

287 A.D.2d 540, 731 N.Y.S.2d 480, 2001 N.Y. Slip Op. 08033  
 (Cite as: 287 A.D.2d 540, 731 N.Y.S.2d 480)

Supreme Court, Appellate Division, Second Department, New York.  
 Milivoj GREGO, etc., Plaintiff-Respondent,  
 v.  
 OTIS ELEVATOR COMPANY, INC., Defendant  
 Second Third-Party Plaintiff-Appellant;  
 Mainco Service, Inc., Defendant Third-Party  
 Plaintiff-Respondent;  
 The Frick Collection, First and Second Third-Party  
 Defendant-Respondent.  
 Oct. 15, 2001.

Wrongful death action was brought against current and former elevator service companies to recover damages arising out of accident. The Supreme Court, Queens County, Golar, J., granted summary judgment for former service company, and appeal was taken. The Supreme Court, Appellate Division, held that there was no evidence that former service company was negligent.

Affirmed.

West Headnotes

**Negligence 272** ↪ 1117

272 Negligence

272XVII Premises Liability

272XVII(D) Breach of Duty

272k1100 Buildings and Structures

272k1117 k. Elevators and Escalators.

Most Cited Cases

Company which had ceased servicing freight elevator approximately three years prior to accident resulting from allegedly defective slack chain switch could not be held liable for negligence absent evidence it had failed to properly maintain, service, or repair elevator.

**\*\*480** Quirk and Bakalor, P.C., New York, N.Y. (Loretta A. Redmond of counsel), for **\*\*481** defendant second third-party plaintiff-appellant.

Leavitt, Kerson & Leffler, New York, N.Y. (Paul E. Kerson, John F. Duane, Marc C. Leavitt, and Manuel Herman of counsel), for plaintiff-respondent.

FRED T. SANTUCCI, J.P., ANITA R. FLORIO, HOWARD MILLER and SANDRA L. TOWNES, JJ.

**\*540** In an action to recover damages for wrongful death, the defendant Otis Elevator Company, Inc., appeals from so much of an order of the Supreme Court, Queens County (Golar, J.), dated January 29, 2001, as denied its motion for summary judgment dismissing the complaint and all cross claims and counterclaims insofar as asserted against it.

ORDERED that the order is reversed insofar as appealed from, on the law, with costs, the motion is granted, the complaint and all cross claims and counterclaims are dismissed insofar as asserted against the appellant, and the action against the remaining defendant is severed.

The plaintiff's decedent was killed as he attempted to free a stuck freight elevator located at the second third-party defendant The Frick Collection (hereinafter The Frick). The decedent worked for The Frick, but his responsibilities did not include elevator maintenance, service, or repair, and he did not call the party then under contract to provide such service, the defendant Mainco Service, Inc. (hereinafter Mainco). The plaintiff commenced this action against Mainco, and against the appellant, Otis Elevator Company, Inc. (hereinafter Otis), which manufactured and installed the approximately 70-year-old elevator, and which maintained, serviced, and repaired it until approximately three years before the accident. The Supreme Court denied Otis's motion for summary judgment dismissing the complaint and all cross claims and counterclaims insofar as asserted against it. We reverse.

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In opposition to Otis's prima facie demonstration of entitlement\*541 to judgment as a matter of law, the plaintiff failed to raise a triable issue of fact as to whether Otis failed to properly maintain, service, or repair the elevator, resulting in an allegedly defective slack chain switch, or on any other theory (*see, Zuckerman v. City of New York*, 49 N.Y.2d 557, 427 N.Y.S.2d 595, 404 N.E.2d 718). Thus, Otis is entitled to summary judgment.

In light of our determination, we need not decide whether the decedent's conduct in attempting to free the elevator was an intervening, superseding cause of the damages alleged (*see, Kush v. City of Buffalo*, 59 N.Y.2d 26, 462 N.Y.S.2d 831, 449 N.E.2d 725).

N.Y.A.D. 2 Dept.,2001.  
Grego v. Otis Elevator Co., Inc.  
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