

Sayles v Urban Am. Mgt. Corp.

2025 NY Slip Op 32350(U)

July 3, 2025

Supreme Court, New York County

Docket Number: Index No. 155149/2020

Judge: Leslie A. Stroth

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This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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GORDON SAYLES,

Plaintiff,

- v -

URBAN AMERICAN MANAGEMENT CORP., PUTNAM
HOLDING COMPANY, LLC, BSREP UA 3333 BROADWAY
LLC, SCHINDLER ELEVATOR CORPORATION,
CENTENNIAL ELEVATOR INDUSTRIES INC., ESSENTIAL
ELEVATOR, LLC, NEW YORK CITY EDUCATIONAL
CONSTRUCTION FUND, RIVERSIDE PARK COMMUNITY
(STAGE I), INC., RIVERSIDE PARK COMMUNITY II,
LLC, RIVERSIDE PARK COMMUNITY, LLC, UAB
PROPERTY MANAGEMENT, LLC, CENTENNIAL
ELEVATOR INDUSTRIES INC., CENTENNIAL ELEVATORS
IND. CORP.

Defendant.

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**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 188, 190, 191, 192, 193, 194, 201

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 003) 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 189, 195, 196, 197, 198, 199, 200, 203, 204, 205, 206, 207

were read on this motion to/for JUDGMENT - SUMMARY

Procedural Background and Alleged Facts

This personal injury action arises from an incident that occurred on or about May 11, 2018, when Plaintiff Gordon Sayles was allegedly injured while riding in an elevator located at 3333 Broadway, Tower C, New York, NY. ("Building") Plaintiff claims that the elevator dropped and bounced, causing him to sustain serious injuries.

Plaintiff commenced this action against the various defendants on July 8, 2020, including BSREP UA 3333 Broadway LLC ("BSREP"), UAB Property Management LLC ("UAB"), and

Schindler Elevator Corporation ("Schindler"), among others, asserting causes of action based on negligence and premises liability. Upon the conclusion of discovery, Defendants UAB, BSREP, Urban American Management Corp., Putnam Holding Company, LLC, 3333 Broadway LLC, Riverside Park Community (Stage I), Inc., Riverside Park Community II, LLC, Riverside Park Community, LLC moved in Motion Sequence 002 for summary judgment on BSREP and UAB's cross-claims against co-defendant Schindler Elevator Corporation ("Schindler") for contractual and common law indemnification and for summary judgment dismissing any claims against Defendants Urban American Management Corp., Putnam Holding Company, LLC, 3333 Broadway LLC, Riverside Park Community (Stage I), Inc., Riverside Park Community II, LLC, Riverside Park Community, LLC. Plaintiff Gordon Sayles moves in Motion Sequence 003 for partial summary judgment on liability against Defendants BSREP, UAB and Schindler as well as dismissal of the comparative fault affirmative defense raised by Defendants.

According to Plaintiff's testimony in his Examination Before Trial ("EBT"), dated September 7, 2022, on May 11, 2018, Plaintiff was working as an inspector for the New York City Department of Housing Preservation and Development and had visited the Building to conduct an inspection. (NY St Cts Elec Filing [NYSCEF] Doc No. 167 at 15). After an unsuccessful attempt to inspect an apartment on the 15th floor, Plaintiff entered the elevator to return to the lobby. (Id. at 20). Upon stopping on the 14th floor, two additional passengers entered. (Id. at 35). Immediately thereafter, the elevator dropped abruptly to the 10th floor, bouncing before coming to a stop. (Id. at 36-37).

Plaintiff testified that he grabbed the security bar to maintain balance and exited the elevator once the doors opened on the 10th floor. (Id. at 39-40). He subsequently descended the stairs to the lobby and informed the Building's superintendent that the elevator should be shut

down due to safety concerns. (Id. at 43). The superintendent acknowledged that the elevator had been experiencing recurring problems and stated he would have it taken out of service for repair. (Id. at 50).

Following the incident, Plaintiff completed an incident report for his employer. (NYSCEF Doc No. 173). As a result of the event, Plaintiff alleges he sustained serious injuries requiring cervical and lumbar spinal fusion surgeries, as well as arthroscopic surgery on his left shoulder.

History of Elevator Maintenance Issues and Complaints

It is undisputed that at the time of the incident, the Building was managed by Urban American Management, through its affiliated entity UAB. Joshua Eisenberg, part-owner of UAB, testified that the Building, known as Tower C within a five-tower complex, was serviced by Schindler Elevator Corporation. Eisenberg stated at his deposition dated November 4, 2022, that Schindler's performance had been unsatisfactory, citing multiple complaints by building staff and breaches of the service contract. (NYSCEF Doc No. 157 at 63-71). Correspondence from March, April, and May 2018, including letters and maintenance logs, detailed repeated instances of the subject elevator "hopping floors," misleveling, and Schindler failing to respond to service calls. (Exhibits H, L, M.)

The log sheet entry dated April 20, 2018 documented complaints of the elevator "hopping floors." (NYSCEF Doc No. 181 at 4). Follow-up entries on April 25 and 26 confirmed the condition persisted, and no effective repair was performed. (Id. at 5). These problems were reported again on May 7, 2018, four days prior to the Plaintiff's accident. (Id. at 7). There is no record that any corrective action was taken before the incident.

Dennis Walters, a long-time maintenance mechanic for Schindler, and Kenneth Barry, an associate superintendent, confirmed at their respective depositions that the Building's elevators were original to their 1975 installation and had long-standing performance issues. Walters testified that the elevators in this building had more operational problems than in any other building he had serviced during his two decades in the field.

Service logs related to the subject elevators and deposition testimony revealed a pattern of malfunctions, including frequent outages, cars stuck between floors, misleveling, and bouncing. On multiple occasions, Schindler technicians were unable to identify or resolve the issues, and in some instances, no repair work was documented following serious complaints. . (NYSCEF Doc No. 168).

Notably, the Facility Log and Service History Report ("FLSHR") confirms that on May 11, 2018, the date of Plaintiff's accident, complaints of the elevator "jumping" and "bouncing" were recorded. These complaints were consistent with prior complaint reports dating back to January 2018. (NYSCEF Doc No. 168).

Legal Standard

Summary judgment is appropriate when a movant establishes, through admissible evidence, that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law (see *Alvarez v Prospect Hosp.*, 68 NY2d 320 [1986]). Once the movant meets this burden, the opposing party must demonstrate, through competent and admissible evidence, the existence of a triable issue of fact (see *Ferber v Sterndent Corp.*, 51 NY2d 782 [1980]). The non-movant is entitled to all favorable inferences that may be drawn from the evidence (see *Dauman Displays, Inc. v Masturzo*, 168 AD2d 204 [1st Dept 1990]).

Discussion

Defendants' Motion for Summary Judgment (Motion Sequence 002)

(A) Contractual and Common Law Indemnification

The motion for summary judgment by BSREP and UAB against Schindler for indemnification is denied. The parties' contract sets forth Schindler's maintenance obligations, including furnishing all labor and materials necessary for elevator inspection and maintenance (NYSCEF Doc No. 155 at 7). The contract language, in pertinent part reads as follows:

GENERAL: The services to be performed by the Contractor under this Specification shall consist of furnishing all material, labor, tools, and equipment necessary to provide inspection and Pre-Maintenance of the elevators as hereinafter specified. (NYSCEF Doc No. 155 at 7)

However, the contract also excludes responsibility for damage due to "malicious mischief, abuse, accident, obsolescence, or vandalism not caused by the contractor" (NYSCEF Doc No. 155 at 12).

Schindler submitted evidence that it informed BSREP and UAB that the elevator was obsolete and required modernization (NYSCEF Doc Nos. 191, 192). This includes a memo by Joseph Gatto clearly stating that replacement parts were obsolete and urging the owner to "prepare to modernize" the equipment. (NYSCEF Doc No. 191 at 1). BSREP did not produce a documented response to these warnings. Accordingly, factual disputes remain regarding the extent of Schindler's duty to repair and whether BSREP was on notice and failed to act, precluding summary judgment on indemnification.

(B) Dismissal of Claims Against Additional Co-Defendants

The branch of the motion seeking dismissal of the claims against the additional co-defendants is also denied. Moving defendants assert that these entities had no involvement in the elevator maintenance or the underlying incident. However, they provide no evidentiary support

or corporate documentation demonstrating a lack of ownership, control, or operational involvement. In the absence of such evidence, the Court cannot find as a matter of law that these parties bear no liability.

Plaintiff's Motion for Partial Summary Judgment

Plaintiff moves for summary judgment on liability against all remaining defendants. The Court grants this motion.

An elevator maintenance company may be held liable where it fails to correct known conditions or to exercise reasonable care in discovering and correcting hazardous conditions (*McLaughlin v Thyssen Dover El. Co.*, 117 AD3d 511 [1st Dept 2014]). Likewise, a property owner has a nondelegable duty to maintain elevators in a reasonably safe condition (*Isaac v 1515 Macombs, LLC*, 84 AD3d 457 [1st Dept 2011]).

Here, Schindler was contractually responsible for elevator maintenance. (NYSCEF Doc No. 166). The record contains documentation that it was aware of the elevator's obsolescence and advised the owner to modernize. Moreover, the owner-defendants were on constructive and/or actual notice of the dangerous condition and failed to act.

Plaintiff has also submitted medical documentation (NYSCEF Doc Nos. 205, 206) linking his injuries to the elevator incident. This is sufficient to establish causation, and Defendants have not submitted admissible evidence disputing causation.

Accordingly, Plaintiff has established all elements necessary for a *prima facie* showing of liability: (1) Defendants owed a duty of care, (2) they breached that duty, (3) the breach was the proximate cause of Plaintiff's injuries, and (4) Plaintiff was in fact injured.

The Court also dismisses the affirmative defense of comparative fault. Plaintiff was a passenger in the elevator and, as a matter of law, cannot be found comparatively negligent under

these circumstances (*Diamond v Comins*, 194 AD3d 784 [2d Dept 2021]; *O'Leary v S & A Elec. Contr. Corp.*, 149 AD3d 500 [1st Dept 2017]).

The Court has considered the parties' remaining contentions and finds them unavailing.

Accordingly, it is hereby:

ORDERED that Motion Sequence 002 by Defendants BSREP and UAB is denied in its entirety; and it is further

ORDERED that Motion Sequence 003 by Plaintiff Gordon Sayles is granted, and summary judgment is entered in Plaintiff's favor as to liability against Defendants BSREP, UAB and Schindler, and the affirmative defense of comparative fault is dismissed; and it is further

ORDERED that the issue of damages shall proceed to trial.

The foregoing constitutes the Decision and Order of the Court.

7/3/2025
DATE

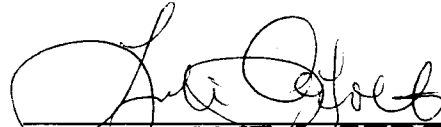
CHECK ONE: CASE DISPOSED DENIED

APPLICATION: GRANTED NON-FINAL DISPOSITION

CHECK IF APPROPRIATE: SETTLE ORDER GRANTED IN PART OTHER

INCLUDES TRANSFER/REASSIGN SUBMIT ORDER REFERENCE

FIDUCIARY APPOINTMENT


HON. LESLIE A. SIROTH
J.S.C.