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## ELEVATOR LIABILITY

Pursuant to section 78 of the New York Multiple Dwelling Law ("MDL"), entitled, "Repairs," a building owner's duty to maintain their premises extends to elevator maintenance.<sup>1</sup> This duty is nondelegable.<sup>2</sup>

Typically, most property owners have arrangements with professional elevator maintenance/service companies to inspect, maintain and service their elevators. However, the ultimate legal responsibility to maintain the elevators in "good repair" as required by the MDL remains with the building's owner.<sup>3</sup> Only if the building owner

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<sup>1</sup> See Wagner v. Grinnell Housing Development Fund Corporation, 260 A.D.2d 265, 266, 688 N.Y.S.2d 551, 553 (1<sup>st</sup> Dep't 1999).

<sup>2</sup> See Mallor v. Wolk Properties, Inc., 63 Misc.2d 187, 195, 311 N.Y.S.2d 141, 149 (Sup.Ct. N.Y. County 1969).

<sup>3</sup> Wagner, 260 A.D.2d at 266, 688 N.Y.S.2d at 553 (noting that the building's owner's "duty to maintain the premises extends to elevator repair" and this duty "remains nondelegable as between the building owner and the injured party, despite any contractual delegation of maintenance obligations by the owner to another party") (citations omitted). See NY MDL § 78(1), stating:

Every multiple dwelling, including its roof or roofs, and every part thereof and the lot

forwarded any and all elevator related complaints to the retained elevator maintenance company prior to an accident occurring can the building owner seek common-law indemnification from the elevator maintenance company if such reported problems with the elevator were not rectified.<sup>4</sup>

Today, it is well-settled throughout New York State that “[a]n elevator company which agrees to maintain an elevator in safe operating condition may be liable to a passenger for failure to correct conditions of which it has knowledge or failure to use reasonable care to discover and correct a condition which it ought to have found.”<sup>5</sup> To establish that it used “reasonable care”, repair records, deposition testimony and affidavits are typically used by defendant elevator companies.<sup>6</sup>

If there is no proof of actual or constructive notice to a building owner of an elevator’s defect, and a judgment is found against the building owner, the building owner would be entitled to full indemnification from the retained elevator service company as the building owner’s liability would only be vicarious.<sup>7</sup>

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upon which it is situated, shall be kept in good repair. The owner shall be responsible for compliance with the provisions of this section; but the tenant also shall be liable if a violation is caused by his own wilful act, assistance or negligence or that of any member of his family or household or his guests. . . .

<sup>4</sup> See Mas v. Two Bridges Associates, 75 N.Y.2d 680, 687-688, 555 N.Y.S.2d 669, 673 (1990); Linares v. Fairfield Views, Inc., 231 A.D.2d 418, 420, 647 N.Y.S.2d 194, 195 (1<sup>st</sup> Dep’t 1996).

<sup>5</sup> Rogers v. Dorchester Associates, 32 N.Y.2d 553, 559, 347 N.Y.S.2d 22, 26 (1973) (citations omitted). See Locatelli v. Simmons Elevator Company Inc., 284 A.D.2d 891, 891, 727 N.Y.S.2d 199, 200 (3d Dep’t 2001); Petro v. New York Life Insurance Company, 277 A.D.2d 213, 213, 715 N.Y.S.2d 725, 726 (2d Dep’t 2000); Farmer v. Central Elevator, Inc., 255 A.D.2d 289, 289-290, 679 N.Y.S.2d 636, 637 (2d Dep’t 1998).

<sup>6</sup> See e.g., Norma Chiesa v. Citibank, 2001 WL 1803322 (N.Y.Sup.App.Term) (“Otis’s repair records, deposition testimony and affidavits established that the elevator was properly maintained and reasonable care was used to discovery and correct any condition which ought to have been found.”).

<sup>7</sup> See Sirigiano v. Otis Elevator Company, 118 A.D.2d 920, 921, 499 N.Y.S.2d 486, 488 (3d Dep’t 1986).

Notwithstanding a building owner having an exclusive contract or arrangement with an elevator company to inspect, maintain and repair their elevator(s), a building owner can still be found liable if it had actual notice of a defective condition with the elevator at issue and did not provide prompt notice to its elevator service company.<sup>8</sup> To successfully establish lack of notice, an affidavit must be presented from the person who would have received notice of such a problem with the elevator stating that no such notice existed.<sup>9</sup>

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<sup>8</sup> See Browning v. Meadowlands Professional Park, Inc., 254 A.D.2d 725, 678 N.Y.S.2d 223, 224 (4<sup>th</sup> Dep't 1998); Camaj v. East 52<sup>nd</sup> Partners, 215 A.D.2d 150, 151, 626 N.Y.S.2d 110, 111 (1<sup>st</sup> Dep't 1995) ("East 52<sup>nd</sup>, as owner of a multiple dwelling, owed a nondelegable duty to persons on its premises to maintain the elevator in a reasonably safe condition. . . . [and the] Plaintiff . . . can maintain the action against East 52<sup>nd</sup> even though the responsibility for maintenance had been transferred to another, provided East 52<sup>nd</sup> had notice, actual or constructive, of the malfunction").

<sup>9</sup> See Scheifla v. Benchmark Management Corporation, 270 A.D.2d 815-816, 705 N.Y.S.2d 749-750 (4<sup>th</sup> Dep't 2000). See e.g., Carrasco v. Millar Elevator Industries, Inc., 305 A.D.2d 353, 354, 758 N.Y.S.2d 679 (2d Dep't 2003) ("The defendant established prima facie that it had no actual or constructive notice of a defective condition in the subject elevator, as that elevator had neither stopped between floors nor shook or vibrated prior to this incident, and the defendant had not received any complaints regarding such activity") (citations omitted).