

Locke v Schindler El. Corp.

2025 NY Slip Op 34952(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 150898/2021

Judge: Denis Reo

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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. DENIS REO PART 65M

Acting Justice

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LOREN LOCKE

Plaintiff,

- v -

SCHINDLER ELEVATOR CORPORATION,
TISHMAN SPEYER PROPERTIES, L.P.,
ROCKEFELLER CENTER MANAGEMENT
CORPORATION, RCPI LANDMARK
PROPERTIES, L.L.C.

Defendants.

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INDEX NO. 150898/2021

MOTION DATE 11/20/2025

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 139, 140, 141, 142, 143, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164

were read on this motion to/for DISQUALIFY COUNSEL

In this action plaintiff alleges that she was injured when an elevator within the property located at 30 Rockefeller Center misleveled. Plaintiff moves by Order to Show Cause for an order disqualifying the law firm of Connell Foley LLP (Connell Foley) from representing defendants Schindler Elevator Corporation (Schindler), Tishman Speyer Properties (Tishman) and RCPI Landmark Properties LLC (RCPI) (collectively defendants) on the ground that there is an inherent, unwaivable conflict of interest created by Connell Foley's dual representation of defendants. Defendants oppose the motion and cross-motion for sanctions.

Plaintiff alleges in her complaint, filed on January 27, 2021, that defendants were negligent in the "ownership, operation, construction, design, creation, management, maintenance inspection, contracting, subcontracting, supervision, repair, authorized use, servicing and/or control of the aforesaid certain elevator" (NYSCEF Document Number 001). Plaintiff

argues that because she has plead a theory that defendant Schindler was negligent in its maintenance of the elevator and that defendants Tishman and RCPI were negligent in the operation of the elevator, a reasonable attorney evaluating the facts of this case would conclude that, in order to zealously advocate on behalf of Tishman and RCPI, the attorney would have to argue that Schindler's negligent maintenance of the elevator caused plaintiff's injuries and that an attorney zealously representing Schindler would be required to argue that Tishman's and RCPI's negligent operation of the elevator caused plaintiff's injuries. Plaintiff contends because the interests of Schindler are materially adverse from the interests of Tishman and RCPI there exists an unwaivable dual representation conflict of interest which requires Connell Foley's disqualification.

In opposition, defendants argue that there is no conflict of interest because there are no cross-claims being asserted between them, Schindler accepted Tishman and RCPI's tender without a reservation of rights and defendants are fully aligned in their interests regarding the theories of the case, as evidenced by their motion for summary judgment in which they argue that they did not breach a duty of care to plaintiff, that they did not have actual or constructive notice of any alleged dangerous condition of the elevator and that plaintiff cannot establish the requisite elements of *res ipsa loquitur*. Defendants further argue that even if there is a conflict, they have waived it pursuant to the affirmations of the General Counsel of Schindler and the General Counsel of Rockefeller Center in which both waive any conflict now and through the pendency of the litigation, up to and including trial to verdict. Defendants also cross-move for sanctions pursuant to NYCRR S 130-1.1 (a) on the ground that plaintiff's Order to Show Cause is frivolous. Plaintiff argues that the cross-motion is untimely and should not be considered and

that defendants' attempt to waive any conflict is untimely and not made knowingly and intelligently.

“Disqualification . . . during litigation implicates not only the ethics of the profession but also the substantive rights of the litigants [and] denies a party's right to representation by the attorney of its choice” (*S & S Hotel Ventures Ltd. Partnership v 777 S. H. Corp.*, 69 NY2d 437, 443, 508 NE2d 647, 515 NE2d 735 [1987]). The right to counsel is “a valued right and any restrictions must be carefully scrutinized” (*id.*). Furthermore, where the rules relating to professional conduct are invoked not at a disciplinary proceeding but “in the context of an ongoing lawsuit, disqualification . . . can [create a] strategic advantage of one party over another” (*id.*). Thus, the movant must meet a heavy burden of showing that disqualification is warranted (*see Broadwhite Assoc. v Truong*, 237 AD2d 162, 163 [1st Dept 1997]). Moreover, if the party seeking disqualification “was aware or should have been aware of the facts underlying the alleged conflict of interest for an extended period of time before bringing the motion, that party may be found to have waived any objection to the other party's representation” (*Hele Asset, LLC v S.E.E. Realty Assoc.*, 106 AD3d 692, 693-694 [2d Dept 2013]).

Connell Foley was substituted as attorneys of record for Tishman and RCPI more than four and half (4 ½) years ago by a Consent to Change Attorney filed on April 19, 2021 (NYSCEF Document Number 11). At that point, given the allegations in plaintiff's complaint regarding the defendants' alleged negligence in both the operation and the maintenance of the elevator, the facts underlying Connell Foley's alleged conflict of interest should have been known by plaintiff. But even assuming that the facts regarding the ownership, operation and maintenance of the elevator were not known at the time of the substitution, the deposition of Tishman's security officer and security manager took place on May 15, 2024 and May 23, 2024,

respectively, while the deposition of Schindler’s foreman was held on December 9, 2024. Plaintiff cites testimony from these depositions in support of its argument that Connell Foley must be disqualified so, at the very least, the facts that plaintiff claims necessitate disqualification were known or should have been known by plaintiff a year ago, in December 2024. Moreover, the alleged conflict of interest, which plaintiff describes as “obvious”, did not need to be articulated by plaintiff’s elevator expert, Michael Sena, for plaintiff to move on it. The facts supporting the alleged conflict could have been known at least a year ago and perhaps as many as four and a half years ago, so the fact that plaintiff waited until now, after summary judgments have been filed, suggests that the motion to disqualify is being used by plaintiff to gain a tactical advantage in the litigation (*see Stilwell Value Partners IV, L.P. v Cavanaugh*, 123 AD3d 641, 642 [1st Dept 2014]). Therefore, assuming that there is a conflict created by Connell Foley’s dual representation and that defendants’ attempt to waive the conflict is ineffective, plaintiff’s delay of at least a year in bringing a motion to disqualify constitutes a waiver of plaintiff’s objection to Connell Foley’s representation. Accordingly, the motion to disqualify is DENIED.

Defendants’ cross-motion for sanctions is also denied as untimely under CPLR § 2215 which requires service of notice of a cross-motion at least three (3) days prior to the time at which the motion is noticed to be heard. Accordingly, it is hereby

ORDERED that the order to show cause and cross-motion are DENIED.

12/22/2025
DATE


DENIS REO, A. J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION OTHER

APPLICATION: GRANTED GRANTED IN PART SUBMIT ORDER

CHECK IF APPROPRIATE: SETTLE ORDER FIDUCIARY APPOINTMENT

INCLUDES TRANSFER/REASSIGN REFERENCE