

Upchurch v Marriott Intl., Inc.

2025 NY Slip Op 32722(U)

July 28, 2025

Supreme Court, New York County

Docket Number: Index No. 150505/2020

Judge: Margaret A. Chan

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK: PART 49M

-----X
 MICHAEL UPCHURCH,

Plaintiff,

- v -

MARRIOTT INTERNATIONAL, INC., HOST HOTELS &
 RESORTS, INC. D/B/A NEW YORK MARRIOTT
 MARQUIS, MACKENZIE AUTOMATIC DOORS
 INC., MACKENZIE GROUP INC. D/B/A MACKENZIE
 AUTOMATIC DOOR COMPANY

Defendant.

INDEX NO. 150505/2020

MOTION DATE 06/03/2024,
06/10/2024

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
 MOTION**

-----X
 HON. MARGARET A. CHAN:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 68, 70, 72, 75, 77, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 98, 99, 100, 101

were read on this motion to/for

JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 002) 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 71, 73, 74, 76, 78, 89, 90, 91, 92, 93, 94, 95, 96, 97, 102, 103, 104

were read on this motion to/for

JUDGMENT - SUMMARY

In this personal injury action, plaintiff Michael Upchurch alleges he was permanently injured when a revolving door stopped short in his face at the Marriott Marquis Hotel in New York City (the Hotel). Plaintiff sues, among others, defendants Mackenzie Automatic Doors Inc., Mackenzie Group Inc. d/b/a Mackenzie Automatic Door Company (together Mackenzie), and Marriott International, Inc. (Marriott), for negligence. In MS 001, Marriott moves for summary judgment on plaintiff's claims and on its cross-claim for indemnification against Mackenzie. In MS 002, Mackenzie moves for summary judgment on plaintiff's claims and Marriott's cross-claims. Plaintiff opposes both motions, and each defendant opposes the other regarding Marriott's cross-claims. For the reasons below, both motions are denied in their entirety.

FACTS

Plaintiff was injured on March 16, 2018, while exiting an automatic revolving door into the Marriott Marquis Hotel at 1535 Broadway, New York, NY, 10036

(NYSCEF # 30, Marriott 19a, ¶ 1). That evening, plaintiff and his wife, returning from dinner, entered the 45th and Driveway automated revolving door (*id.* ¶ 6; Michell tr at 71:16-72:14). The door suddenly stopped and plaintiff walked directly into the door, striking his left temple and breaking his glasses (Video at 0:20-0:21; Pltf's tr at 29:22-23). Plaintiff suffered a permanent brain injury (NYSCEF # 54, Bill of Particulars, ¶ 15).

The Automatic Revolving Doors

The Hotel had four automatic revolving doors, each at a different entrance (NYSCEF # 41, Michell tr, at 19:23-25). While plaintiff could not recall which specific door he used (NYSCEF # 40, Pltf's tr at 27:2-28:11), the video indicates that plaintiff was in the 45th Street Driveway door (*see* NYSCEF # 43, Video, at watermark ["Rev Doors, 45 DT," referring to the drive-through entrance on 45th Street]; *see also* Michell tr at 71:16-72:14 [identifying the door as 45 and Driveway]).

Based on the video of the incident, the subject automatic revolving door consists of a central cylinder or drum with four door panels that create four quadrants (*see* Video). Marriott's director of engineering, William Michell, testified that the door is equipped with various occupancy and motion sensors on the outside that detect movement as users approach (Michell tr at 22:22-23:7). Michell explained that when the sensors detect a person approaching, they will start to rotate automatically to allow the person to walk through the door (*id.*). According to Michell, the speed of the door is supposed to automatically adjust based on the speed of the occupant (*id.* at 28:18-29:13). And the doors had other safety signs and equipment as well (Marriott 19a ¶¶ 16-18).

However, Mackenzie's assistant vice-president of automatic doors, Donald Mattson testified that there was "no sensor to keep the door functioning and going around on the inside of the drum" (NYSCEF # 42, Mattson tr at 28:15-19). Mattson testified that while the automatic revolving door is capable of spinning continuously, that setting was not active at the time of the incident (*id.* at 36:4-12). Instead, certain settings were active that would make the door stop automatically. For example, the door was programmed to only make a single 360-degree rotation after its activation, then come to a stop (*see id.* at 35:19-21). According to Mattson, Mackenzie "[o]riginally very possibly" programmed this setting into the door (*id.* at 35:25-36:3). Mattson added that the door is set to automatically stop if an occupant gets too close to the back of a quadrant to avoid hitting or crushing them (*id.* at 30:16-23, 32:24-33:9).

Inspection Responsibilities

As relevant here, Marriott hired Mackenzie to inspect, adjust, maintain, and repair the automatic revolving doors via a service contract (Marriott 19a ¶ 37; *see*

also NYSCEF # 65, Mackenzie 19a, ¶ 5; NYSCEF # 37, Service Agreement). Mackenzie agreed to indemnify Marriott for “personal injuries or death of any other person arising out of [Mackenzie’s] Services,” except “to the extent of Marriott’s negligence . . .” (Service Agreement § 6). Mackenzie also kept track of its work for Marriott through work orders and invoices sent to Marriott (NYSCEF # 39, Assorted Mackenzie Work Orders).

The details of the parties’ various inspection duties were laid out in a letter and “planned maintenance program” from Mackenzie to Marriott (*see* NYSCEF # 38, Letter & Maintenance Program). Per the letter, Mackenzie agreed to four yearly inspections of the door, two more than required (*id.* at *2). Per the program, Marriott agreed to perform daily inspections to determine if the doors were malfunctioning or unsafe, and, if so, Marriott would turn off the doors and immediately contact Mackenzie (*id.* at *3). Michell and his department were responsible for reporting to Mackenzie (Michell tr at 60:7-23).

Marriott asserts it complied with its daily inspection responsibilities. Michell testified that he has personally inspected the doors on several occasions (*id.* at 31:4-33:4). He added that the majority of inspections are conducted by security personnel rather than engineers (*id.*). The security staff are supposed to visually inspect the doors, walk through them, and test the various sensors and switches (*id.*). However, Michell does not make records of those inspections if they find nothing (*id.* at 32:8-16), and there is no evidence of any records created by security personnel.

Timeline Leading to the Incident: Pastor Incident

On December 29, 2017—three months before plaintiff’s injury—another guest at the Hotel named Susan Pastor was injured when the same automatic revolving door stopped suddenly and hit her in the face (the Pastor Incident) (*see* NYSCEF # 86, Pastor Incident Report, at 2). Ms. Pastor did not report the incident until two days later after she began to experience more pain (*id.*). According to an incident report created on December 31, 2017, Ms. Pastor was diagnosed with “a fractured nose and irritation to her left eye” (Pastor Incident Report or the Report) (*id.*).

Based on the information in the Pastor Incident Report, the Report was written and reviewed by two Marriott staff members in the “Loss Prevention Department” (*id.* at 3). The Report was also distributed only to “Eric Mazzella,” “Ralph Limone,” and “Jerome W.” (*id.*). Mazzella is the head of security while Limone and Jerome W. are the assistant director of “Loss Prevention” and the manager of Loss Prevention, respectively (Michell tr at 61:6-9, 65:16-19, 66:8-10). The Report was printed by “Hugo Vergara,” whom Michell testified was a “security specialist” (*id.* at 65:20-21; Pastor Incident Report at 3).

Michell does not recall personally seeing the Pastor Incident Report and has never heard of Ms. Pastor (Michell tr at 90:4-6, 90:17-21, 94:15-18). Michell pointed

out that “the distribution of the report . . . was limited to the loss prevention management staff” (*id.* at 94:3-8). Mattson too had not heard of Ms. Pastor prior to this lawsuit (Mattson tr at 63:16-64:6).¹

There is no Mackenzie work order from on or around the date of Ms. Pastor’s Incident, nor is there any indication Marriott informed Mackenzie of the incident around that time. However, the work orders indicate Mackenzie serviced the door at least once and potentially twice² between the Pastor Incident and March 16, 2018, the date of plaintiff’s injury (*see* Assorted Mackenzie Work Orders at *2-4, *12-16).

First, on January 8, 2018, a little over a week after the Pastor Incident, Mackenzie replaced blown fuses in the 45th and 46th street revolving doors and found no errors (*id.* at *2-4). The reports do not specify if the 45th Street door referenced is the same 45th Street door referenced here, as Michell’s testimony indicates there are two revolving doors on 45th Street (Michell tr at 71:16-72:14).

Second, on February 8, 2018, Mackenzie performed one of its four regularly scheduled maintenance inspections as discussed in the Service Agreement (Assorted Mackenzie Work Orders at *12-16). In both cases, Mackenzie did not note any sudden stop issues.

Plaintiff’s Incident

Video evidence shows that mere seconds before plaintiff and his wife returned to the hotel from dinner and entered the automatic door’s injury, a man in a black hoodie entered the automatic revolving door from the street as a small group was exiting from the revolving door onto the street (Video at 0:00-0:03). However, the door stopped rotating just before he could enter, and so he was forced to push the door to move it (*id.* at 0:03-0:08). After viewing the video, Mattson testified that the sensors did not see the man in the black hoodie because “he blocked himself from the people by coming behind them” (Mattson tr at 24:18-25). It stopped rotating, Mattson claimed, because it had completed its programmed 360-degree rotation for the guests leaving (*id.* at 27:10-28:19, 35:19-21).

As the man in the black hoodie exited the automatic revolving door into the hotel, a group of five people approached the door from the same side (Video at 0:09-0:17). All five people entered the same quadrant (*id.* at 0:19). However, the last

¹ However, during his deposition, Mattson was provided a letter that allegedly showed Mackenzie was informed about the Pastor Incident on April 18, 2018, after the events giving rise to this action (*see id.* at 64:7-65:5). That letter was not filed here.

² While Marriott references a third work order on January 15, 2018, the work orders suggest that incident addressed the other 45th Street door (*see* Michell tr at 71:16-72:14 [finding that the relevant door was the 45th and Driveway door, not the 45th and Alley door]; Assorted Mackenzie Work Orders at *5 [work performed on “45 and Alley” revolving door]).

person in the group slipped in just before the quadrant closed, just avoiding being pinned or crushed between the door and the drum wall (*id.* at 0:19-0:20).

At the same time, plaintiff and his wife approached the automatic revolving door from the street (*id.* at 0:15). The two of them entered the same door section together (*id.* at 0:15-0:19). Plaintiff testified that the door moved “at a walking pace” and that he was in front of his wife by about one or two feet (Pltf’s tr at 29:3-5).

Just as the last person in the group of five slid into the automatic revolving door, the door suddenly stopped (Video at 0:20-0:21). Plaintiff walked directly into the door, striking his left temple and breaking his glasses (*id.*; Pltf’s tr at 29:22-23). The rest of the video depicts plaintiff’s wife’s efforts to collect the broken pieces of plaintiff’s glasses from the ground (Video at 0:21-0:42). This section is notable because part of the glasses fell into the automatic revolving door chamber, and so she was forced to stay inside for multiple rotations (*id.*). However, the door at one point came close enough that she appeared to be touching the back panel, yet the door did not suddenly stop as it did mere seconds before (*id.* at 0:29-0:31).

The Mackenzie work orders indicate that Mackenzie visited the hotel three days later on March 19, 2018, after complaints from Marriott that there was an unspecified “problem with 2 revolvers” (Assorted Marriott Work Orders at *21). Mackenzie replaced the “passive bumpers” of the doors, which do not affect the speed or opening/closing of the door (*id.* at *22; Mattson tr at 73:2-7). Mackenzie did not mention a sudden-stop issue.

Plaintiff provides an expert report from Michael Panish, who “has been working with automatic door systems . . . since the mid 1970’s” (NYSCEF # 85, Panish Report, at *5). Panish viewed the video, conducted a site inspection, and reviewed many deposition and other records (*id.* at *8). Panish concluded that the problem was Marriott’s “fail[ure] to know and understand all potential operating modes of this door,” including its setting to spin continuously (*id.* at *7-8). Panish explained that “it would have been reasonable for Mackenzie to advise the hotel management about the operational parameters that were available,” but that Mattson apparently did not do so (*id.* at *7, referencing Mattson tr at 36:4-12). Panish also concluded that Marriott “fail[ed] to seek information from a professional service provider to question and understand how [the Pastor Incident] occurred” (*id.* at *7-8).

DISCUSSION

Both motions seek summary judgment under CPLR 3212. On a motion for summary judgment, evidence presented must be examined “in the light most favorable to the non-moving party” (*Schmidt v One New York Plaza Co. LLC*, 153 AD3d 427, 428 [2017]). “It is well settled that ‘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 demonstrate the absence of any material issues of fact” (*Pullman v Silverman*, 28 NY3d 1060, 1062 [2016], quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). “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]).

If the moving party makes this initial showing, the burden shifts to the opposing party to rebut the prima facie showing by producing evidentiary proof in admissible form sufficient to require a trial of material issues of fact (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010]). In the presence of a genuine issue of material fact, a motion for summary judgment must be denied (*see Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]; *Grossman v Amalgamated Haus. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]).

The elements of negligence are “(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]).

I. Marriott’s Motion³

“To be entitled to summary judgment, a property owner is required to establish that it maintained its premises in a reasonably safe manner and that it did not create a dangerous condition that posed a foreseeable risk of injury to individuals expected to be present on the property” (*Matos v Azure Holdings II, L.P.*, 181 AD3d 406, 406 [1st Dept 2020]). Moreover, the property owner must show that it did not have “actual or constructive notice” of the dangerous condition (*Gomez v Samaritan Daytop Vil., Inc.*, 216 AD3d 456, 457 [1st Dept 2023]).

A. Dangerous Condition

“[W]hether a dangerous or defective condition exists on the property of another so as to create liability depends on the peculiar facts and circumstances of each case and is generally a question of fact for the jury” (*Trincere v County of Suffolk*, 90 NY2d 976, 977 [1997] [internal quotations omitted]).

Here, Marriott failed to establish the absence of a dangerous condition. Specifically, the fact that the automatic revolving door stops suddenly and without warning may be considered a dangerous condition, particularly in the context of a busy hotel entrance in Times Square. The door is set to stop in several circumstances, including when someone is close to the back door of a quadrant and upon completion of a 360-degree rotation from the last person who triggered the

³ To the extent Marriott argues that plaintiff’s opposition should be stricken as untimely, Marriott’s request is denied for the reasons stated in plaintiff’s letter to the court dated October 21, 2024 (NYSCEF # 101). Specifically, the delay was *de minimis* (two and a half hours) and based in part on an unfortunate personal situation for plaintiff’s lawyer.

external sensor (Michell tr at 23:24-24:14). Regardless of what specific setting caused the door to suddenly stop in front of plaintiff, these sudden stops may be merely annoying (in the case of the man in the black hoodie [Video at 0:00 – 0:09]) to dangerous (in the case of Ms. Pastor [Pastor Incident Report at 2]). This is especially true given Mattson's testimony that the door can be set to rotate continuously rather than start and stop (Mattson tr at 36:4-12). While there is a question of fact whether the choice to use these settings is a *defective* condition,⁴ this question is largely academic given that Marriott has failed to prove that it was not *dangerous* at the time of the incident.

B. Notice

Marriott has failed to establish that it did not have actual or constructive notice of the dangerous condition. In fact, the evidence tends to show that Marriott had actual notice that the automatic revolving door would suddenly stop in front of occupants given the Pastor Incident three months earlier.

Marriott argues that it had no actual knowledge of the Pastor Incident because Mackenzie never raised such an issue to Marriott's attention (*see* NYSCEF # 46, Marriot mol, at 9-10). Mackenzie is not Marriott, and the existence of the Pastor Incident Report alone is enough to show actual notice.

Marriott claims it may nevertheless defeat notice "by producing evidence of its maintenance activities on the day of the accident, and specifically that the dangerous condition did not exist when the area was last inspected or cleaned before plaintiff fell" (*Gomez*, 216 AD3d at 457). Marriott claims it produced evidence that it had no notice the sudden stopping was present because its staff inspected the door daily and because Mackenzie had inspected before and after the incident and found no issues (Marriott mol at 9-10).

But neither of these suffice to defeat notice. Contrary to its assertions, Marriott failed to produce any evidence that its staff inspected the door on March 16, 2018. At best, Marriott submits deposition testimony showing that daily inspection was their policy, not that it occurred (*see* Michell tr at 31:4-33:4). Moreover, the daily inspections were conducted by security personnel, not engineering staff who had expertise in the operations of the door (*id.*), and so it is not clear that the inspection would have been adequate even if it had occurred.

As for Mackenzie's inspections, Michell testified that the Pastor Incident Report was distributed only to "loss prevention staff" and security, not to himself or other people in engineering (Pastor Incident Report at 3; Michell tr at 61:6-9, 65:16-21, 66:8-10; 90:4-6, 90:17-21, 94:15-18). He therefore did not have a chance to report the incident to Mackenzie, and Mackenzie was never asked to investigate a stopping

⁴ The work orders and testimony from Mattson indicate the automatic revolving door may have not been defective and been working as intended.

issue (*see* NYSCEF # 66, Mackenzie mol at 10). But Mackenzie was not looking for a stopping problem in any of its inspections before or after plaintiff's injury. Moreover, Mackenzie's inspections were not conducted the day of the incident, and therefore similarly do not defeat Marriott's actual notice.

Marriott (and Mackenzie) cite to several other revolving door cases, but none of them are on point because they involve constructive notice, not the actual notice at issue here (Marriott mol at 6-7). Marriott has therefore failed to establish that it did not have actual notice of the dangerous condition.⁵

C. Proximate Cause

Marriott next argues that it was not the proximate cause of plaintiff's injury either because it adequately maintained the revolving door or because Mackenzie was solely responsible for discovering and repairing the defective condition under the parties' contract (*id.* at 10-15).

Both of Marriott's arguments fail for the same reason: Marriott failed to notify Mackenzie about the Pastor Incident, and therefore did not give Mackenzie the notice it needed to properly investigate the door. As such, there is a question of fact as to who is responsible for the revolving door's sudden stops. Marriott has failed to defeat proximate cause.

D. Indemnification

Finally, Marriott argues that it should be granted summary judgment on its indemnification claims against Mackenzie because indemnification is mandated in the Service Agreement. However, summary judgment at this stage would be premature. The Service Agreement provides indemnification except "to the extent of Marriott's negligence . . ." (Service Agreement § 6). Because plaintiff's negligence claim survives against Marriott, indemnification cannot be granted at this time.

II. MacKenzie's Motion

An independent contractor who enters a service contract owes a duty of care to third parties in three situations: " (1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, launches a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely" (*Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 140 [2002] [internal quotations and citations omitted]).

⁵ Because Marriott failed to disprove actual notice, there is no need to reach Marriott's arguments that it did not cause the dangerous condition nor that it lacked constructive notice.

Here, plaintiff makes no arguments about detrimental reliance or displacing contractual duties, and so the only potential duty at issue is if Mackenzie launched a force or instrument of harm. There are questions of fact on this point. Mackenzie was never given notice of the Pastor Incident and thus did not have actual notice of the dangerous condition. However, Mackenzie either programmed the door settings or at least did not discuss with Marriott the potential to switch to a continuous rotation setting to avoid sudden stops. Mackenzie also failed to discover these sudden stop issues in their inspections. Thus, it is a question of fact for the jury whether Mackenzie launched the force or instrument of harm—the suddenly stopping automatic revolving doors.


CONCLUSION

Pursuant to the above, it is hereby

ORDERED that the motions for summary judgment by Marriott International, Inc. (MS 001) and by Mackenzie Automatic Doors Inc. and Mackenzie Group Inc. d/b/a Mackenzie Automatic Door Company (MS 002) are denied in their entirety; and it is further

ORDERED that counsel for plaintiff shall serve a copy of this Decision and Order, with notice of entry, to the Clerk of the Court and to all parties within 20 days of the date of this order.

This constitutes the Decision and Order of the court.

<u>7/28/2025</u> DATE			 MARGARET A. CHAN, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
APPLICATION:	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE