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 OTIS ELEVATOR COMPANY

UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA

KEVIN FEAGINS, YOLANDA FEAGINS,  
 KEVIN FEAGINS, JR., a Minor, JOSHUA  
 FEAGINS, a Minor, ANDRE FEAGINS, a  
 Minor, and JONATHAN FEAGINS, a Minor,  
 by and through their parents, KEVIN  
 FEAGINS and YOLANDA FEAGINS,

Plaintiffs,

vs.

THE TRUMP ORGANIZATION, a foreign  
 corporation; TRUMP RUFFIN COMMERCIAL  
 LLC, a foreign limited liability company;  
 TRUMP INTERNATIONAL HOTEL & TOWER  
 LAS VEGAS UNIT OWNERS ASSOCIATION,  
 a Nevada non-profit corporation; OTIS  
 ELEVATOR COMPANY, a foreign corporation,  
 and DOES I through XXX, inclusive,

Defendants.

CASE NO. 2:11-CV-01121-GMN-GWF

**ORDER**

Defendant OTIS ELEVATOR COMPANY's Motion for Summary Judgment and  
 Defendant TRUMP RUFFIN TOWER I LLC's (erroneously sued as The Trump Organization,  
 Trump Ruffin Commercial LLC, and Trump International Hotel & Tower-Las Vegas Unit  
 Owners Association) Joinder to Otis Elevator Company's Motion for Summary Judgment having  
 come on for hearing on the 27<sup>th</sup> day of September, 2013, and REBECCA L. MASTRANGELO,  
 ESQ., of the law firm of ROGERS, MASTRANGELO, CARVALHO & MITCHELL, having  
 appeared on behalf of Defendant Otis Elevator Company, DAVID B. AVAKIAN, ESQ., of the

1 law firm of LEWIS BRISBOIS BISGAARD & SMITH LLP, having appeared on behalf of  
2 Trump Ruffin Tower I LLC, and BRADLEY PAUL ELLEY, ESQ. having appeared on behalf of  
3 Plaintiffs; and the Court having reviewed the pleadings and papers on file herein and having  
4 entertained oral argument, and good cause appearing therefore, finds as follows:

5 **FINDINGS OF FACT**

6 1. On May 13, 2009 , Plaintiffs were passengers in an elevator at the Trump Hotel in  
7 Las Vegas.

8 2. Plaintiffs allege that the elevator “free fell” then stopped abruptly. Plaintiffs  
9 concede that one of the minor Plaintiffs was jumping in the elevator.

10 3. The elevator at issue was manufactured by Otis Elevator Company and was  
11 installed at the Trump premises in 2006.

12 4. At the time of the incident and at all times relevant herein, Otis Elevator Company  
13 was under contract with the Trump for the maintenance and repair of the elevator.

14 5. Plaintiffs’ sole claim against Otis Elevator Company is for strict products  
15 liability.

16 6. Otis Elevator Company denied that there was a malfunction in the operation of the  
17 elevator on the date of the subject incident, and denied that the elevator was defective.

18 7. Plaintiffs neither discovered, nor produced, any evidence or expert opinions  
19 indicating that the elevator was defective or that any defect existed in the product at the time it  
20 left the hands of the manufacturer.

21 8. Plaintiffs asserted claims against the Trump Defendants for negligence and  
22 premises liability.

23 9. Plaintiffs neither discovered, nor produced, any evidence or expert opinions  
24 indicating that there was a dangerous condition on the property or negligence in the maintenance  
25 of the elevator or otherwise on the part of the elevator owner, Trump.

26 10. Plaintiffs produced no evidence, nor any expert opinions, indicating that there was  
27 anything wrong with the elevator, that it malfunctioned on the date of the incident, or that the  
28 actions of any of the Defendants caused or contributed to the alleged incident.

1           11.     This case involves the inner workings of an elevator which is, by its very nature,  
2 a complex piece of machinery. The appropriate design, manufacture, installation and  
3 maintenance of an elevator is beyond the common knowledge of laypersons.

#### 4                                   CONCLUSIONS OF LAW

5           12.     Fed. R. Civ. Pro. 56(a) provides that the court shall grant summary judgment upon  
6 the movant's showing that "there is no genuine dispute as to any material fact and the movant is  
7 entitled to judgment as a matter of law."

8           13.     In opposing a motion for summary judgment, the non-moving party cannot merely  
9 rest on the allegations of the Complaint, but must come forward with admissible evidence  
10 pointing to a genuine issue for trial. *Celotex Corp. v. Catrett*, 484 U.S. 1066, 107 S.Ct. 1028  
11 (1988). In the absence of such evidence, the court may consider the facts, as supported by the  
12 movant, as undisputed. Fed. R. Civ. Pro. 56(e)(2).

13           14.     Where a party is seeking summary judgment, it need only show that the Plaintiffs  
14 cannot establish an element of their case. *Triton Energy Corporation v. Continental Loss*  
15 *Adjusting, Inc.*, 68 F.3d 1216 (9<sup>th</sup> Cir. 1995).

16           15.     Proceeding under a theory of strict product liability does not relieve Plaintiffs of  
17 their burden of proof; instead, in order to prove a case of strict product liability, Plaintiffs must  
18 show that there was a defect in the product (elevator) and that such defect existed at the time the  
19 elevator left the hands of the manufacturer. *Shoshone Coca Cola Bottling Co. v. Dolinski*, 82  
20 Nevada 439, 443, 420 P.2d 855 (1966).

21           16.     The proffered testimony of the Plaintiffs herein, i.e. that the elevator "free fell"  
22 cannot sufficiently demonstrate the existence of a defect in the elevator, nor that a defect existed  
23 at the time the product left the hands of the manufacturer in 2006. *Griffin v. Rockwell*  
24 *International, Inc.*, 96 Nev. 910, 912, 620 P.2d 862 (1981).

25           17.     Without evidence of a defect in the elevator, Plaintiffs cannot demonstrate a  
26 genuine issue of material fact on their strict products liability claim as the "malfunction theory in  
27 no way relieves the plaintiff of the burden of proving a defect." *Walker v. General Electric Co.*,  
28 968 F.2d 116, 120 (1<sup>st</sup> Cir. 1992), quoting *Ocean Barge Transport v. Hess Oil Virgin Islands*,

1 726 F.2d 121, 125 (3<sup>rd</sup> Cir. 1984).

2 18. Although Plaintiffs have not demonstrated, by admissible evidence, that the  
3 elevator failed, even if their testimony was sufficient, the mere fact that a product failed is  
4 insufficient to establish a defect. *Cooper Tire & Rubber Co. v. Mendez*, 204 S.W.3d, 797, 807  
5 (Tex. 2006); *Clement v. Griffin*, 634 So.2d 412, 429 (La.Ct.App. 1994).

6 19. As to the negligence claims, the mere happening of an accident does not prove  
7 liability or the existence of a dangerous condition on the property. *Gunlock v. New Frontier*  
8 *Hotel*, 78 Nev. 182, 370 P.2d 682 (1962). Further, under Nevada law, an expert is an  
9 indispensable part of a case where the conduct at issue is beyond the common knowledge of lay  
10 persons. *Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels Corp.*, 98 Nev. 113, 115, 642  
11 P.2d 1086 (1982), citing *Bialer v. St. Mary's Hospital*, 83 Nev. 241, 427 P.2d 957 (1967)  
12 (overruled on other grounds).

13 20. Even under a theory of *res ipsa loquitur*, Plaintiffs are not relieved of carrying  
14 their burden of proof as they must still show that it is more probable than not that the claimed  
15 injury resulted from the Defendant's breach of duty. *American Elevator Co. v. Briscoe*, 93 Nev.  
16 665, 669, 572 P.2d 534 (1977).

17 21. To establish that the *res ipsa loquitur* doctrine applies, Plaintiffs must first  
18 establish that the event does not normally occur unless someone has been negligent. *Woodard v.*  
19 *Univ of Michigan Med Ctr*, 473 Mich. 1, 7, 702 NW2d 522 (2005). Further, "the fact that the  
20 injury complained of does not ordinarily occur in the absence of negligence must either be  
21 supported by expert testimony or must be within the common understanding of the jury." *Id.*  
22 (internal citation and quotation marks omitted.)

23 22. Plaintiffs herein failed to provide any expert testimony, which was necessary as  
24 elevator maintenance is not within the common understanding of the average juror. *Hearon v.*  
25 *Lafayette Towers Apartments*, 2006 WL 1042110 (Mich.App., 2006.)

26 Based upon the undisputed facts and the state of the law, Plaintiffs have shown no  
27 genuine issues of material fact and, therefore:

28 **IT IS HEREBY ORDERED** that Defendant OTIS ELEVATOR COMPANY's Motion

1 for Summary Judgment is **GRANTED**; and

2 **IT IS FURTHER ORDERED** that Defendant TRUMP RUFFIN TOWER I LLC's  
3 (erroneously sued as The Trump Organization, Trump Ruffin Commercial LLC, and Trump  
4 International Hotel & Tower-Las Vegas Unit Owners Association) Joinder to Otis Elevator  
5 Company's Motion for Summary Judgment is **GRANTED**.

6 **DATED** this 17th day of October, 2013.

7   
8 \_\_\_\_\_  
9 Gloria M. Navarro  
United States District Judge

10 SUBMITTED BY:

11 ROGERS, MASTRANGELO, CARVALHO  
12 & MITCHELL

13 /s/ Rebecca L. Mastrangelo

14 \_\_\_\_\_  
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20 APPROVED AS TO FORM AND CONTENT:

21 LEWIS BRISBOIS BISGAARD & SMITH LLP

22 /s/ Josh Cole Aicklen, Esq.

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REVIEWED BY:

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**NO INPUT RECEIVED FROM  
COUNSEL FOR PLAINTIFFS**