

Bortungo v New York State Urban Dev. Corp.

2019 NY Slip Op 33316(U)

November 4, 2019

Supreme Court, New York County

Docket Number: 150623-2013

Judge: David Benjamin Cohen

Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op 30001(U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 58

-----X
NICHOLAS BORTUNGO AND JOSEPHINE
BORTUNGO,

Plaintiffs,

-against-

Index No.: 150623-2013

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION D/B/A EMPIRE STATE
DEVELOPMENT CORPORATION, MOYNIHAN
STATION DEVELOPMENT CORPORATION,
SCHINDLER ELEVATOR CORPORATION AND
MIDLAND ELEVATOR CO., INC.,

Defendants.

-----X
COHEN, J.:

Defendants New York State Urban Development Corporation (UDC) d/b/a Empire State Development Corporation (ESDC) and Moynihan Station Development Corporation (MSDC), move, pursuant to CPLR 3212 (a), for an order granting summary judgment and dismissing plaintiffs Nicholas and Josephine Bortungo’s complaint and cross claims and counter claims.

FACTUAL ALLEGATIONS

Deposition of Nicholas Bortungo

Plaintiff Nicholas Bortungo (plaintiff) testified that on January 19, 2012, he was injured while working for Satellites Unlimited, Inc., a communication satellite provider, which was conducting work at the Farley Post Office (the premises) in New York City. On the date of the accident, plaintiff’s supervisor Dave Rosenberg (Rosenberg), accompanied him to the premises. Upon arriving, plaintiff loaded his equipment on a cart and proceeded to take a freight elevator with Rosenberg from the loading dock to the fourth floor. Instead of stopping at the fourth floor,

the elevator proceeded to the fifth floor which was under construction.

Plaintiff and Rosenberg traveled back down to the loading dock area and were told by a worker that the fourth floor could be accessed by utilizing elevator number 105. Elevator 105 had doors that ascended and descended from the top and bottom of the elevator which met in the middle. The elevator also included a gate.

After walking to elevator 105, plaintiff noticed that the doors would not open. Rosenberg was told by a worker at the premises that there were often problems with the subject elevator. The worker proceeded to physically open the elevator's cage door with his hands. When the doors opened, plaintiff observed that Celeste Woods (Woods), the client who they were meeting, was located on the opposite side of the elevator as it had two sets of doors. Rosenberg and plaintiff proceeded to walk through the elevator to reach Woods.

Plaintiff testified that he told Rosenberg that he was going to get the cart with the equipment and proceeded to walk back through the elevator. Plaintiff grabbed the cart and walked back through the elevator when he got struck in the head by the cage door which had descended. He did not hear any bells or observe lights flashing while it descended.

At his deposition, plaintiff reviewed pictures of the site of the accident. He did not recall any gates or fences located by the elevators, nor did he recall observing a passageway which he could have utilized to access the location where Woods was standing.

Deposition of Dave Rosenberg

Rosenberg testified that he was with plaintiff on the date of his accident to install a Direct TV system. Rosenberg testified that he recalls contacting Woods when they arrived. At the premises, the workers proceeded to the fifth floor in an elevator. When they could not reach the

fifth floor, they traveled back down to lower level which was comprised of a loading dock.

Rosenberg maintains that when they got out of the elevator, the workers walked to another elevator and saw Woods who was located on the other side of the elevator which had two sets of doors. Rosenberg recalls that he entered into that elevator with Woods. Rosenberg testified that plaintiff began to wheel the cart into the elevator when the elevator door descended onto plaintiff's head. Rosenberg does not recall hearing any bells or buzzers going off. He did not recall a passageway which existed between the corridor and the loading dock area.

Deposition of Celeste Woods

Woods testified that she worked for the United States Postal Service (USPS) as a secretary at the premises. She maintains that the administrative offices were located on the fourth floor of the building. Woods testified that on the date of plaintiff's accident, a district manager was having Direct TV installed. She recalls receiving a call that the satellite installer needed assistance as he was trying to access the fourth floor and the freight elevator would not travel to that location. Woods went down to the ground floor and met Rosenberg and plaintiff.

Woods testified that when she arrived on the ground floor, the workers were located on the opposite side of an elevator which had both its front doors and back doors open. Rosenberg entered the elevator to use it as a walkway to meet Woods while plaintiff followed with a cart. She testified that when plaintiff walked through the elevator, the elevator's doors closed at the same time, striking plaintiff on the head. Woods attempted to turn the elevator off by entering the elevator.

Woods did not recall any prior incidents requiring doors needing to be forced open or any complaints about the subject elevator. Woods reported the incident to her supervisor and the

safety manager. She was not sure who maintains the elevators. Woods reviewed a photo of the area which included a fence which limited access, but she did not recall the fence or who was responsible for its installation. She did not know why plaintiff and Rosenberg walked through the elevator as she was going to walk through a passageway to meet them.

Deposition of Simon Wynn

Simon Wynn (Wynn) testified that he works for UDC as Senior Counsel. Wynn maintains that ESDC is a subsidiary of UDC. He testified that UDC owns the building, and that it was previously owned by the USPS which remains as a tenant. Wynn was involved in the project at the premises, but was not involved with the elevators. Wynn testified that he did not have any involvement with negotiating the agreement for the maintenance and upkeep of the elevators because they were completed before he began working at UDC.

At his deposition, Wynn reviewed the agreement between UDC and the New York State Office of General Services (OGS). The agreement, which was in effect on the date of plaintiff's accident, provided for OGS to undertake the management services and facilities for all of the premises. He maintains that Midland, an elevator company, performed services at the premises, until it was assigned to Schindler Elevator (Schindler) on June 21, 2012. Wynn testified that while there were 12 freight elevators and 16 passengers elevators at the premises, he did not review any complaints regarding the elevators. He maintains that OGS would receive complaints about the elevators and that there was an OGS representative named Jerry Mikolaiczvk at the premises on a daily basis.

Wynn testified that UDC established the MSDC. He maintains that the MSDC had an on-site project associate, Bronson Fox, who Wynn testified was technically an employee of

UDC, and who was assigned to the premises on a daily basis.

Wynn testified that he first learned of plaintiff's accident when his office received a notice of claim. He reviewed log tickets from Schindler, but did not see any problems with the elevator prior to January 19, 2012. He did not recall seeing any records which indicated that the subject elevator's gates were not properly operating. He does not believe that plaintiff's accident was reported to anyone at MSDC, OGS, or UDC.

At his deposition, Wynn reviewed pictures of the site of the accident. He testified that the gate in the picture was installed by the USPS. He maintains that the gate appeared to create an obstacle to the loading dock, and that he did not know if it was possible to walk down the passageway behind the subject elevator.

Deposition of Jaroslaw Mikolajczyk

Jaroslaw Mikolajczyk (Mikolajczyk) testified that he works for OGS and was a building manager at the premises. Mikolajczyk was responsible for the maintenance of the building. Mikolajczyk testified that the contractors reported to him. He maintains that if there was a need for a repair of an elevator, the elevator company would be contacted by himself or the building engineer. Mikolajczyk testified that Schindler was the outside vendor that serviced the subject elevator.

Mikolajczyk maintains that the subject elevator had two sides, with one side facing the loading dock, and the other side facing a hallway where vehicles park. He maintains that there was never a time in which he had to push the outside doors of the subject elevator open. Mikolajczyk testified that some of the elevators received pneumatic pads and electronic safety edges which stopped the gates from closing. However, the subject elevator did not receive such

an upgrade.

Mikolajczyk testified that when the elevator's door came down, there would be a bell and a blinking light located on the ceiling of the elevator. He was not alerted of a time when the doors descended or when the light or bell were not operational. Mikolajczyk had never received complaints regarding the elevator not fully opening.

At his deposition, Mikolajczyk reviewed a contract between OGS and Midland for maintenance of the premises's elevators. Mikolajczyk reviewed photographs of the accident site, and maintains that the fence in the photo prevented the postal personnel from using the space to the east of the fence. He testified that there were no signs which stated that the elevators should not be used as a pass through.

Mikolajczyk testified that engineers who worked for GSA conducted daily tours, would send him emails each day, and would check each morning if the elevators were operational. He maintains that if there were problems with elevators, tenants were to contact OGS's office.

Mikolajczyk testified that although the doors could be made safer, door retraction devices were not considered by OGS for the subject elevator because the elevator was rarely utilized. He maintains that a fence separated the subject elevator from the deck on the opposite side, and that workers would have to reload their materials and travel to another area as they could not bring materials inside at that location.

Deposition of Daniel Hrivnak

Daniel Hrivnak (Hrivnak) testified that he is an owner of Omega Industries, an elevator consulting company. Hrivnak worked as an account executive for Midland, which was later sold to Schindler. Hrivnak worked for Schindler as senior sales representative from September of

2011 to July of 2014. Hrivnak was the sole contact for account management and sales activities at the premises and contracted with OGS. He maintains that Midland provided a field technician to visit the premises every morning and that he visited the building with mechanics monthly or bimonthly.

Hrivnak testified that he had meetings with OGS and UDC regarding modernizing the elevators. The discussions included installing a detector edge infrared light device which would retract when the light was broken. He maintains that a detector edge was to prevent mail carriers from damaging the freight doors because mail carts were being pushed into the doors. Hrivnak was unclear why the subject elevator did not receive any upgrades.

Hrivnak testified that the subject elevator's doors should have had a working siren and light when closing and that he did not recall being notified of any problems with the lights or siren prior to the accident. At his deposition, Hrivnak reviewed a maintenance ticket for the subject elevator for November and December of 2011, but the tickets did not indicate the specific type of maintenance performed. Hrivnak did not see any tickets which indicated problems with doors unexpectedly closing or the alarm or light not functioning.

Deposition of John Soutar

John Soutar (Soutar) testified that he was working for Schindler as a lead superintendent in 2011 and that he did not visit the premises. He maintains that Schindler employees Vinnie Fizzouglio and Rob Holder (Holder) were mechanics assigned to service Schindler's contract at the premises. Soutar testified that mechanics would be located at the building for four hours a day.

At his deposition, Soutar reviewed a maintenance ticket, but did not know what work was

performed in November and December of 2011 regarding the subject elevator. He also reviewed a document dated January 5, 2012, which indicated that work was performed on the subject elevator to test the fire recall system. He did not find any records which indicated that maintenance was being performed on the subject elevator concerning its doors closing, alarms, or lighting.

Deposition of Robert Holder

Robert Holder (Holder) testified that he works for Schindler and previously worked for Midland as a resident mechanic. He testified that he would assist at the premises when needed. Holder was not aware of any complaints prior to plaintiff's accident that the doors of any of the freight elevators had to be pushed to open.

Holder testified that when the doors closed, an alarm and red light would be activated. He maintains that the elevator doors had a padded bumper with a safety device which retracted if anything made contact. Holder was never made aware of an accident in which a gate struck a person without the presence of an audible alarm. Holder maintains that anytime a gate and door were to open, a visual alarm should be activated.

DISCUSSION

MSDC argues that summary judgment must be granted as to itself because it did not own, occupy, or control the premises in January of 2012. MSDC argues that its purpose, as a subsidiary of UDC, was to coordinate and oversee the construction. MSDC contends that its duties were limited to hiring contractors, securing funding, and coordinating work. MSDC argues that it was not a party to any contract for the maintenance of the building. MSDC further argues that plaintiffs do not oppose the part of the motion which seeks dismissal as against it.

MSDC submits an affidavit dated September 11, 2018, from Richard Dorado (Dorado), Senior Counsel to MSDC, which states that MSDC is a subsidiary of the UDC and was formed to coordinate and oversee the construction of a new train station at the premises. Dorado states that MSDC did not own any part of the premises on the date of plaintiff's accident, and that its sole purpose was to coordinate the efforts between multiple private and public entities.

Dorado also states that MSDC had no maintenance or management obligations for the premises, did not employ any person with maintenance or management responsibilities, and that none of the areas of MSDC's oversight for the construction of the train station involved general maintenance obligations.

"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." *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 (1985). The burden then shifts to the motion's opponent to "present evidentiary facts in admissible form sufficient to raise a genuine, triable issue of fact." *Mazurek v Metro. Museum of Art*, 27 AD3d 227, 228 (1st Dept 2006).

As MSDC submits Dorado's affidavit which states that it was not an owner of the premises and that it did not have any obligations or responsibilities for maintenance of the premises, the burden shifts to plaintiffs to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact. In opposition, plaintiffs fail to specifically oppose MSDC's arguments, do not demonstrate that MSDC had notice of any defects with the elevator, and fail to raise an issue of fact as to this defendant. Therefore, because plaintiffs fail to meet their burden, the part of the motion for summary judgment seeking to dismiss the claims

against MSDC must be granted.

UDC d/b/a ESDC contends that plaintiffs' complaint must also be dismissed against it due to its out of possession ownership of the premises and because it lacked actual or constructive notice of defects of the subject elevator. UDC maintains that it had no role in elevator maintenance at the premises and was never notified of any incidents involving the subject elevator. UDC argues that neither Midland nor Schindler were notified of any issues regarding the lights, sirens, or door operation of the elevator before the incident, and that the USPS never complained about the elevator.

UDC argues that it did not have any employees at the premises and that the entire management of the building was contracted to the State of New York through the OGS. UDC maintains that OGS was responsible for managing the building's custodial work, building services, security, and utility bill payment. UDC contends that OGS, which is independent from UDC, contracted out twelve contractor and vendors for building based services, including but not limited to engineers, security, and elevator mechanics.

In opposition, Schindler and Midland maintain that OGS created the condition which led to the improper use of the freight elevator due to the erection of a fence which closed off the proper passageway. Schindler and Midland contend that OGS's failure to post signs or a security guard to warn against the use of a freight elevator as a passageway, its failure to secure doors in an open position, and its failure to assign a qualified operator, are steps which could have prevented plaintiff's injury.

Schindler and Midland argue that while UDC emphasizes that it is an out of possession owner and that OGS, was responsible for the day to day operation of the building, because OGS

was performing its function in the capacity of UDC's managing agent pursuant to an agreement with UDC, any negligent act or omission on OGS's part is chargeable to UDC.

Schindler and Midland submit an expert affidavit from Jon B. Halpern (Halpern), a licensed professional engineer in the field of vertical transportation. Halpern states that he reviewed many documents including plaintiff's verified bill of particulars, Schindler's maintenance and repair records, and the testimony of Bortugno, Holder, and Mikolajczyk.

Halpern states that UDC, through OGS, installed a chain link fence across the premises' north loading dock in the western annex garage and thereby separated the front dockside entrance of the subject elevator from the entrance to the passageway which ran behind the loading dock. Halpern states that by installing the fence, it was foreseeable that workers who had material on a dolly on the loading dock side of the subject elevator and who wished to gain access to the passageway behind the freight elevator would use the elevator as a substitute pass-through.

Halpern states that the proper way to isolate the two areas would be to disable the rear entrances of the elevators so that neither elevator could be used as a passageway. He states that if it became necessary to use the elevator as an alternative entrance or pass-through to the passageway, UDC should have temporarily shut down the subject elevator with its front and rear doors left open.

Halpern also contends that in January of 2011, UDC, through OGS, purchased an upgrade to elevators F109 through F112 to add infrared door protection devices to the elevator gates. Halpern maintains that UDC's decision to exclude the subject elevator from the upgrade rendered the elevator less safe. He maintains that the installation of a non-contact door protection device would likely have prevented the gate from contacting plaintiff.

Plaintiffs argue in opposition that UDC hired OGS to be the building manager but remained responsible for providing all building services. They contend that UDC has not produced records for the elevators for the date of the accident or for a period of nine days after it occurred. They maintain that while a record was produced for a day before the accident, there appears to be room on the document for additional entries, but the original was never produced.

In support of plaintiffs' opposition, plaintiffs submit an affidavit from Patrick A. Carrajat (Carrajat), an elevator expert. Carrajat states that he reviewed the verified bill of particulars, the deposition transcripts of plaintiff, Woods, and Rosenberg, records of repair and maintenance of the subject elevator, witness statements and observations. He concludes that the elevator was not equipped with a properly operating flashing strobe light and that the existence of the light would have prevented the accident.

Carrajat states that the accepted elevator safety practice is that the closing of a freight elevator must be preceded by an audible alarm to warn a person in a doorway that the gates are about to close. He maintains that there is no evidence that the alarm was tested for functionality or decibel level and that none of the witnesses heard or saw an audible alarm prior to the gate shutting. Carrajat concludes that both the failure of the audible and visual alarm was due to negligence, carelessness, and recklessness of defendants. He states that after reading the elevator maintenance contract between Midland, Schindler and OGS, Schindler and Midland were in exclusive control of the subject elevator.

"Generally, a landowner owes a duty of care to maintain his or her property in a reasonably safe condition. That duty is premised on the landowner's exercise of control over the property, as the person in possession and control of property is best able to identify and prevent

any harm to others." *Gronski v County of Monroe*, 18 NY3d 374, 379 (2011) (citations and quotations omitted).

Furthermore, "a landlord who has surrendered possession and control over premises leased premises [sic] to a tenant will not be liable for the tenant's negligent failure to maintain the premises in a reasonably safe condition." *Mehl v Fleisher*, 234 AD2d 274, 274 (2d Dept 1996). However, an out of possession landlord may be liable for the condition of a leased premises if it is "contractually obligated to make repairs or maintain the premises or . . . has a contractual right to reenter, inspect and make needed repairs, and liability is based on a significant structural or design defect that is contrary to a specific statutory provision." *DeJesus v Tavares*, 140 AD3d 433, 433 (1st Dept 2016) (citations omitted); *see also Bing v 296 Third Ave. Group, L.P.*, 94 AD3d 413, 414 (1st Dept 2012) (holding "[a]lthough landlord retained the right of reentry pursuant to the lease, plaintiff identified the defective condition as snow or ice on the ramp . . . [h]owever, snow or ice is not a significant structural or design defect").

Pursuant to the Interim Lease and Development Agreement between the USPS and the UDC d/b/a ESDC dated March 30, 2007, and effective May 1, 2007, ESDC was to take over the operation, maintenance, and repair of the premises and was responsible for maintaining the building's systems including vertical transportation.

ESDC also entered into a contract with OGS for the premises entitled "AGREEMENT FOR THE PROVISION OF CERTAIN SERVICES TO THE EMPIRE STATE DEVELOPMENT CORPORATION FOR JAMES A. FARLEY POST OFFICE BUILDING AND ANNEX." This agreement states that ESDC, as the fee owner of the premises, was to remain the primary contact with the USPS for the resolution of operational matters as well as

policy matters. The agreement provides in part that OGS was to ensure that the day to day operations of the building are conducted in a cooperative and coordinated fashion with ESDC, as well as the USPS.

The agreement also states that OGS was to provide minor and emergency repairs, that it should maintain all building services required to allow for the building to operate at a level consistent with current operations, that all spaces are to be cleaned in a manner approved by the ESDC, that ESDC retains the right to reject and bar from the facility any employee hired by the cleaning contractor, that approval from ESDC is required for emergency repairs, that ESDC must ensure that OGS has adequate on-site office facilities, that pest control operations must be approved by ESDC, that ESDC has the right to reject any employee hired by the contractor from facility, and that staffing of a building management position shall be reviewed monthly and updated by mutual written agreement of the parties.

The contractual language discussed above suggests that the UDC d/b/a ESDC retained some control and oversight of the activities at the subject premises. The Appellate Division, First Department, has held that "[w]here an owner is not completely out of possession, it may be held liable as long as it had adequate notice of and a reasonable opportunity to repair the dangerous condition." *Federal Ins. Co. v Evans Constr. of N.Y. Corp.*, 257 AD2d 508, 509 (1st Dept 1999).

With specific regards to maintenance of elevators and notice, the Appellate Division, First Department, has held that:

"[a] property owner has a nondelegable duty to passengers to maintain its building's elevator in a reasonably safe manner and 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. An 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."

Isaac v 1515 Macombs, LLC, 84 AD3d 457, 458 (1st Dept 2011); *see also Dzikowska v Related Cos., LP*, 157 AD3d 447, 447 (1st Dept 2018) (holding "[t]he record contained ample evidence from which a jury could find that the owner had actual notice of a recurring, misleveling problem with the elevator, based on prior similar incidents shown in the building's logbook and based on service records").

Here, plaintiffs fail to demonstrate that UDC d/b/a ESDC or MSDC had notice of any defect regarding the subject elevator. Plaintiffs do not discuss testimony which indicates that the moving defendants had actual notice of any problems with the alarm, lighting, or doors. Plaintiffs also fail to demonstrate that UDC d/b/a ESDC or MSDC had constructive notice of any defects with the elevator or that the elevator had a structural or design defect which violated a specific statutory provision.

While plaintiffs also contend that the existence of a fence required plaintiff to utilize the elevator as a passageway and was a factor in causing the injury, plaintiff's injury was directly caused by the function of the elevator doors, and not the existence of a fence. Therefore, as plaintiffs fail to meet their burden and do not demonstrate that an issue of fact exists or that the moving defendants had notice of a defect with the elevator, UDC d/b/a ESDC and MSDC's motion for summary judgment must be granted.

Plaintiffs also contend that the doctrine of *res ipsa loquitor* applies to the subject accident

because the occurrence of the elevator door descending without a warning would not have occurred in the absence of negligence.

The Appellate Division, First Department, has held:

“[w]hile the doctrine of *res ipsa loquitur* may be invoked against the defendant in an action involving a malfunctioning elevator, it may only be applied if it can be established that: (1) the occurrence . . . would not ordinarily occur in the absence of negligence; (2) . . . it was within the exclusive control of the defendant(s); and (3) nothing plaintiff did in any way contributed to the happening of the event.”

Hodges v Royal Realty Corp., 42 AD3d 350, 350 (1st Dept 2007) (citations omitted).

Here, Midland and Schindler were servicing the elevators at the premises and had control regarding elevator maintenance. UDC submits a bid for Midland’s services for the premises which states in paragraph 4.2 that it was for complete elevator maintenance services. Wynn testified that Midland performed services at the premises, which were later assigned to Schindler. Hrivnak testified that Midland provided a field technician to visit the premises every morning and that he visited the building with mechanics monthly or bimonthly. Soutar testified that he was working for Schindler as a lead superintendent in 2011 and that there were two Schindler employees who were assigned to service Schindler’s contract at the premises.

Plaintiffs have not submitted any evidence that UDC d/b/a ESDC had any notice that a dangerous condition existed regarding the operation of the elevators. Based upon the testimony from the various witnesses, plaintiffs fail to demonstrate that UDC d/b/a ESDC exercised such a degree of control over the building's elevators to allow for the application of *res ipsa loquitur* to establish its liability for this accident.

Plaintiffs also raise an argument that defendants engaged in spoliation regarding maintenance records. When seeking spoliation sanctions, the moving party must establish that

the party with control over the evidence had an obligation to preserve it at the time it was destroyed, that the records were destroyed with a "culpable state of mind," which may include ordinary negligence, and that the destroyed evidence was relevant to the moving party's claim or defense. *See VOOM HD Holdings LLC v EchoStar Satellite, L.L.C.*, 93 AD3d 33, 45 (1st Dept 2012).

Here, plaintiffs fail to meet their burden to establish that any evidence was destroyed. Counsel for the moving defendants submit an affirmation in reply which states that the records produced were Schindler's elevator logs and work tickets, that such records are not UDC's, and that UDC provided only what it had in its possession as provided to it by either OGS and/or Midland and Schindler.

Therefore, as plaintiffs fail to demonstrate that UDC had the required control over the evidence for spoliation to be applicable, such argument is without merit.

Finally, although UDC d/b/a ESDC's verified answer to the second amended complaint includes a cross claim as against defendants Schindler and Midland for breach of contract for failure to purchase liability insurance which also alleges that they should cover defense costs and attorneys fees, the moving defendants fail to address such cross claim.

CONCLUSION and ORDER

Accordingly, it is

ORDERED that New York State Urban Development Corporation d/b/a Empire State Development Corporation and Moynihan Station Development Corporation motion for summary judgment is granted; and it is further

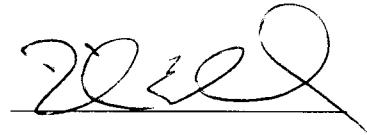
ORDERED that New York State Urban Development Corporation d/b/a Empire State

Development Corporation and Moynihan Station Development Corporation shall serve a copy of this order with notice of entry upon all parties within 20 days of entry; and it is further

ORDERED that the remainder of the action shall continue.

Dated: 11-4-2019

ENTER:



HON. DAVID B. COHEN
J.S.C.