meet her burden in opposition, as she "failed to produce evidence of a prior problem with the elevator that would have provided notice of the specific defect that allegedly caused the elevator to mislevel on the date of her accident" (*Isaac*, 84 AD3d at 459 [citations omitted]).

Plaintiff stated that she had seen the elevator in question mislevel on several prior occasions but admits that she did not report this malfunction to anyone at the Premises before the date of her accident (Derschowitz aff exhibit Q [NYSECF Doc. No. 124] [Moranska deposition tr, at 72:15-73:7, 74:14-18, 112:8-14]. Plaintiff admitted that she used the same elevator twice a day, once in the morning after she arrived at work and once in the evening as she was leaving, and that she did not notice anything unusual about its operation on the morning of March 7, 2013 (*id.* 42:20-24, 43:8-16). Finally, plaintiff admitted that she was in shock for a few minutes after her accident, and only noticed the elevator misleveling later, *after* she was helped to her feet (*see id.* 53:15-54:4, 55:7-8, 56:20-24, 58:17-59:3).

Plaintiff's showing of notice is insufficient to create an issue of fact (*see Ezzard v One E. Riv. Place Realty Co.*, 129 AD3d 159, 162 [1st Dept 2015] ["Plaintiff's testimony of prior, unreported instances of misleveling were insufficient to establish that any of the defendants had notice of a dangerous condition"] [citation omitted]). Plaintiff also failed to "offer any expert evidence that [defendants] could have discovered the defect through the exercise of reasonable care" (*Isaac v 1515 Macombs, LLC*, 84 AD3d 457, 459 [1st Dept 2011] [citation omitted]).

To remedy her lack of notice evidence, plaintiff resorts to res ipsa loquitur.

> "Res ipsa loquitur is an evidentiary doctrine which 'permits the inference of negligence to be drawn from the circumstances of the occurrence' when a plaintiff can establish that (1) the event is of a kind that ordinarily does not occur in the absence of negligence; (2) the event was caused by an agency or instrumentality within the exclusive control of defendant; and (3) the event was not caused by the plaintiff's actions"

(*Barkley v Plaza Realty Invs., Inc.*, 149 AD3d 74, 77 [1st Dept 2017], quoting *Dermatosssian v New York City Tr. Auth.*, 67 NY2d 219, 226 [1986]).

By establishing these elements, plaintiff could avoid the need to show defendants had actual or constructive notice of the defect (*see Ezzard,* 129 AD3d at 163 ["Notice of a defect is

inferred when [res ipsa loquitur] applies and the plaintiff need not offer evidence of actual or constructive notice in order to proceed"]).

That doctrine, however, does not apply to plaintiff's cause of action because her fall and injury "could have occurred in the absence of negligence" on the part of defendants "and could have been caused by a misstep on [her] part" (*Meza v 509 Owners LLC*, 82 AD3d 426 427 [1st Dept 2011] [citation and internal quotation marks omitted]).

New York's Multiple Dwelling Law does not avail plaintiff either. Section 78 of New York's Multiple Dwelling Law imposes on the owner of a multiple dwelling, such as a hotel, a nondelegable duty to keep its building in good repair (*Worth Distribs., Inc. v Latham*, 59 NY2d 231, 237-38 [1983]). The owner's nondelegable duty extends to maintaining the building's elevators

> "in a reasonably safe manner and [the owner] may be liable for elevator malfunctions or defects causing injury to a plaintiff about which it has constructive or actual notice, or where, despite having an exclusive maintenance and repair contract with an elevator company, it fails to notify the elevator company about a known defect"

(*Isaac,* 84 AD3d at 458 [citations omitted]). Likewise,

> "'[a]n elevator company which agrees to maintain an elevator in safe operating condition may be liable to a passenger for failure to correct conditions of which it has knowledge or failure to use reasonable care to discover and correct a condition which it ought to have found'"

(*id.*, quoting *Rogers v Dorchester Assocs.*, 32 NY2d 553, 559 [1973]; *see also Bonifacio v 910-930 S. Blvd.*, 295 AD2d 86, 88 [1st Dept 2002], citing *Rogers*, 33 NY2d 553] [although its "liability under this statute is nondelegable, [] the owner may in turn look to a party with whom it contracted for the maintenance of the premises" for indemnification]).

As in the case of the res ipsa loquitur doctrine, the Multiple Dwelling Law does not offer a basis to hold defendants liable. Plaintiff still lacks any evidence of actual or constructive notice of defect, or failure to use reasonable care in inspection and maintenance of the elevator in question, required under *Isaac* (84 AD3d at 458).

Accordingly, Affinia Defendants' motion for summary judgment, dismissing the complaint as to 371 LLC, and Marcato's cross-motion, dismissing the complaint as to Marcato, are granted, and plaintiff's cross motion for partial summary judgment as to defendants' liability is denied.

Affinia Defendants' Cross Claims for Common-Law and Contractual Indemnification

"Common-law indemnification is available to one who has committed no wrong but is held liable to the injured party because of some relationship with the tortfeasor 'or obligation

imposed by law'" (*Elkman v Southgate Owners Corp.*, 246 AD2d 314, 314 [1st Dept 1998], quoting *Glaser v M. Fortunoff of Westbury Corp.*, 71 NY2d 643, 646 [1988]). Affinia Defendants are not being held liable to an injured party in this action, so this cross claim is unfounded. Affinia Defendants' motion for summary judgment with respect to common-law indemnification must be denied and Marcato's cross-motion for summary judgment, dismissing this cross-claim, is granted.

Affinia Defendants' cross-claim for contractual indemnification also fails. Marcato entered into the "Owners Form" maintenance contract, dated December 4, 2012 (Contract), with 371 LLC, which executed the Contract as the "Owner" of the Premises (exhibit J to Derschowitz aff).[3] In paragraph 1.14 of the Agreement, Marcato, as "Contractor," agreed to obtain comprehensive general liability (CGL) insurance coverage for itself and for 371 LLC, DHG and nonparty Van Deusen & Associates, as additional insureds, for:

> *any loss, cost, expense, liability or damage (including without limitation, judgment, attorney's fees, court costs and the cost of appellate proceedings) which the Owner incurs because of sickness, injury to or death of any person* or on account of damage to or destruction of property, including loss of use thereof, or any other claim *arising out of, in connection with, or as a consequence of the performance of the services or the furnishing of the equipment and supplies and/or any acts of the Contractor* or any of its officers, directors, employees, agents, subcontractors, or anyone else directly or indirectly employed by the Contractor *for whom it may be liable as it relates to the scope of this contract*"

(emphasis added).

This section of the contract goes on for almost another two pages, describing Marcato's duties in selecting a New York-licensed and admitted CGL insurer, the liabilities and limits of the coverages to be obtained, and 371 LLC's duty to provide timely notice to Marcato of any accident, alteration or change to covered equipment, or other occurrence that could affect the operation and safety of such equipment (*see id.*).

The right to contractual indemnification should not be found "unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances" (*George v Marshalls of MA, Inc.*, 61 AD3d 925, 930 [2d Dept 2009]).

The contractual provision in question here is plainly an agreement to procure insurance. "An agreement to procure insurance is *not* an agreement to indemnify or hold harmless, and the distinction between the two is well recognized" (*Kinney v G.W. Lisk Co.*, 76 NY2d 215, 218 [1990] [citations omitted]). Marcato itself has no obligation to indemnify the Affinia Defendants. Instead, it was required to provide them CGL insurance coverages within the parameters set forth in the Contract, to provide them such indemnity. To the extent the Affinia Defendants may claim to be aggrieved by the funding of defense costs in this action, the court reiterates its statement in

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[3] The Contract, at ¶ 1.2 (A), defined "Owner" as "the person, organization, corporation or other entity representing building ownership and the relative responsibilities under this contract."

its decision and order of June 27, 2016, disposing of motion sequence number 005, which noted that Affinia Defendants' proper course would be to seek declaratory relief against Marcato's CGL carrier.

Affinia Defendants' motion for summary judgment, declaring Marcato liable for contractual indemnification is denied and Marcato's cross motion for summary judgment, dismissing Affinia Defendants' cross-claims for contractual indemnification, is granted.

Accordingly, it is hereby

ORDERED that the motion of defendants 371 Seventh Avenue Co. Lessee LLC and DHG Management Company, LLC is granted, to the extent of granting them summary judgment, dismissing the complaint as to 371 Seventh Avenue Co. Lessee LLC and DHG Management Company, LLC, with costs and disbursements to movants as taxed by the Clerk upon the submission of an appropriate bill of costs, and is otherwise denied; and it is further

ORDERED that plaintiff Stanislawa Moranska's cross motion for partial summary judgment is denied; and it is further

ORDERED that defendant P.S. Marcato Elevator Co., Inc.'s cross motion for summary judgment, seeking dismissal of the cause of action plaintiff asserted against it and dismissal of the cross claims asserted against it by defendants 371 Seventh Avenue Co. Lessee LLC and DHG Management Company, LLC, is granted, with costs and disbursements to P.S. Marcato Elevator Co., Inc. as taxed by the Clerk upon the submission of an appropriate bill of costs.

6/7/2019
DATE

GERALD LEBOVITS, J.S.C.

CHECK ONE:	X	CASE DISPOSED			NON-FINAL DISPOSITION		
		GRANTED		DENIED	X GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE