

Locke v Schindler El. Corp.
2026 NY Slip Op 31283(U)
March 31, 2026
Supreme Court, New York County
Docket Number: Index No. 150898/2021
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO PART 65M

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.

Defendant.

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INDEX NO. 150898/2021

MOTION DATE N/A, N/A

MOTION SEQ. NO. 004 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 132, 133, 134, 135, 136, 137, 138, 144, 145, 148, 172

were read on this motion for SUMMARY JUDGMENT.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 149, 150, 168, 169, 170, 171, 173

were read on this motion for SUMMARY JUDGMENT.

Plaintiff Loren Locke ("plaintiff") moves, pursuant to CPLR § 3212, for partial summary judgment on liability against defendants Schindler Elevator Corporation, Tishman Speyer Properties, L.P., and RCPI Landmark Properties, L.L.C. (Mot. Seq. 004). Plaintiff seeks an order determining, as a matter of law, that defendants' negligence caused plaintiff's February 9, 2018 trip-and-fall incident involving elevator "S44" at 30 Rockefeller Plaza, with comparative fault (if any) and damages to be tried.

Defendants oppose plaintiff's motion and, by separate motion (Mot. Seq. 005), seek summary judgment dismissing the complaint, arguing principally that plaintiff cannot establish defendants' negligence or notice, and that the doctrine of res ipsa loquitur cannot be used to impose liability on this record.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff commenced this action in January 2021. Defendants served answers in 2021. Depositions of plaintiff and defendants' witnesses were completed, including testimony from plaintiff (April 3, 2023 and June 12, 2023), defendants' elevator attendant/security witness (May 15, 2024), defendants' management witness (May 23, 2024), and the elevator contractor's foreman

(December 9, 2024). A note of issue was filed in September 2025, and these summary judgment motions followed.

The underlying claim arises from an incident on February 9, 2018 at 30 Rockefeller Plaza, where plaintiff worked and alleges she was injured while exiting elevator “S44” at the sub-basement. Plaintiff contends the elevator stopped below floor level, creating a height differential that caused her toe to strike the exposed edge of the landing as she exited. Plaintiff further contends that irregular operation occurred on the 65th floor immediately before her ride, including abnormal door movement and travel behavior, and that the elevator attendant/security officer nevertheless allowed the elevator to remain in service and permitted plaintiff to ride.

Plaintiff submits deposition testimony, video evidence, a “Control Center Log” entry describing an “unleveled” condition and a loud noise report, elevator service and preventive maintenance records (including entries referencing the governor rope and a complaint that the car was “jumping while traveling”), and the opinion of plaintiff’s elevator expert (Michael Sena), who opines the elevator should have been removed from service and that deficient inspection/maintenance—particularly as to the governor rope and stopping accuracy systems—more likely than not caused the mis-leveling event.

Defendants submit, among other items, opposition papers contending that plaintiff did not meet her prima facie burden; that the record demonstrates regular and systematic maintenance, inspection, and testing; that plaintiff’s reliance on post-incident adjustment is improper as subsequent remedial measures; that prior service issues are not sufficiently similar to mis-leveling to establish notice; that plaintiff’s hearsay-based “awareness” of prior elevator issues is insufficient; and that plaintiff’s own testimony (that she was “in a hurry” and did not see the alleged mis-level) precludes plaintiff from obtaining judgment as a matter of law. Defendants also rely on an expert (Jon B. Halpern) who opines that the elevator was maintained consistent with industry standards and that mis-leveling can occur even where maintenance is proper.

ARGUMENTS

Plaintiff argues she is entitled to partial summary judgment on liability because: (i) the elevator mis-leveled at the sub-basement and caused her fall; (ii) the elevator attendant/security officer observed abnormal conditions at or before the 65th floor and had a policy obligation to take the elevator out of service but did not do so; (iii) the Control Center Log memorializes an “unleveled” condition and abnormal operation; (iv) pre-incident service history (including a “jumping while traveling” complaint and documentation of “clean debris from governor rope”) supplied warning signs of a condition affecting stopping accuracy; and (v) Schindler’s post-incident tightening/adjustment of the governor rope further supports plaintiff’s contention that the governor rope and related systems were implicated. Plaintiff further argues that, under the Court of Appeals’ decision in *Rodriguez v City of New York*, 31 NY3d 312 (2018), comparative negligence does not bar a plaintiff from obtaining partial summary judgment on defendant liability. Plaintiff relies on liability principles applicable to elevator owners/managers and elevator maintenance contractors, including *Rogers v Dorchester Assoc.* (32 NY2d 553 [1973]) and related authority.

Defendants argue plaintiff's motion must be denied because plaintiff did not "apply" or "conclude" the summary judgment standard in her moving papers and because plaintiff has not eliminated triable issues of negligence, notice, and causation. Defendants argue that plaintiff's deposition establishes she was fast-walking and did not see the mis-level before she tripped, such that plaintiff cannot establish the incident occurred "due to no fault of her own," and—at minimum—issues exist as to causation. Defendants contend their service and maintenance proof demonstrates systematic maintenance and inspection, including that the governor rope and stopping accuracy-related components were maintained. Defendants argue plaintiff's reliance on the post-incident governor rope adjustment is barred as subsequent remedial measures. Defendants further argue notice is not established because (i) there were no prior complaints of mis-leveling, (ii) prior door issues, "banging," or "jumping while traveling" are not similar to mis-leveling, and (iii) plaintiff's testimony about hearing unidentified coworkers discuss elevator problems is hearsay and insufficient. Defendants cite authority requiring similarity of prior conditions to prove notice and rejecting hearsay assertions as insufficient to defeat summary judgment.

On defendants' motion (Mot. Seq. 005), defendants argue that plaintiff cannot prove negligence without resort to speculation, and that *res ipsa loquitur* is unavailable or insufficient on this record. Plaintiff contends defendants are not entitled to dismissal because plaintiff has submitted admissible evidence of abnormal operation and mis-leveling, because the contemporaneous log and video evidence support notice and breach, and because plaintiff's expert opinion raises at least triable issues as to negligent maintenance and negligent operation in failing to remove the elevator from service.

DISCUSSION

I. Legal Standards

Summary judgment is a drastic remedy that should be granted only where the movant establishes, through evidence in admissible form, entitlement to judgment as a matter of law by demonstrating the absence of any material issue of fact (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Andre v Pomeroy*, 35 NY2d 361, 364 [1974]; *Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395, 404 [1957]). Failure to make a prima facie showing requires denial regardless of the sufficiency of the opposing papers (*Alvarez*, 68 NY2d at 324).

A movant must tender proof sufficient to eliminate triable issues; mere conclusions, expressions of hope, or speculation do not suffice (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Where competing inferences may be drawn from the record, or where credibility issues exist, summary judgment is inappropriate (*Sillman*, 3 NY2d at 404; *Andre*, 35 NY2d at 364).

Before turning to the substantive merits of the parties' respective motions, the court finds it necessary to address several threshold legal principles that frame the analysis that follows. These preliminary issues do not resolve the ultimate question of liability, but they define the governing standards by which the evidence must be evaluated and clarify the legal lens through which the parties' arguments are to be considered. In particular, the court must first address the role of comparative negligence in the context of a motion for partial summary judgment, the contours of the duties owed by property owners and elevator maintenance contractors under settled New York

law, and the evidentiary limitations applicable to proof of subsequent remedial measures. Resolving these foundational matters at the outset ensures that the court's analysis proceeds in an orderly and principled fashion, guided by controlling Court of Appeals and Appellate Division precedent, and allows the court to then turn, with appropriate clarity, to the central question presented by the motions: whether either party has demonstrated entitlement to judgment as a matter of law or whether material issues of fact remain for resolution by a jury.

A. *Comparative Negligence*

Defendants argue plaintiff cannot obtain summary judgment because plaintiff testified she was "in a hurry" or "fast walking" and did not see the alleged mis-leveling before she tripped. Even assuming that testimony could support a finding of comparative negligence at trial, the Court of Appeals has held that a plaintiff moving for partial summary judgment on defendant liability is not required to demonstrate the absence of plaintiff's own comparative fault (*Rodriguez v City of New York*, 31 NY3d 312, 324-325 [2018]). Comparative negligence may bear on apportionment of fault and damages, but does not, standing alone, defeat a plaintiff's motion where defendant negligence and causal role are otherwise established as a matter of law (*id.*).

Rodriguez, however, does not diminish plaintiff's burden to establish, prima facie, defendants' negligence and causation in the first instance. The question on plaintiff's motion remains whether plaintiff has eliminated all triable issues as to defendants' breach of duty and proximate cause.

B. *Substantive Elevator Liability Principles*

A property owner or managing agent owes a duty to maintain its premises in a reasonably safe condition under the circumstances (*Basso v Miller*, 40 NY2d 233, 241 [1976]). In the elevator context, an owner's duty to maintain safe elevator service may be nondelegable, and an owner may be liable for elevator malfunctions where it has actual or constructive notice of the alleged defect, or where it fails to notify the elevator contractor of a known defect (*Rogers v Dorchester Assoc.*, 32 NY2d 553, 559 [1973]; *Isaac v 1515 Macombs, LLC*, 84 AD3d 457, 457-458 [1st Dept 2011]). An elevator maintenance contractor may be liable in negligence to an injured passenger for failing to repair a defect of which it had actual or constructive notice, or for failing to use reasonable care to discover and correct a defective condition it reasonably should have found (*Rogers*, 32 NY2d at 559). The Court of Appeals has recognized that circumstantial evidence may support an inference of negligent inspection and repair against an elevator maintenance company under appropriate circumstances (*id.*; see also *Beinhocker v Barnes Dev. Corp.*, 296 NY 925 [1947]; *Kelly v Watson El. Co.*, 309 NY 49 [1955]).

Where notice is asserted through prior incidents, the prior condition must be sufficiently similar in nature to the condition alleged to have caused the injury (*Dzidowska v Related Cos., LP*, 157 AD3d 447, 447-448 [1st Dept 2018]; *Gjonaj v Otis El. Co.*, 38 AD3d 384, 384-385 [1st Dept 2007]).

C. *Evidence of Subsequent Remedial Measures and its Limits*

Defendants contend plaintiff improperly relies on evidence that technicians tightened or adjusted the governor rope after the incident. Evidence of subsequent remedial measures is generally not admissible to prove negligence or culpable conduct (*Cook v HMC Times Sq. Hotel, LLC*, 112 AD3d 485, 485 [1st Dept 2013]). To the extent plaintiff's motion treats post-incident adjustment as substantive proof of negligence, such reliance is limited by that principle (*id.*) The court notes, however, that the existence of a post-incident adjustment is not the only proof plaintiff advances; plaintiff also relies on evidence of abnormal operation and an "unleveled" condition described contemporaneously, as well as pre-incident service history and expert opinion. Accordingly, the court's disposition does not turn on the admissibility of subsequent remedial measures alone.

II. Plaintiff's Motion

Plaintiff has submitted substantial proof supporting the claim that elevator S44 malfunctioned and mis-leveled and that abnormal elevator operation occurred on the day of the incident. Plaintiff also points to evidence that the elevator attendant/security officer and building management witnesses described a policy requiring removal from service if abnormal behavior occurred, and plaintiff relies on a contemporaneous control center log entry reflecting a report that the elevator made a loud noise and was "unleveled" upon arrival at the 65th floor. Plaintiff further submits expert opinion attributing the mis-leveling to maintenance deficiencies relating to stopping accuracy and governor rope tension systems and opining that the elevator should have been removed from service before plaintiff's ride.

Nevertheless, on this record, plaintiff has not eliminated all triable issues of fact as to defendants' negligence and causal responsibility. Several issues require resolution by a factfinder: First, the record presents a material dispute regarding whether a mis-leveling condition at the 65th floor occurred prior to plaintiff's entry and whether the attendant/security officer had actual notice of a leveling defect requiring immediate removal from service. Defendants contend the video does not demonstrate mis-leveling at the 65th floor and that no testimony from plaintiff or the attendant/security officer establishes mis-leveling at that floor. Plaintiff contends the log and video demonstrate mis-leveling and releveling behavior and constitute actual notice. Where the parties' proofs support competing inferences about the existence and timing of an observed mis-level condition, summary judgment for plaintiff is inappropriate (*Sillman*, 3 NY2d at 404; *Andre*, 35 NY2d at 364).

Second, to the extent plaintiff relies on prior service history to establish notice of the specific mis-leveling condition, defendants raise a triable issue whether the cited prior complaints—door malfunctions, "banging," or "jumping while traveling"—are sufficiently similar to mis-leveling to constitute notice of the particular hazard alleged. Similarity of prior conditions is required where notice is premised upon prior issues (*Dzidowska*, 157 AD3d at 447-448; *Gjonaj*, 38 AD3d at 384-385). Plaintiff's expert opines that "jumping while traveling" may reflect defects affecting stopping accuracy and governor rope systems, but defendants' submissions dispute that inference and contend such complaints are not mis-leveling and do not establish notice. Because the similarity and significance of the prior conditions, and whether reasonable care required additional inspection or repair, are disputed on competing proofs, plaintiff has not shown entitlement to liability as a matter of law (*Rogers*, 32 NY2d at 559; *Sillman*, 3 NY2d at 404).

Third, defendants argue plaintiff did not see the mis-leveling before exiting and was walking quickly, and they contend this bears on causation and comparative negligence. While *Rodriguez* forecloses denial of plaintiff's motion merely because comparative fault might exist, plaintiff still must establish that the mis-leveling defect, rather than some other cause, was the proximate cause of the fall as a matter of law (*Rodriguez*, 31 NY3d at 324-325; *Zuckerman*, 49 NY2d at 562.) Defendants' proof, coupled with plaintiff's testimony, supports at least an arguable alternative inference as to how the incident occurred, and the video and testimonial record requires weighing of inferences that is not appropriate on summary judgment (*Andre*, 35 NY2d at 364).

Accordingly, plaintiff's motion for partial summary judgment on liability must be denied.

III. Defendants' Motion

Defendants, as movants on Mot. Seq. 005, bear the burden to establish prima facie entitlement to judgment as a matter of law dismissing the complaint, including by demonstrating either that no dangerous condition existed, that defendants were not negligent, or—where notice is required—that defendants lacked actual or constructive notice and that reasonable care was exercised (*Alvarez*, 68 NY2d at 324; *Rogers*, 32 NY2d at 559.)

Defendants rely on evidence of routine maintenance and inspection, including testimony and records showing systematic upkeep, and on expert opinion that mis-leveling can occur even without negligence, that defendants lacked notice of a leveling problem, and that no failure to maintain caused plaintiff's incident. Defendants emphasize that no prior complaint expressly used the term "mis-leveling," and argue that plaintiff's reliance on hearsay about other employees' complaints is insufficient.

Even assuming defendants' submissions make a prima facie showing, plaintiff has raised triable issues that preclude dismissal. First, plaintiff submits evidence of contemporaneous abnormal operation and a reported "unleveled" condition, together with testimony that abnormal elevator behavior required the elevator to be removed from service. Evidence of contemporaneous irregular operation and a documented "unleveled" condition, even if contested as to precise timing and degree, raises triable issues of actual notice and negligent operation, including whether defendants failed to act reasonably by allowing continued service (*Rogers*, 32 NY2d at 559; *Isaac*, 84 AD3d at 457-458; *Sillman*, 3 NY2d at 404).

Second, plaintiff submits evidence of pre-incident service history implicating systems potentially related to stopping accuracy, including a service entry describing "clean debris from governor rope" and a complaint that the car was "jumping while traveling." Defendants argue these are not similar to mis-leveling, citing authority requiring similarity of prior conditions (*Dzidowska*, 157 AD3d at 447-448; *Gjonaj*, 38 AD3d at 384-385). Plaintiff's expert, however, opines that such "jumping" and erratic operation can reflect problems affecting encoder-related stopping accuracy or governor rope tension and that the maintenance documentation does not show appropriate testing or adjustment. On summary judgment, the court may not resolve such competing expert inferences or the weight to give the service history (*Andre*, 35 NY2d at 364; *Zuckerman*, 49 NY2d at 562).

Third, defendants' reliance on plaintiff's testimony that she "heard" others talk about elevator issues does not advance defendants' motion to the extent defendants seek to treat plaintiff's entire notice proof as inadmissible hearsay. While hearsay assertions, such as unspecified complaints by unidentified persons, are insufficient to defeat summary judgment where they are the only notice proof, plaintiff's opposition is not confined to hearsay; plaintiff relies on documentary records, video evidence, and expert analysis (*San Andres v 1254 Sherman Ave. Corp.*, 94 AD3d 590, 591 [1st Dept 2012]). Thus, the existence of hearsay in part of plaintiff's narrative does not eliminate the triable issues created by the remainder of plaintiff's proof.

Finally, defendants' argument that plaintiff cannot rely on *res ipsa loquitur* does not warrant dismissal on these papers. *Res ipsa loquitur* is an evidentiary doctrine permitting an inference of negligence where the event would not ordinarily occur absent negligence, the instrumentality was within defendants' control, and the occurrence was not due to plaintiff's voluntary act (*Kambat v St. Francis Hosp.*, 89 NY2d 489, 494 [1997]). While the doctrine does not automatically establish liability, it can, in a proper case, create triable issues precluding summary judgment for defendants where defendants' explanation does not conclusively eliminate negligence (*Morejon v Rais Constr. Co.*, 7 NY3d 203, 209 [2006]; *Rogers*, 32 NY2d at 559). Here, where plaintiff submits proof of mis-leveling and abnormal operation and defendants' proof is contested, defendants are not entitled to judgment as a matter of law.

Accordingly, defendants' motion for summary judgment dismissing the complaint must be denied. It is hereby

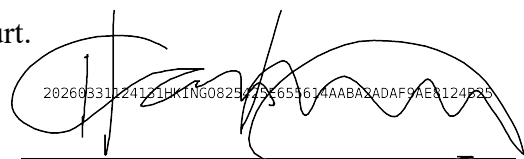
ORDERED that plaintiff's motion for partial summary judgment on liability (Mot. Seq. 004) is denied; and it is further

ORDERED that defendants' motion for summary judgment dismissing the complaint (Mot. Seq. 005) is denied; and it is further

ORDERED that the action shall proceed to trial on liability (including comparative fault, if any) and damages, and the parties shall appear as directed by the court for further pretrial proceedings; and it is further

ORDERED that the parties are directed to appear for a settlement conference before the court on Wednesday June 3, 2026, at 10:00 AM in Room 308 of the courthouse located at 80 Centre Street, New York, New York.

This constitutes the decision and order of the court.


HASA A. KINGO, J.S.C.

3/31/2026
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input 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