SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. DAVID B. COHEN** **PART 58**

Justice

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JANELLE BURGESS,

Plaintiff,

- v -

LEC CONSULTING AND INSPECTION GROUP INC, FIVE STAR ELEVATOR TESTING INC., CHAMPION ELEVATOR CORPORATION, and CHAMPION ELEVATOR CONSTRUCTION CORP.,

Defendants.

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INDEX NO. 150411/2020

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 107, 108, 109, 110, 111, 112, 113, 114, 115

were read on this motion to/for REARGUMENT/RECONSIDERATION.

In this personal injury action, defendants Champion Elevator Corporation and Champion Elevator Construction Corp. (collectively, Champion) move, pursuant to CPLR 2221(d) for leave to reargue its motion for summary judgment (Seq. 003).

I. Factual and Procedural Background

As set forth in this Court's March 29, 2024 order (NYSCEF Doc No. 105), plaintiff commenced this action against defendants in January 2020 after she was allegedly struck by an elevator door in 2018 at her place of employment. The elevator was maintained by Champion and the door struck plaintiff as she entered the elevator. After discovery was completed, Champion moved for summary dismissal of the complaint as against it (Doc No. 83), arguing, among other

things, that it lacked sufficient notice of any allegedly hazardous conditions regarding the elevator (Doc No. 82).

By decision and order entered April 2, 2024, the motion was denied as Champion failed to make a prima facie showing that it lacked actual or constructive notice of any alleged defects in the elevator because it failed to provide maintenance or inspection records (Doc No. 105). It was also determined that, even if Champion made such showing, plaintiff demonstrated triable questions of fact about notice based on prior elevator violations. Champion now moves for leave to reargue the motion for summary dismissal (Doc No. 107), which plaintiff opposes (Doc No. 112).

II. Legal Analysis and Conclusions

Champion contends that it is entitled to leave to reargue because this Court misapprehended the law when it determined that Champion failed to demonstrate a lack of notice by failing to include evidence of maintenance and inspection records, and by concluding that the violations created triable questions of fact. Plaintiff argues in opposition that this Court neither misapprehended the law nor overlooked any facts in denying the motion for summary dismissal.

"A motion for leave to reargue pursuant to CPLR 2221 is addressed to the sound discretion of the court and may be granted only upon a showing that the court overlooked or misapprehended the facts or the law or for some reason mistakenly arrived at its earlier decision" (*William P. Pahl Equip. Corp. v Kassis*, 182 AD2d 22, 27 [1st Dept 1992] [internal quotation marks and citations omitted], *lv dismissed and denied* 80 NY2d 1005 [1992]; *see Foley v Roche*, 68 AD2d 558, 567-568 [1st Dept 1979]).

Champion fails to demonstrate that this Court misapprehended the law in determining that it failed to make a prima facie showing that it lacked notice. "A defendant is not entitled to summary judgment on notice grounds where there is a failure to present *sufficient evidence* regarding its maintenance procedures in respect of an allegedly malfunctioning elevator" (*Stewart v World El. Co., Inc.*, 84 AD3d 491, 495 [1st Dept 2011] [citations omitted] [emphasis added]). Sufficient evidence may be provided through maintenance and inspection records (*see e.g. Gjonaj v Otis El. Co.*, 38 AD3d 384, 384-385 [1st Dept 2007] [finding defendant made prima facie showing regarding lack of notice because records indicated no issues with elevator serviced on monthly basis]), or witness testimony from an individual who performed the actual maintenance (*see e.g. Santoni v Bertelsmann Prop., Inc.*, 21 AD3d 712, 713-714 [1st Dept 2005] [finding prima facie showing made in part because elevator employee testified that he personally inspected elevator weekly and had no issues]).

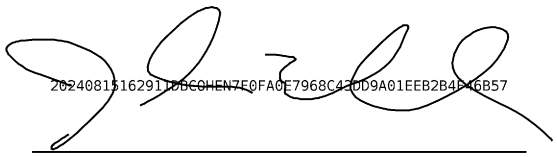
Champion provided neither records nor witness testimony. During his deposition, one of Champion's branch managers described the general process by which Champion maintained records regarding maintenance and inspections, but he never discussed any records specific to the elevator at issue (*see Stewart*, 84 AD3d at 495 [concluding reference of "work log" at deposition but absence of log in record was insufficient evidence]; *cf. Gjonaj*, 38 AD3d at 385 [submission of records in support of motion was sufficient evidence]).

Therefore, Champion is not entitled to leave to reargue its motion for summary judgment dismissing the complaint.

The parties' remaining contentions are either without merit or need not be addressed given the findings above.

Accordingly, it is hereby:

ORDERED that the motion for leave to reargue by defendants Champion Elevator Corporation and Champion Construction Corporation is denied.



8/15/2024
DATE

DAVID B. COHEN, J.S.C.

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