

**Grasso v Metropolitan 919 3rd Ave. LLC**

2025 NY Slip Op 34985(U)

December 22, 2025

Supreme Court, New York County

Docket Number: Index No. 158718/2021

Judge: Mary V. Rosado

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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. MARY V. ROSADO PART 33M

Justice

ELLEN D. GRASSO, Plaintiff, - v - METROPOLITAN 919 3RD AVENUE LLC, 919 GROUND LEASE LLC, 919 GROUND LEASE MEMBER LLC, SL GREEN REALTY CORP., SL GREEN MANAGEMENT CORP., OTIS ELEVATOR COMPANY, FOREST ELECTRIC CORP. Defendant. INDEX NO. 158718/2021 MOTION DATE 09/02/2025 MOTION SEQ. NO. 002 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 002) 88, 89, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 153, 155

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

The following e-filed documents, listed by NYSCEF document number (Motion 003) 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 124, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 154

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and after a final submission date of November 5, 2025, motion sequence 002 ("Mot. Seq. 002) and motion sequence 003 ("Mot. Seq. 003") are consolidated for disposition and decided as follows:

- A. Defendants Metropolitan 919 3rd Avenue LLC, 919 Ground Lease LLC, 919 Ground Lease Member LLC, S.L. Green Realty Corp., and S.L. Green Management Co.'s (collectively "SL Green Defendants") motion for summary judgment ("Mot. Seq. 002") dismissing Plaintiff Ellen D. Grasso's ("Plaintiff") Amended Complaint and granting them summary judgment on their crossclaims for indemnification and breach of contract against Defendant Otis Elevator Company ("Otis") is granted in part and denied in part.

B. Defendant Otis' motion for summary judgment ("Mot. Seq. 003") dismissing Plaintiff's Complaint is denied.

## I. Background

On February 16, 2019, Plaintiff was at work in the office building at 919 Third Avenue, New York, New York (the "Premises") when she was hit on her right-hand side by the elevator's doors, which allegedly closed quickly (NYSCEF Doc. 156 at 21-23; 48-49). Plaintiff testified she had prior trouble with the Premises' elevators' doors closing quickly and the doors had hit her before (*id.* at 65; 121).

The SL Green Defendants own and/or manage the Premises. Thomas Munafo was the Premises' property manager employed by SL Green Realty Corp (NYSCEF Doc. 116 at 6). The SL Green Defendants retained an elevator consultant, Boca Group, who performed evaluations of the Premises' elevators (NYSCEF Doc. 116 at 40-42). Otis was responsible for maintaining the Premises' elevators and employed resident mechanics at the Premises (NYSCEF Doc. 116 at 21; 39; 51-52). One of Otis' resident mechanics was Brian Mulkerrins (NYSCEF Doc. 117 at 11). Two days prior to Plaintiff's accident, the elevator that allegedly injured her underwent emergency repair, but Mr. Mulkerrins could not recall what repairs were completed (NYSCEF Doc. 117 at 105). The SL Green Defendants seek dismissal of Plaintiff's Complaint or alternatively seek summary judgment against Otis on their claims for indemnification and breach of contract. Otis also moves for summary judgment dismissing Plaintiff's Complaint. Plaintiff opposes.

## II. Discussion

### A. Otis' Motion (Mot. Seq. 003)

Otis' motion for summary judgment dismissing all claims and crossclaims against them is denied. Otis failed to meet its *prima facie* burden of demonstrating the absence of any material

issues of fact with respect to its alleged negligence in repairing and maintaining the elevator which allegedly hurt Plaintiff. To show entitlement to summary judgment Defendants must do more than point to gaps in Plaintiff's evidence (*see, e.g. Maria v Concourse Estate, LLC*, 200 AD3d 578 [1st Dept 2021] citing *Vargas v Riverbay Corp.*, 157 AD3d 642 [1st Dept 2018]). Here, Otis fails to demonstrate affirmatively the lack of negligence and instead relies on a dearth of evidence, which only exists because of its own poor records management.

Otis failed to proffer any explanation or description of the emergency repair work completed on the subject elevator just two days prior to Plaintiff's accident. Mr. Mulkerrins could not remember what that emergency repair work involved and stated that the only documents that would have that information were his service call and calendar reports, which Otis failed to maintain. Although SL Green maintained Mr. Mulkerrins' reports from January 2017 through August 2018, they were unable to locate any service call and calendar reports from September 2018 through February of 2019. Mr. Mulkerrins could not recall with specificity what maintenance he performed regularly on the subject elevator. This is insufficient for Otis to meet its *prima facie* burden on a motion for summary judgment (*see, e.g. Merrick v Macerich Co.*, 223 AD3d 530, 532 [1st Dept 2024]). Otis' argument that it was not contractually required to maintain the doors of the elevator is insufficient. Although certain parts of the elevators were excluded from Otis' contractual obligations, including "car door panels, hoistway enclosures...hoistway door panels, [and] hoistway doorframes and sill..." other parts of the doors were included in maintenance including, amongst other things "automatic power operated door operations, car door hangars, car door contacts, door protective devices, tracks, door clutch mechanism, closers and closer arms...car safety units" (NYSCEF Doc. 119 at § 14).

But even if Otis did meet its *prima facie* burden, Plaintiff raised an issue of fact through her expert's affidavit (*see* NYSCEF Doc. 151). To the extent the Court is confronted with two conflicting expert affidavits, with one expert claiming Otis was not negligent and another expert claiming Otis was negligent, summary judgment is improper, and the credibility and weight of the experts' competing opinions must be submitted to a jury for resolution (*see Escolastico v Rigs Management Co., LLC*, 232 AD3d 491, 492 [1st Dept 2024]; *Mable v 384 East Associates, LLC*, 175 AD3d 1127, 1128 [1st Dept 2019]). Therefore, Otis' motion for summary judgment is denied.

#### **B. SL Green Defendants' Motion (Mot. Seq. 002)**

The SL Green Defendants' motion for summary judgment is granted in part and denied in part. The SL Green Defendants' motion for summary judgment dismissing Plaintiff's Complaint is denied. The SL Green Defendants may be held vicariously liable for the negligence of Otis (*see Estevez v SLG 100 Park LLC*, 215 AD3d 566, 569 [1st Dept 2023]). As issues of fact preclude summary judgment in favor of Otis and against Plaintiff, those same issues of fact preclude summary judgment in favor of the SL Green Defendants and against Plaintiff because the SL Green Defendants may be vicariously liable for Otis' negligence (*see also Pesante v Vertical Industrial Development Corp.*, 29 NY3d 983, 983-84 [2017]; *Tobola v 123 Washington, LLC*, 195 AD3d 456, 457 [1st Dept 2021]).

SL Green Defendants' motion for summary judgment on their common law indemnification claim against Otis is denied. The SL Green Defendants failed to eliminate issues of fact as to their notice of a safety issue with the subject elevator's door (*see Dzikowska v Related Companies, LP*, 157 AD3d 447, 448 [1st Dept 2018]). Curiously, although the SL Green Defendants maintained service call and calendar reports of the subject elevator's maintenance from January 2017 through August 2018, the maintenance records from September 2018 through

February of 2019 (the months leading up to Plaintiff's accident) are missing. The SL Green Defendants also fail to explain what emergency repairs were conducted to the subject elevator just two days prior to Plaintiff's accident, thus it remains an issue of fact as to whether the SL Green Defendants knew or should have known about a dangerous condition regarding the subject elevator's doors. Based on this issue of fact, a jury could find the SL Green Defendants were negligent in failing to remove the subject elevator from service, which precludes the SL Green Defendants from obtaining common-law indemnification from Otis (*Dzidowska, supra* at 448 citing *Martins v Little 40 Worth Assoc., Inc.*, 72 AD3d 483, 483 [1st Dept 2010]).

Since there are issues of fact as to the SL Green Defendants' negligence, and there has not yet been a finding of negligence against Otis, the SL Green Defendants' motion for contractual indemnification claim against Otis is granted conditionally. The SL Green Defendants are entitled to contractual indemnification conditioned on a finding of negligence against Otis and solely to the extent that a jury finds the SL Green Defendants' did not cause or contribute to the accident (*see, e.g. Winkler v Halmar International, LLC*, 206 AD3d 458, 462-63 [1st Dept 2022]; *Gonzalez v G. Fazio Construction Co., Inc.*, 176 AD3d 610, 611 [1st Dept 2019]).

The SL Green Defendants' motion for summary judgment on their breach of contract for failure to procure insurance claim is denied. The SL Green Defendants are being provided with a defense by Otis' insurer because, as admitted by Otis' insurer, the SL Green Defendants were named as additional insureds (*see* NYSCEF Doc. 121). The SL Green Defendants were also reimbursed for defense costs by Otis' insurer. Although a reservation of rights was issued by the insurer pending further investigation, coverage was never disclaimed, and Otis cannot be held responsible for breach of contract based on its insurer's coverage determinations where, as here, Otis procured sufficient insurance for the SL Green Defendants to be considered additional

insureds and defended in this action. Based on the foregoing, which was submitted by the SL Green Defendants on their motion in chief, there are at a minimum, triable issues of fact as to whether Otis breached its contractual obligations to procure insurance.

Accordingly, it is hereby,

ORDERED that the SL Green Defendants’ motion for summary judgment (“Mot. Seq. 002”) is granted solely to the extent that the SL Green Defendants’ motion for summary judgment on their claim for contractual indemnification is granted conditioned on a finding of negligence against Otis at the time of trial and solely to the extent that the SL Green Defendants are not found to have caused or contributed to the accident, and the remainder of the SL Green Defendants’ motion is denied; and it is further

ORDERED that Otis’ motion for summary judgment is denied; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

<u>12/22/2025</u> DATE			<u>Mary V Rosado, JSC</u> HON. MARY V. ROSADO, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT
			<input type="checkbox"/> REFERENCE