



Question of Fact Whether Elevator Company Had Constructive Notice of “Misleveling Condition”/Question of Fact About Applicability of Res Ipsa Loquitur Doctrine

The First Department determined questions of fact had been raised about whether an elevator company, which exclusively maintained and repaired the elevator, had constructive notice of the “misleveling condition.” In addition there was a question of fact about the applicability of the res ipsa loquitur doctrine:

An elevator company that agrees to maintain an elevator 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

Plaintiffs raised a triable issue of fact as to whether defendants had constructive notice of the misleveling condition or with reasonable care could have discovered and corrected the condition, by submitting the affidavit of their expert, who reviewed defendants’ repair tickets and concluded that they revealed conditions related to the elevator’s leveling function. * * *

Issues of fact exist as to whether the doctrine of res ipsa loquitur applies here. The expert testimony conflicts as to whether the misleveling of the elevator would not ordinarily occur in the absence of negligence. It is, however, undisputed that defendants were exclusively responsible for maintenance and repair of the elevator, and the record is devoid of any evidence that plaintiff contributed to its misleveling... . [McLaughlin v Thyssen Dover El Co, 2014 NY Slip Op 03440, 1st Dept 5-13-14](#)