Rijo v Alliance El. Co.
2026 NY Slip Op 30323(U)
January 27, 2026
Supreme Court, New York County
Docket Number: Index No. 161888/2019
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. PHAEDRA F. PERRY-BOND** **PART** **35**

Justice

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INDEX NO. 161888/2019

FRANKLIN RIJO,

MOTION DATE 05/22/2024, 04/24/2024

Plaintiff,

MOTION SEQ. NO. 005 006

- v -

ALLIANCE ELEVATOR COMPANY, UNITEC ELEVATOR COMPANY, OTIS ELEVATOR COMPANY, EDISON MANAGEMENT CO., L.L.C.

Defendant.

DECISION + ORDER ON MOTION

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The following e-filed documents, listed by NYSCEF document number (Motion 005) 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 120, 122, 124, 125, 126, 127, 128, 129, 136, 140

were read on this motion to/for SUMMARY JUDGMENT(BEFORE JOIND) .

The following e-filed documents, listed by NYSCEF document number (Motion 006) 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 121, 123, 130, 131, 132, 133, 134, 135, 137

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

Upon the foregoing documents, motion sequences 005 and 006 are consolidated for disposition and decided as follows:

A. Defendants Unitec Elevator Company ("Unitec"), Alliance Elevator Company ("Alliance") and Otis Elevator Company's ("Otis") (collectively "Otis Defendants") motion for summary judgment dismissing all claims and crossclaims asserted against it ("Mot. Seq. 005") is denied.

B. Defendant Edison Management Co., L.L.C.'s ("Edison Management") motion for summary judgment dismissing Plaintiff Franklin Rijo's ("Plaintiff") Complaint ("Mot. Seq. 006") is denied.

I. Background

On July 7, 2017, Plaintiff, employed as a housekeeper at 228 West 47th Street, New York, New York (the "Premises" or the "Edison Hotel") used a service elevator[1] to go floor to floor and ensure the garbage had been picked up. Edison Management owns the Premises (NYSCEF Doc. 96 at 12). Edison Management leased the Premises to 47th Street Management Co. LLC ("47th Street Management") (NYSCEF Doc. 97). Edison Management contracted non-party Vema Group to provide supervisory services over elevator maintenance (NYSCEF Doc. 96 at 30). Vema Group contracted Defendant Unitec to maintain the Premises' elevators (NYSCEF Doc. 98). Paul Maloney was an elevator mechanic employed by Unitec[2] and assigned to maintain and inspect the Premises' elevators (NYSCEF Doc. 135 at 19).

Plaintiff attempted to use the service elevator to go from the 21st to the 20th floor when the elevator dropped suddenly from the 21st floor to the 17th floor (NYSCEF Doc. 94 at 72). The service elevator then allegedly dropped to the lobby floor and the door would not open, and the Premises' security had to open the door from the outside (*id.* at 79-82). According to Plaintiff, prior to his accident he had heard coworkers complain about the service elevator not working properly (*id.* at 159). Records detailing the elevator's maintenance show that shortly before Plaintiff's accident, on April 20, 2017, the elevator became stuck on floor 9, and on May 8, 2017, the elevator was "jumping between floors badly" (NYSCEF Doc. 95 at 38-39). At the time of the accident, the Premises' elevators were undergoing a modernization project (NYSCEF Doc. 96 at 16). Now, all Defendants move for summary judgment dismissing Plaintiff's Complaint. The motions are consolidated for disposition and decided in accordance with the reasons that follow.

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[1] The elevator is described as "Elevator 7".
[2] Unitec was formerly known as Alliance (NYSCEF Doc. 135 at 19).

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. The Otis Defendants' Motion ("Mot. Seq. 005")

The Otis[3] Defendants' motion for summary judgment is denied. Viewing the facts in the light most favorable to the non-moving parties, and considering the movant's heavy burden on summary judgment, the Otis Defendants' argument that they did not have notice of any defect in the subject elevator is insufficient, especially given the numerous records detailing prior incidents with the elevator "jumping" in the months leading up to Plaintiff's accident (*see* (NYSCEF Doc. 95 at 38-39; *see also Lilly v City of New York*, 161 AD3d 461 [1st Dept 2018] citing *Ardolaj v Two*

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[3] Although Otis, Unitec, and Alliance are three separate named Defendants, the Otis Defendants' motion papers does not make any attempt to distinguish liability as amongst those three entities and instead makes the same unitary and blanket argument for all three corporate entities.

Broadway Land Co., 276 AD2d 264, 265 [1st Dept 2000]). The conflicting expert interpretations of the elevator records detailing prior incidents with the same elevator only further highlight issues of fact as to notice (*see Escolastico v Rigs Mgt. Co., LLC*, 232 AD3d 491, 492 [1st Dept 2024]; *see also Mable v 384 East Associates, LLC*, 175 AD3d 1127, 1128 [1st Dept 2019]). Therefore, the Otis Defendants' motion for summary judgment is denied (*see also Aponte v Bronx Preservation Hous. Dev. Fund Corp.*, 202 AD3d 401, 401-402 [1st Dept 2022] citing *Dzidowska v Related Companies, L.P.*, 157 AD3d 447, 447-448 [1st Dept 2018]). The Court has considered the remainder of the Otis Defendants' contentions, including their argument that Plaintiff's expert's affidavit does not establish liability, and has found them to be unavailing.

C. Edison Management's Motion ("Mot. Seq. 006)

Edison Management's motion for summary judgment is denied. Edison Management's motion for summary judgment premised on the argument that it is an out of possession landlord who cannot be held liable is undercut by the very same lease it relies upon to make that argument. While an out-of-possession landlord is generally not liable for negligence with respect to a condition of the demised premises, there is an exception to this rule where the landlord "has a contractual right to re-enter, inspect, and make needed repairs, and where liability is based on a significant structural or design defect that is contrary to a specific statutory safety provision" (*see Thomas v Triboro Maintenance Corporation*, 223 AD3d 582, 582 [1st Dept 2024] quoting *Ledesma v AMA Grocery, Corp.*, 145 AD3d 477, 477 [1st Dept 2016]).

There are multiple issues of fact which preclude summary judgment under Edison Management's "out of possession" argument. First, there is an issue of fact as to whether Edison Management is even an out of possession landlord since the lease states that Edison Management maintains an office presence at the Premises (*see* NYSCEF Doc. 97 at page 1). Second, pursuant

to the lease, Edison Management retained the right to reenter the Premises and to make repairs that its tenant may have neglected or refused to make (*see* NYSCEF Doc. 97 at Art. 14 and Art. 18 § 8). A malfunctioning elevator is a "significant structural or design defect that is contrary to a specific statutory safety provision" and given Edison Management's right to reenter and inspect the Premises to make repairs, the malfunctioning elevator is a defect for which it may be liable. Moreover, there are issues of fact as to Edison Management's notice of the malfunctioning elevator considering there was an ongoing modernization project for all the Premises' elevators and there were numerous incidents with this specific subject elevator in the months leading up to Plaintiff's accident (*see also Federal Ins. Co. v Evans Const. of New York Corp.*, 257 AD2d 508, 508 [1st Dept 1999]).

Finally, Edison Management's argument that Plaintiff has failed to identify the defect that caused his accident is undercut by Plaintiff's own testimony and the affidavit of his expert. Therefore, Edison Management's motion for summary judgment is denied.

Accordingly, it is hereby,

ORDERED that the Otis Defendants' and Edison Management's motions for summary judgment are each 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.

1/27/26

DATE

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

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