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| Guerrero v Battery Park City Auth. |
| 2026 NY Slip Op 30513(U) |
| February 10, 2026 |
| Supreme Court, New York County |
| Docket Number: Index No. 156612/2019 |
| 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. 156612/2019

GLENDA ASCENCIO GUERRERO,
Plaintiff,

MOTION DATE 12/30/2024

MOTION SEQ. NO. 002

- v -

BATTERY PARK CITY AUTHORITY, CBRE, INC., OTIS
ELEVATOR COMPANY,

DECISION + ORDER ON
MOTION

Defendant.

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CBRE, INC.

Third-Party
Index No. 595645/2024

Plaintiff,

-against-

ALLAN BRITWAY ELECTRICAL CONTRACTORS, INC.,
ALLAN BRITWAY ELECTRICAL UTILITY CONTRACTORS,
INC., ALLAN BRITWAY ELECTRICAL SERVICES, INC.,
ALLAN BRITWAY UTILITY SERVICES, INC.

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 59, 60, 61, 62, 63,
64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 95, 96, 97, 98

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

Upon the foregoing documents, Defendant Battery Park City Authority's ("Battery Park")
motion for sanctions and for summary judgment dismissing Plaintiff's Complaint is granted in part
and denied in part.

On September 24, 2018, Plaintiff, an employee of American Express, was allegedly injured
while using an elevator in the American Express Building at 200 Vesey Street, New York, New
York (the "Premises"). Battery Park owns the land on which the Premises sits (NYSCEF Doc. 64
at 23). In 1983, Battery Park leased the entirety of the Premises to non-party Olympia & York

Battery Park Company for a term set to expire on June 17th, 2069 (NYSCEF Doc. 65). In that lease, Battery Park retained a right of reentry for the purpose of inspecting the Premises, to ensure the tenant is complying with the lease terms, and in the case of an emergency or an event of default, allowing it to make any necessary repairs to the Premises (*id.* at p. 188, § 20.01). That lease was subsequently assigned to American Express (NYSCEF Doc. 67) and underwent several amendments, none of which altered the right of reentry provision in the original lease or the parties' obligations with respect to repairs and maintenance (NYSCEF Docs. 68-72). Defendant/Third-Party Plaintiff CBRE, Inc. ("CBRE") manages the Premises on behalf of American Express (NYSCEF Doc. 82 at 9-11). Defendant Otis Elevator Company ("Otis") managed the Premises' elevators on behalf of non-party American Express (NYSCEF Doc. 74 at 20-21). CBRE conducted a post-accident investigation and identified two potential causes for the elevator malfunctioning, with both causes tied to loose, bent, or faulty equipment in the electrical circuit powering the subject elevator.

Battery Park moves for summary judgment based on the argument that it is an out of possession landlord who may not be held liable for injuries occurring on the Premises and seeks sanctions against Plaintiff for suing Battery Park. The only party to oppose is Plaintiff. There is no dispute that Battery Park is an out of possession landlord who leased the entirety of the Premises to American Express, and who assumed no active duty to maintain the elevators or any other part of the Premises. An out-of-possession landlord with a limited right to reenter can be liable for negligence in the event the accident was caused by a significant structural or design defect that is contrary to a specific statutory safety provision (*Drotar v 60 Sweet Thing, Inc.*, 106 AD3d 426, 426-427 [1st Dept 2013]).

In the context of elevator accidents, the First Department has repeatedly dismissed out-of-possession landlords for injuries caused by elevator mis-leveling on the basis that mis-leveling is not a significant structural or design defect (*see Ortiz v CEMD Elevator Corp.*, 123 AD3d 463, 463-464 [1st Dept 2014]; *Dixon v Nur-Hom Realty Corp.*, 254 AD2d 66, 66-67 [1st Dept 1998]). The record before the Court on this motion contains an analogous non-structural defect – which by Plaintiff’s own admissions constituted a loose connection in an electrical circuit (*see* NYSCEF Doc. 79 at ¶ 9). The repair of this defect would not require any substantial structural or design modifications.

In opposition, to Battery Park’s *prima facie* showing, Plaintiff fails to identify how the alleged defect was structural or based on design and likewise fails to identify any specific statutory safety provision the alleged defect violated (*see, e.g. Dinkins v Kansas Fried Chicken, Inc.*, 158 AD3d 420 [1st Dept 2018] [out-of-possession landlord not liable for ceiling which collapsed and fell on plaintiff]; *Heim v Trustees of Columbia University in City of New York*, 81 AD3d 507, 507 [1st Dept 2011] [out-of-possession landlord not liable for non-structural defect for which it had no notice]). Therefore, the motion for summary judgment is granted (*see also Estrella v Rex Realty of Connecticut, Inc.*, 188 AD3d 562, 562 [1st Dept 2020]).

However, the motion for sanctions is denied. The decision whether to impose sanctions for frivolous conduct is generally left to the sound discretion of the Court (*Flowers v 73rd Townhouse, LLC*, 227 AD3d 568 [1st Dept 2024]). Here, while Plaintiff’s opposition to the motion was lacking and Battery Park ultimately succeeded on summary judgment, the Court does not find the lawsuit and refusal to voluntarily dismiss Battery Park to be wholly frivolous, as there does exist precedent in similar elevator accident cases where an out-of-possession landlord is denied summary judgment and even found liable to a plaintiff during trial. While the record before the Court does

not comport with those other cases, nor has Plaintiff set forth any expert opinion on the nature of the defect or the statutes violated, the Court does not deem Plaintiff's actions in this case to rise to the extreme level of frivolity required to issue sanctions. Therefore, the branch of the motion seeking sanctions is denied.

Accordingly, it is hereby,

ORDERED that Battery Park's motion for summary judgment dismissing Plaintiff's Complaint is granted, and the Complaint as asserted against Battery Park is hereby dismissed; and it is further

ORDERED the branch of the motion seeking sanctions is denied; and it is further

ORDERED that within ten days of entry, counsel for Battery Park 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.

2/10/26
DATE


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

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| CHECK ONE: | <input type="checkbox"/> CASE DISPOSED | <input type="checkbox"/> DENIED | <input checked="" type="checkbox"/> NON-FINAL DISPOSITION | <input type="checkbox"/> OTHER |
| APPLICATION: | <input type="checkbox"/> GRANTED | | <input checked="" type="checkbox"/> GRANTED IN PART | |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> SETTLE ORDER | | <input type="checkbox"/> SUBMIT ORDER | |
| | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN | | <input type="checkbox"/> FIDUCIARY APPOINTMENT | <input type="checkbox"/> REFERENCE |