SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PAUL A. GOETZ** **PART** **47**

Justice

----------X

INDEX NO. 158399/2022

CHEICK KONATE AND AWA KONATE AS ADMINISTRATORS OF THE ESTATES OF ALISSA KANTE AND ADIARATOU KOUROUMA, S. K.,

MOTION DATE 05/15/2025, 03/17/2025, 03/17/2025

Plaintiffs,

MOTION SEQ. NO. 023 024 025

- v -

1829-1835 7 LLC,BARUCH SINGER, SCOTT J. KATZ, DAVID BRECHER, TRIANGLE WEST ENTERPRISES LLC,TRIANGLE NORTH ENTERPRISES LLC,DAVID ISRAEL, JUDA STERN, J. WASSER & CO. INC.,MEYER BRECHER, MANHATTANVILLE HOLDINGS LLC,IRVING LANGER, E & M ASSOCIATES, E & M MANAGEMENT SERVICES, LLC,

DECISION + ORDER ON MOTION

Defendants.

----------X

1829-1835 7 LLC, BARUCH SINGER, DAVID BRECHER, TRIANGLE WEST ENTERPRISES LLC, TRIANGLE NORTH ENTERPRISES LLC, JUDA STERN, MANHATTANVILLE HOLDINGS LLC

Third-Party
Index No. 595246/2023

Plaintiffs,

-against-

FELIX DAVENPORT

Defendant.

----------X

The following e-filed documents, listed by NYSCEF document number (Motion 023) 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 467, 470, 480, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 515, 516, 517, 518, 521, 522, 523, 525

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 024) 442, 443, 444, 445, 446, 447, 448, 468, 471, 473

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 025) 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 469, 472, 474, 482, 504, 505, 507, 508, 509, 510, 511, 512, 513, 514, 519

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER .

Upon the foregoing documents, it is

In this wrongful death action, where plaintiffs, Cheick Konate and Awa Konate as Administrators of the Estates of Alissata Kante and Adiaratou Kourouma ("Decedents"), and S.K. by his Father and Natural Guardian Cheick Konate ("SK"), allege that defendants negligently maintained the building where decedents lived, by not having operational smoke detectors, carbon monoxide detectors, and an accessible fire escape, resulting in Alissata Kante and Adiaratou Kourouma's deaths and SK's injuries.

In Motion Sequence #23, defendants, 1829-1835 7 LLC ("1829"), Baruch Singer ("Singer"), David Brecher ("Brecher"), Triangle West Enterprises LLC ("Triangle West"), Triangle North Enterprises LLC ("Triangle North"), Juda Stern ("Stern"), and Manhattanville Holdings LLC ("Manhattanville") (1829, Singer, Brecher, Triangle West, Triangle North, Stern, and Manhatanville together hereinafter "1829 defendants") move for summary judgment pursuant to CPLR § 3212 dismissing the amended complaint as against them in its entirety. Plaintiffs cross-move to amend their amended complaint and their Bill of Particulars to plead specific violations of various New York City, Fire, Building, and Administrative codes. Plaintiffs cross-move for sanctions, alleging that the 1829 defendants misrepresented statutory law by addressing out of date and inapplicable sections of the NYC Administrative Code.

In Motion Sequence #24, defendant Scott J. Katz ("Katz") moves for summary judgment pursuant to CPLR § 3212 dismissing the amended complaint as against him, or in the alternative, summary judgment dismissing SK's claims as asserted against him. Plaintiffs do not oppose Katz's motion.

In Motion Sequence #25, defendants David Israel ("Israel") and J. Wasser & Co. Inc. ("Wasser") (together "Property Manager defendants") move for summary judgment pursuant to

CPLR § 3212 dismissing the amended complaint and all cross-claims as against them. Plaintiffs also cross-move for sanctions as against Israel and Wasser, alleging that they too misrepresented statutory law by addressing out of date and inapplicable sections of the NYC Administrative Code.

BACKGROUND

Plaintiffs Cheick Konate and Awa Konate were granted a Limited Letters of Administration to act as administrator to the Estate of Adiaratou Kourouma, and to Aissata Kante (*see Administration Proceeding, Estate of Adiaratou Kourouma*, File No. 2022-865, Decree Granting Administration; *see also Administration Proceeding, Estate of Aissata Kante*, File No. 2022-866, Decree Granting Administration). In the petition for Letters of Administration for the estate of decedent Kourouma, Cheick Kontae identified himself as her "Distributee Surviving Spouse" (NYSCEF Doc No 440 ¶ 2).[1] In Cheick Konate's petition for Letters of Administration for the estate of decedent Kante he identified himself as her "Distributee Father" (*id.* at ¶ 4).[2] Cheick Konate also commenced this action on behalf of S.K. as his Father and Natural Guardian (*id*. at ¶ 6)[3]. Awa Konate is Cheick Konate's sister (*id*. at ¶ 8).

On November 19, 2021 Cheick Konate, Adiaratou Kourouma, Alissata Kante, and the infant SK lived at 1833 7th Avenue, Apartment 4D, New York, New York (*id*. at ¶ 1). The building was owned by defendant 1829 (*id*. at ¶ 9). Defendant, Wasser was the property

[1] Defendants argue that Cheick Konate was not legally married to Adiaratou Kourouma at the time of her death because he was married to another woman when he allegedly married Kourouma in a religious ceremony in Mali. As addressed in the August 15, 2025 decision and order on MS #18 (NYSCEF Doc No 537) Letters of Administration cannot be attacked collaterally in a different civil matter (*Capozzola v Oxman*, 216 AD2d 509 [2d Dept 1995]).

[2] Similarly, defendants argue that Cheick Konate was not Aissata Kante's father as he was not listed as such on her birth certificate. While, as stated above, the issue of the veracity of the statements made in the Letters of Administration are not at issue in this case, Cheick Konate submitted a DNA test certifying him as the father of Aissata Kante (NYSCEF Doc No 393).

[3] Cheick Konate is also not listed as SK's father on his birth certificate but he submits a second DNA test certifying him as the father of SK (NYSCEF Doc No 394).

management company, and defendant David Israel was the property manager for the building (NYSCEF Doc No 440 ¶ 10; *see also* NYSCEF Doc No 48 at 11:9 – 12:18). Singer, Brecher, Triangle West, Triangle North and Stern are members of the 1829 LLC (NYSCEF Doc No 440 ¶¶ 11 – 12). Defendant Katz is the Chief Financial Officer of non-party Galil Management, the sole member of Galil Manhatanville Management LLC, which was the managing agent of the building from January 2016 – August 2021 until Wasser took over managerial duties (NYSCEF Doc No 443 ¶¶ 4 – 7).

On the evening of November 19, 2021 Cheick Konate received a call from decedent Kourouma to tell him that there was a fire in the building, and that she was unable to escape (NYSCEF Doc No 440 ¶ 29). According to the NYPD Fire Marshall, the fire began in the living room of Apartment 3D (*id*. at ¶ 30). Adiaratou Kourouma and Alissata Kante died due to injuries suffered in the fire, and plaintiffs allege that SK suffered injuries as a result of the fire.

Plaintiffs allege that at the time of the fire, there were no working smoke detectors in the building, and that the decedents were unable to access the fire escape due to a defective gate over the window which would get stuck shut, preventing egress. Plaintiffs further allege that they had contacted the super of the building on numerous occasions to complain about the smoke detectors and the fire escape.

Plaintiffs assert three causes of action as against all defendants, for (1) Wrongful Death as to Alissata Kante; (2) Wrongful Death as to Adiaratou Kourouma; and (3) Negligence as to SK.

DISCUSSION

I. Motion Sequence #23 - Cross-Motion to Amend

Plaintiffs move to amend their amended complaint and bill of particulars in order to allege specific violations of New York City Codes[4], relating to defective smoke/carbon monoxide detectors, and fire escapes. Plaintiffs argue that the defendants will not suffer prejudice or surprise by allowing this amendment as plaintiffs identified the lack of fire prevention in the building as the proximate cause of the accident. Defendants argue that plaintiffs have failed to offer a reasonable excuse for their delay in seeking amendment, and that they would be prejudiced by allowing a post-note of issue amendment.

"Leave to amend a pleading should be freely given [pursuant to CPLR 3025[b]], provided the amendment is not palpably insufficient, does not prejudice or surprise the opposing party, and is not patently devoid of merit" (*Reyes v Brinks Glob. Services USA, Inc.*, 112 AD3d 805, 806 [2d Dept 2013]). "[L]eave to amend the pleadings to identify a specific, applicable … Code [violations] may properly be granted, even after the note of issue has been filed, where the plaintiff makes a showing of merit, and the amendment involves no new factual allegations, raises no new theories of liability, and causes no prejudice to the defendant" (*Castano v Algonquin Gas Transmission, LLC*, 213 AD3d 905, 908 [2d Dept 2023]). "Mere delay is not a sufficient basis on which to deny amendment (*Flowers v 73rd Townhouse LLC*, 149 AD3d 420, 421 [1st Dept 2017]). In *Schiff v ABI One LLC*, the First Department allowed a post-note of issue

[4] Specifically, plaintiffs seek to amend their Complaint and Bill of Particulars to allege violations of NYC Administrative Code 27-2045, NYC Administrative Code 28-312.4, NYC Administrative Code 28-312.5, 2014 NYC Building Code 907.2, 1968 NYC Building Code 27-978, 1968 NYC Building Code 27-979, 1968 NYC Building Code, 27-980, 1968 NYC Building Code 27-981, UL 217, NYC Administrative Code 27-2046, NYC Administrative Code 28-312.1, NYC Administrative Code 28-312.2, NYC Administrative Code 27-368 (a), Multiple Dwelling Law 145,Multiple Dwelling Law 53, New York City Administrative Code, 2014 New York City Fire Code 1027.3.7, New York City Administrative Code, 2014 New York City Fire Code 1027.7, New York City Administrative Code, 2014 New York City Fire Code 1027.3, New York City Administrative Code, 2014 New York City Fire Code 901.6.3.4, and 1 RCNY15-10(d).

amendment of the bill of particulars to add specific statutory violations regarding smoke and carbon monoxide detectors in a wrongful death action resulting from a fire in an apartment building (155 AD3d 543 [1st Dept 2017]).

Here, defendants fail to show that they would be prejudiced by the proposed amendment. The amendment is based on evidence obtained during discovery and defendants' argument that the new theories are surprising is unavailing, as during the deposition with Cheick Konate, defendants extensively questioned him about the detectors and the fire escape in his apartment (*see* NYSCEF Doc No 434 at 175:20 – 179:10 ["A: She told me she could not get out because the emergency exit couldn't be open. Q: Which emergency exit? A: To the fire escape).

Accordingly, plaintiffs' cross-motion to amend their complaint will be granted to the extent that plaintiffs are permitted to amend their bill of particulars to allege specific violations of sections of the New York City Codes. However, plaintiffs will not be granted leave to amend the complaint, as the violations of these specific codes, does not create new causes of action, but rather merely adds specifics to already pled causes of action for wrongful death and negligence, and therefore amendment of the complaint is unnecessary.

II. *Motion Sequence # 23 - 1829 Defendants' Motion for Summary Judgment*

a. Summary Judgement Standard

"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] [internal citations omitted]).

"Once such a prima facie showing has been made, the burden shifts to the party opposing the motion to produce evidentiary proof in admissible form sufficient to raise material issues of fact which require a trial of the action" (*Cabrera v Rodriguez*, 72 AD3d 553, 553-554 [1st Dept 2010], citing *Alvarez*, 68 NY2d at 342).

"The court's function on a motion for summary judgment is merely to determine if any triable issues exist, not to determine the merits of any such issues or to assess credibility" (*Meridian Mgmt. Corp. v Cristi Cleaning Serv. Corp.*, 70 AD3d 508, 510-511 [1st Dept 2010] [internal citations omitted]). The evidence presented in a summary judgment motion must be examined "in the light most favorable to the non-moving party" (*Schmidt v One New York Plaza Co.*, 153 AD3d 427, 428 [2017], quoting *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]) and bare allegations or conclusory assertions are insufficient to create genuine issues of fact (*Rotuba Extruders v Ceppos*, 46 NY2d 223, 231 [1978]). If there is any doubt as to the existence of a triable fact, the motion for summary judgment must be denied (*id.*).[5]

b. 1829 Defendants' Negligence

The 1829 defendants argue that they cannot be held liable for the wrongful death and negligence causes of action, because they did not breach a duty owed to plaintiff in that plaintiffs were provided with smoke detectors prior to moving into the apartment, and that building owners do not owe a further duty to maintain smoke detectors during the occupancy of a tenant.

To establish a cause of action for wrongful death a plaintiff must prove "(1) the death of a human being, (2) the wrongful act, neglect or default of the defendant by which the decedent's death was caused, (3) the survival of distributees who suffered pecuniary loss by reason of the

[5] While plaintiffs argue that defendants' summary judgment motions are untimely because they were not filed within 60 days of the filing of the Note of Issue as required by this Part's rules, the motions were filed within the 120 day deadline imposed by the last status conference order (NYSCEF Doc No 305) from the prior Part, where the case was pending. Consequently, the motions will not be denied as untimely.

death of decedent, and (4) the appointment of a personal representative of the decedent" (*Proano v Gutman*, 211 AD3d 978, 982-83 [2d Dept 2022]). Further to prevail on the second element requiring a showing of neglect, 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]).

The threshold question of any negligence action is whether the defendant owed a duty to the plaintiff (*Hamilton v Beretta U.S.A. Corp.*, 96 NY2d 222 [2001]). A legal duty can have its roots either in the common law or by statute (*Santoro v Poughkeepsie Crossings, LLC*, 180 AD3d 12 [2d Dept 2019]). "[A] landlord does not have a common-law duty to provide fire protection devices to his tenants" (*McIntosh v Moscrip*, 138 AD2d 781, 783 [3d Dept 1988]). However, with respect to smoke detectors, installation and maintenance is governed by NYC Admin Code § 27-2045 which provides in pertinent part:

> It shall be the duty of the owner of a class A multiple dwelling which is required to be equipped with smoke detecting devices pursuant to section 907.2 of the New York city building code or sections 27-978, 27-979, 27-980 and 27-981 of the 1968 building code to:
>
> (1) provide and install one or more approved and operational smoke detecting devices in each dwelling unit and replace such devices in accordance with article 312 of chapter 3 of title 28 of the administrative code of the city of New York

Relevant portions of NYC Admin Code § 28-312 provide:

> 28-312.4
>
> Smoke alarms required pursuant to section 907.2 of the New York city building code or sections 27-978, 27-979, 27-980 and 27-981 of the 1968 building code shall be replaced when the time elapsed since the installation of such alarm exceeds the manufacturer's suggested useful life of the alarm.

> Exception: A smoke alarm installed before April 1, 2014 and whose end of useful life is not known shall be replaced with an alarm that complies with section 28-312.5 by no later than April 1, 2021.
>
> 28-312.5
>
> All smoke alarms installed after April 1, 2014 shall comply with UL 217, shall employ a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years, and shall be of the type that emits an audible notification at the expiration of the useful life of the alarm.

Together, these provisions provide that, a landlord must provide and install smoke detectors in their tenants' apartments when they first commence their tenancy (*Mero v Vuksanovic*, 140 AD3d 574 [1st Dept 2016]). The smoke alarms required to be installed must have "a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years" (NYC Admin Code § 28-312.5). However, for smoke alarms that were installed prior to the enactment of § 28-312.5, on April 1, 2014, landlords had until April 1, 2021 to install a compliant device.

Defendants note that NYC Admin Code § 27-2045(b) also provides that:

> Notwithstanding the provisions of subdivision a of section 27-2005 of article one of this subchapter and subdivision c of section 27-2006 of article one of this subchapter, it shall be the sole duty of the occupant of each dwelling unit in a class A multiple dwelling in which a smoke detecting device has been provided and installed by the owner pursuant to the provisions of section 907.2 of the New York city building code or sections 27-978, 27-979, 27-980 and 27-981 of the 1968 building code to:
>
> (1) keep and maintain such device in good repair; and
>
> (2) replace any and all devices which are either stolen, removed, missing or rendered inoperable during the occupancy of such dwelling unit with a device meeting the requirements of article 312 of chapter 3 of title 28 of the administrative code of the city of New York.

Furthermore, a landlord has a common law duty to provide and install an operational smoke detector, but "[t]hereafter, the occupant of the apartment [is] solely responsible for the maintenance and repair of the smoke detector, and for its replacement in case of removal" (*Tucker v 64 W. 108th St. Corp.*, 2 AD3d 193, 194 [1st Dept 2003]). A landlord is entitled to summary judgment in its favor when it submits uncontroverted evidence that it installed a functional and statutorily compliant smoke detector in plaintiff's apartment (*Vanderlinde v 600 W. 183rd St. Realty Corp.*, 101 AD3d 583 [1st Dept 2012]).

The 1829 defendants argue that it is undisputed that there was a functional smoke detector installed in the decedents' apartment when they first moved in. Cheick Konate testified that he and his sister moved into the apartment in 2004 and that they were co-tenants (NYSCEDF Doc No 434 at 84:9 – 85:14). He further testified that when he moved in there were two smoke detectors installed in the apartment (*id*. at 117:7 – 117:19). Konate stated that he would check the smoke detectors annually and replace their batteries (*id*. at 117:15 – 119:11). A few months prior to the fire, Konate realized that the smoke detectors were not functioning when he tried to change the battery, and he testified that he informed the super that they were not working (*id*. at 119:24 – 122:17).

The 1829 defendants argue that this testimony establishes that they installed working smoke detectors when plaintiffs moved into the apartment, and that since they are not statutorily required to maintain the smoke detectors plaintiffs cannot establish that they breached any duty owed. However, NYC Admin Code § 28-312.4 requires that smoke detectors "installed before April 1, 2014 and whose end of useful life is not known shall be replaced with an alarm that complies with section 28-312.5 by no later than April 1, 2021." The 1829 defendants have not

provided any evidence that the smoke detectors in the apartment were replaced with code compliant smoke detectors at any point since their initial installation in 2004.

Furthermore, there is a question of fact whether the smoke detectors in the apartment complied with NYC Admin Code § 28-312.5, which requires "a non-removable, non-replaceable battery that powers the alarm for a minimum of 10 years," since Konate testified that he would regularly check, remove, and replace the batteries in the smoke detectors. While defendants argue that they did not need to replace the smoke detectors because there is no proof that thet had reached the end of their useful life, plaintiffs submit the expert witness report of Gary Ludwig,[6] who opines that smoke alarms which were at least 17 years old, were past their useful life expectancy (NYSCEF Doc No 491 at 13). Therefore, the 1829 defendants have failed to establish *prima facie* evidence that they fully complied with the statutory requirements of NYC Admin Code § 27-2045, and their motion for summary judgment dismissing the amended complaint in its entirety must be denied.

c. Piercing the Corporate Veil

The 1829 defendants, seek summary judgment dismissing the amended complaint as against Singer, Brecher, Triangle West, Triangle North, and Manhatanville arguing that their only potential liability in this action arises out of their membership in 1829-1835 7 LLC. Plaintiffs do not oppose dismissal as against Singer, Triangle West and Triangle North, however they argue that the actions of Brecher and Manhattanville warrant "piercing of the corporate veil" to impose liability on them.

[6] While, the 1829 defendants argue that the expert witness report should be disregarded because plaintiff failed to establish his expertise, "[a]n expert is qualified to proffer an opinion if he or she possesses the requisite skill, training, education, knowledge, or experience to render a reliable opinion" (*Lieberman-Massoni v Massoni*, 215 AD3d 663, 664 [2d Dept 2023]), and here Ludwig has established himself as an expert in fire safety and prevention, as he has worked in the field for 46 years, and has written and lectured extensively about fire prevention methods.

NY Limited Liab. Co. § 609 provides:

> Neither a member of a limited liability company, a manager of a limited liability company managed by a manager or managers nor an agent of a limited liability company…is liable for any debts, obligations or liabilities of the limited liability company…whether arising in tort…or otherwise, solely by reason of being such member…or acting (or omitting to act) in such capacities…in the conduct of the business of the limited liability company.

"The concept of piercing the corporate veil is an exception to this general rule, permitting, in certain circumstances, the imposition of personal liability on members for the obligations of the limited liability company" (*Louis Monteleone Fibres, Ltd. v Hudson Baylor Brookhaven, LLC*, 228 AD3d 641, 644 [2d Dept 2024]). This requires "a showing that: (1) the [member] exercised complete domination over the corporation with respect to the transaction attacked, and (2) that such domination was used to commit a fraud or wrong against the plaintiff, resulting in the plaintiff's injury" (*First Capital Asset Mgt., Inc. v N.A. Partners, L.P.*, 300 AD2d 112, 116 [1st Dept 2002]; *Sutton 58 Assocs. LLC v Pilevsky*, 189 AD3d 726, 729 [1st Dept 2020] ["[t]he part[ies] seeking to pierce the corporate veil must establish that the members [of the LLC], through their domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against that party such that a court in equity will intervene"]). While plaintiffs argue that the building received multiple HPD violations and that these violations were deliberately ignored, these allegations are speculative and conclusory and insufficient to establish the requisite abuse required to pierce the corporate veil (*see UMG Recordings, Inc. v FUBU Records, LLC*, 34 AD3d 293 [1st Dept 2006]).

Accordingly, the amended complaint will be dismissed as against Singer, Brecher, Triangle West, Triangle North, and Manhatanville.

d. Dismissal as against Stern

The 1829 defendants move for summary judgment dismissing the amended complaint as against Stern arguing that his only connection with the subject building is that he was hired as a property manager over a year after the fire occurred. Plaintiffs fail to submit any opposition to this portion of the motion and the amended complaint as asserted against him will be dismissed as abandoned.

e. Claims on Behalf of SK

The 1829 defendants argue that the claims asserted on behalf of SK must be dismissed because they allege that SK did not suffer any injuries as a result of the fire, relying on the testimony of Awa Konate that SK did not suffer any injuries.

"Since damages are a necessary element of a negligence cause of action such a cause of action is not cognizable until damages are sustained" (*Bonded Waterproofing Services, Inc. v Anderson-Bernard Agency, Inc.*, 86 AD3d 527, 530 [2d Dept 2011] [internal citation omitted]). The 1829 defendants note that in her testimony, Awa Konate, who SK has been living with since the fire, testified that he does not have burns or scarring on his body (NYSCEF Doc No 436 at 52:15 – 52:17, 67:18 – 67:22). She further testified that he has not to her knowledge been diagnosed with any ongoing medical issues (*id*. at 66:2 – 66:5, 68:2 – 71:12). Plaintiffs submit a letter from SK's doctor, who states that SK has been treated for a nighttime cough which could be connected to the smoke he inhaled because of fire. However, the unaffirmed/unsworn letter is insufficient to create an issue of fact as to whether SK was injured because of the fire (*Alisha B. v Dominique S.*, 221 AD3d 445 [1st Dept 2023]).

Accordingly, the 1829 defendants will be granted summary judgment dismissing SK's claims as against them.

f. Punitive Damages

The 1829 defendants argue that the claims for punitive damages should be dismissed because the conduct alleged in this action does not rise to a level of gross negligence that warrants the imposition of punitive damages.

"[P]unitive damages are not available for ordinary negligence" (*Munoz v Puretz*, 301 AD2d 382, 384 [1st Dept 2003]). "In order to recover punitive damages, a plaintiff must show, by 'clear, unequivocal and convincing evidence' 'egregious and willful conduct' that is 'morally culpable, or is actuated by evil and reprehensible motives'" (*id*. [internal citations omitted]). "However, defendant cannot meet its prima facie burden by pointing to perceived gaps in plaintiff's proof (*Vazquez v 3M Co.*, 177 AD3d 428, 429 [1st Dept 2019]). "[E]ven if defendant satisfied its burden, summary judgment dismissing the claim is unwarranted [and] determination of the issues are better left for the trial court and for a factfinder to decide" (*id*.).

Accordingly, the claims for punitive damages will not be dismissed.

g. Cross-Motion for Sanctions

Plaintiffs cross-move for sanctions, arguing that the 1829 defendants cited an inapplicable version of the Administrative Code in an attempt to mislead the court. While, plaintiffs argue that the portion of NYC Admin Code § 27-2045, that the 1829 defendants cite, appears to be from the 2006 version, when the statute was amended in 2014, they fail to identify which portion of the 1829 defendants' submissions improperly quote, and the quoted portions of the code found in 1829 defendants Memorandum of Law (NYSCEF Doc No 439 at p 5), appear in both the 2016 and 2014 version of the statute (*see* NYSCEF Doc No 487). While some of the cases cited by the 1829 defendants are applying the 2006 version of the statute this does not rise

to the level of sanctionable conduct, and therefore, this portion of the cross-motion will be denied.

III. *Motion Sequence #24 – Dismissal as against Katz*

Defendant, Katz moves for summary judgement dismissing the amended complaint against him on the grounds that he is the Chief Financial Officer of Galil Management, the sole member of Galil Manhatanville Management LLC, which was the managing agent for the building from January 7, 2016 through August 19, 2021 (NYSCEF Doc No 445), and therefore had no connection to the building at the time of the fire. Plaintiffs offer no opposition to Katz's motion and accordingly the amended complaint as asserted against Katz will be dismissed.

IV. *Motion Sequence 25 – Dismissal as against Israel and Wasser*

a. *Property Manager Defendant's Duty*

The Property Manager defendants (Israel and Wasser) move for summary judgment dismissing the amended complaint as against them, arguing that as the property manager for the building, they did not owe a duty to plaintiffs. Plaintiffs argue that the Property Manager defendants affirmatively created the hazardous condition, as their employee, the super of the building, removed the smoke detectors from Apartment 4D prior to the fire and stated that he would replace them.

"[A] contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third party" (*Espinal v Melville Snow Contractors, Inc.*, 98 NY2d 136, 138 [2002]). Following this principle, a property management company acting on behalf of an owner is ordinarily not liable to third parties for alleged nonfeasance (*Caldwell v Two Columbus Ave. Condominium*, 92 AD3d 441 [1st Dept 2012]). However, a contracting party can assume a duty of care to a third-party

> (1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, "launche[s] 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,* 98 NY2d at 140 [internal citations omitted]).

Here, it is undisputed that the Property Manager Agreement was between 1829 and Wasser and that plaintiffs were not parties to the agreement (NYSCEF Doc No 462). However, Cheick Konate testified that when he discovered that the smoke detector in his apartment was not functioning, he informed the superintendent of the building, a Wasser employee, who then removed the smoke detectors and said he would replace them (NYSCEF Doc No 434 at 122:18 – 122:25; *see also* NYSCEF Doc No 461 at 20:23 – 21:5). Plaintiffs argue that by removing the smoke detectors, the Property Manager defendants "launched an instrument of harm" and thereby owed a duty of care to plaintiffs.

The Property Manager defendants argue that plaintiffs fail to raise a triable issue of fact because at his deposition Cheick Konate was asked to provide the superintendent's name, and he stated that he believed his name was Charles Brown (NYSCEF Doc No 459 at 22:3 – 22:10). The Property Manager defendants allege however that the superintendent for the building was named Charles Watson, and Charles Brown was another tenant in the apartment (NYSCEF Doc No 461 at 18:3 – 18:8; 73:15 – 73:20). The Property Manager defendants argue that Cheick Konate never lodged a complaint to the Property Manager defendants' employee and instead complained to his neighbor, thereby absolving them of responsibility for launching the instrument of harm.

However, based on Cheick Konate's testimony there is a triable question of fact regarding the identity of the person he alleges responded to his complaint about the smoke

detectors. Konate testified that he received the superintendent's phone number from a board listing in the lobby (NYSCEF Doc No 459 at 470:21 – 472:20). Defendant, Israel confirmed in his deposition that the superintendent's number was indeed posted in the lobby of the building (NYSCEF Doc No 461 at 18:2 – 18:19). While the Property Manager defendants have met their initial burden of establishing they did not owe a duty to plaintiffs, considering Konate's testimony that he contacted the super, Charles, regularly about, among other things, the smoke detectors, and that he obtained his phone number from a location where the superintendent's number was listed, plaintiffs have raised a triable question of fact as to whether the Property Manager defendants "launched an instrument of harm" by allegedly removing the smoke detectors from their apartment and failing to replace them with working units.

Accordingly, the amended complaint will not be dismissed as against the Property Management defendants on these grounds

b. Causation

The Property Management defendants also argue that the amended complaint must be dismissed because plaintiffs cannot establish that the lack of smoke detectors was the proximate cause of the plaintiff's injuries and deaths. The Property Management defendants cite *Acevedo v Audubon Mgt., Inc.*, where the court dismissed a wrongful death cause of action on causation grounds "given the absence of testimony from any witness concerning the cause of the fire, the location of the deceased when the fire started or whether the deceased was or was not alerted to the existence of the fire before sustaining his injuries, no triable issue of fact existed as to proximate cause" (280 AD2d 91 [1st Dept 2001]).

However, here the FDNY incident report confirms that the fire originated in apartment 3D, directly below plaintiff's apartment (NYSCEF Doc No 492). Further, it is undisputed that

both of the decedents died from smoke inhalation (NYSCEF Doc No 493 at 23:21 – 23:25; NYSCEF Doc No 500). Finally, plaintiffs submit expert witness testimony who opines that had the apartment had working smoke detectors "[Decedents] would have been alerted by the smoke alarms long before seeing any smoke" giving them ample time to escape (NYSCEF Doc No 491 at 11).

Accordingly, the Property Management defendants are not entitled to dismissal of the amended complaint as against them based on these grounds.

c. SK injuries / Punitive Damages

The Property Management defendants join the 1829 defendants in arguing that the claims as asserted for SK should be dismissed, and that the claims for punitive damages should be dismissed. For the same reasoning as indicated above, this portion of the Property Management defendants' motion will be denied and the claims will not be dismissed.

d. Cross-Motion for Sanctions

Plaintiffs cross-move for sanctions arguing as they did in MS #23 that the Property Management defendants cite an inapplicable version of the Administrative Code in an attempt to mislead the court. This argument is rejected for the same reason as above, and the cross-motion will be denied.

Accordingly it is,

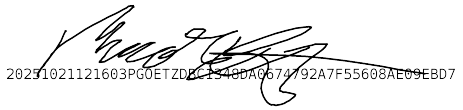
ORDERED that the 1829 defendants' summary judgment motion (MS #23) is granted to the extent that plaintiff SK's claims are dismissed as against them and the remainder of the amended complaint is dismissed as against defendants Stern, Singer, Brecher, Triangle West, Triangle North, and Manhatanville and is otherwise denied; and it is further

ORDERED that plaintiffs' cross-motion (MS #23) is granted to the extent that they are given leave to amend their bill of particulars to assert violations of New York City Codes and is otherwise denied; and it is further

ORDERED that defendant Katz's (MS #24) motion for summary judgment is granted and the amended complaint as asserted against him is dismissed; and it is further

ORDERED that defendants, Israel and Wasser's motion (MS # 25) for summary judgment to dismiss the amended complaint as asserted against them, is denied; and it is further

ORDERED that plaintiffs' cross-motion (MS #25) for sanctions as against defendants Israel and Wasser is denied.



10/21/2025
DATE

PAUL A. GOETZ, J.S.C.

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