

Telfair v Otis El. Co.

2026 NY Slip Op 30277(U)

January 22, 2026

Supreme Court, New York County

Docket Number: Index No. 157189/2017

Judge: Phaedra F. Perry-Bond

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: PHAEDRA F. PERRY-BOND PART 35

Justice

SHARON TELFAIR, Plaintiff, - v - OTIS ELEVATOR COMPANY, 1251 AMERICAS ASSOCIATES, L.P., 1251 AMERICAS ASSOCIATES, II, L.P., MITSUI FUDOSAN AMERICA, INC. Defendant.
INDEX NO. 157189/2017
MOTION DATE 12/28/2023, 12/26/2023
MOTION SEQ. NO. 007 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 241, 243, 245, 247, 270, 271, 272, 273, 278, 285, 296, 297, 298, 299

were read on this motion to/for JUDGMENT - SUMMARY

The following e-filed documents, listed by NYSCEF document number (Motion 008) 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 240, 242, 244, 246, 248, 266, 267, 268, 269, 274, 275, 276, 277, 279, 281, 282, 283, 284, 286

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, motion sequences 007 and 008 are consolidated for disposition and decided as follows:

- A. Defendant Otis Elevator Company's ("Otis") motion for summary judgment dismissing Plaintiff Sharon Telfair's ("Plaintiff") Complaint ("Mot. Seq. 007") is denied.
B. Defendants 1251 Americas Associates, L.P. ("1251 Americas"), 1251 Americas Associates, II, L.P. ("1251 Americas II"), and Mitsui Fudosan America, Inc.'s ("Mitsui") (collectively "1251 Defendants") motion for summary judgment dismissing

1 Although Otis also seeks in its notice of motion dismissal of all crossclaims asserted against it, it offers no arguments in support of this relief in its motion papers. Therefore, to the extent Otis sought dismissal of all crossclaims asserted against it, this relief is denied.

all claims and crossclaims asserted against them and seeking summary judgment on their contractual and common law indemnification cross claims asserted against Otis is granted in part and denied in part.

I. Background

On the morning of April 30, 2015, Plaintiff entered her office building at 1251 Avenue of the Americas (the “Premises”) and rode the elevator to the tenth floor (NYSCEF Doc. 210 at 33- 37). When elevator reached the tenth floor, Plaintiff tried to exit, but the elevator door suddenly and forcefully closed and hit Plaintiff (*id.* at 37). 1251 Americas II is the owner of the Premises, while 1251 Americas and 1251 Americas II are affiliates of Mitsui (NYSCEF Doc. 217). Brian Ralli, Otis’ service supervisors at the time of Plaintiff’s accident, testified that Otis inspected and maintained elevators at the Premises, and employed Tommy Szweada², an elevator mechanic assigned specifically to the Premises (NYSCEF Doc. 211 at 19 and 31). Mr. Szweada purportedly performed inspections of the elevators at the Premises and maintained the elevators (*id.* at 37).

In the months leading up to Plaintiff’s accident, Otis’ records reflect that multiple repairs were performed on the doors of the elevator that allegedly injured Plaintiff (*see* NYSCEF Doc. 229). However, the records do not contain specific details of the repairs or the issues necessitating the repairs, and at his deposition, Mr. Ralli could not provide a detailed explanation as to the issues necessitating the repairs. Now, Defendants move for summary judgment dismissing Plaintiff’s Complaint, while the 1251 Defendants also seek summary judgment on their indemnification crossclaims asserted against Otis. The motions are consolidated and decided in accordance with the following reasons.

² Mr. Szweada retired and there is no testimony from him included in the record on these motions.

II. Discussion

A. Standard

“On a motion for summary judgment, the movant must make a *prima facie* showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial” (*Nellenback v Madison County*, --- N.E.3d ----, 2025 NY Slip Op. 02263 at *3 [2025] [internal quotations and citations omitted]). The movant’s burden is heavy, and the facts must be viewed in the light most favorable to the non-movant (*Jacobsen v New York City Health and Hospitals Corp.*, 22 NY3d 824, 833 [2014]). “If the moving party fails to meet this initial burden, summary judgment must be denied ‘regardless of the sufficiency of the opposing papers’” (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] quoting *Vega v Restani Constr. Corp.*, 18 NY3d 499, 503 [2012]). “It is not the function of a court deciding a summary judgment motion to make credibility determinations or findings of fact” but rather the Court’s function is to identify material triable issue of fact or point to the lack thereof (*Vega, supra* at 505 [2012]).

B. Otis’ Motion (Mot. Seq. 007).

Viewing the facts in the light most favorable to the non-movants, Otis’ motion for summary judgment dismissing all claims and crossclaims asserted against it 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.

There is no testimony from Mr. Szweada, the Otis mechanic assigned to the Premises, regarding his maintenance and inspections of the subject elevator, nor is there any explanation as to the ongoing elevator door problems referenced multiple times in Otis' own records in the year leading up to Plaintiff's accident. Given the absence of any testimony from the mechanic assigned to the Premises, coupled with the lack of explanation regarding the numerous repairs and incidents involving the subject elevators door, the Court is precluded from finding Otis eliminated issues of fact as to notice (*see also Mable v 384 East Associates, LLC*, 175 AD3d 1127 [1st Dept 2019]). Otis' reliance on the expert affidavit of Jon B. Halpern, P.E. is unavailing considering he inspected the elevator on December 4, 2019, years after Plaintiff's accident took place (*see, e.g. Cintron v New York City Transit Auth.*, 77 AD3d 410 [1st Dept 2010] [expert's affidavit was not probative since expert did not inspect site of accident until four years after accident]).

Finally, even if Otis did meet its *prima facie* burden, issues of fact are raised by Plaintiff's expert's affidavit.³ On a motion for summary judgment, this Court cannot judge the credibility of the competing expert opinions (*see, e.g. Gobind v Nercessian*, 227 AD3d 464 [1st Dept 2024]; *P.D. v Lacour-Gayet*, 174 AD3d 417 [1st Dept 2019]; *Severino v Weller*, 148 AD3d 272 [1st Dept 2017]). Credibility issues are reserved for the fact finder at the time of trial (*Clindinin v New York City Hous. Auth.*, 117 AD3d 628 [1st Dept 2014]). Therefore, Otis' motion to dismiss Plaintiff's Complaint is denied (*see also Escolastico v Rigs Mgt. Co., LLC*, 232 AD3d 491, 492 [1st Dept 2024]; *Lilly v City of New York*, 161 AD3d 461 [1st Dept 2018]).

³ Notably, according to Mr. Carrajat, the door opening device being used in the elevator at the time of Plaintiff's accident was deemed obsolete by Otis one year prior to Plaintiff's accident. Mr. Carrajat also opined that the device was past its useful life.

C. 1251 Defendants' Motion for Summary Judgment ("Mot. Seq. 008")

1251 Defendants' motion for summary judgment is granted in part and denied in part. 1251 Defendants concede they are owners of the Premises and therefore were under a non-delegable duty to ensure the Premises remained clear of any dangerous conditions or defects, and therefore may be held vicariously liable for the negligence of their contractor Otis (*Logiudice v Silverstein Properties, Inc.*, 48 AD3d 286,286-87 [1st Dept 2008]). Therefore, because Otis was not entitled to summary judgment dismissing Plaintiff's Complaint, neither are the 1251 Defendants, who may be held vicariously liable for the acts and omissions of Otis (*see Pesante v Vertical Industrial Development Corp.*, 29 NY3d 983, 983-84 [2017]; *Tobola v 123 Washington, LLC*, 195 AD3d 456, 457 [1st Dept 2021]).

1251 Defendants' motion for summary judgment on their crossclaim for common law indemnification against Otis is denied, without prejudice, as premature. Because there has not yet been any finding of negligence against any defendant, any ruling on whether the 1251 Defendants are entitled to common law indemnification from Otis is premature. Likewise, the contractual indemnification crossclaims are premature as that indemnification clause is only triggered upon a finding that Otis negligent acts or omissions caused damages or liabilities to be incurred by 1251 Americas II. As there has not yet been any finding of negligence on the part of Otis, a ruling on contractual indemnification is premature (*see, e.g. Pena v Intergate Manhattan LLC*, 194 AD3d 576, 578 [1st Dept 2021]; *see also Healy v 169 East 69th Street Corp.*, 189 AD3d 680, 681 [1st Dept 2020] citing *JPMorgan Chase Bank, N.A. v Luxor Capital, LLC*, 101 AD3d 575 [1st Dept 2012] [indemnification clause does not apply to the mere assertion of claims]).

1251 Defendants' motion for summary judgment is granted to the extent that Otis has asserted crossclaims for contractual and common law indemnification against the 1251

Defendants.⁴ Otis, as the 1251 Defendants’ agent, cannot be held vicariously liable for 1251 Defendants’ acts and therefore the common law indemnification crossclaim is dismissed. Moreover, there is no contractual agreement by which the 1251 Defendants agreed to indemnify Otis. However, to the extent Otis asserts a contribution crossclaim against the 1251 Defendants, that claim survives as it is premature to rule that a jury could not reasonably allocate fault amongst the 1251 Defendants and Otis.

Accordingly, it is hereby,

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

ORDERED that the 1251 Defendants’ motion for summary judgment is granted solely to the extent that Otis’ crossclaims for contractual and common law indemnification are dismissed, and the remainder of the motion 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.

1/22/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE

⁴ Otis’ crossclaim is one lengthy paragraph that fails to delineate under what legal theory Otis is asserting a crossclaim (see NYSCEF Doc. 7 at