NEW YORK SUPREME COURT----------COUNTY OF BRONX

PART IA - 5

PASKA DRAGAJ,

Plaintiff,

-against-

CENTRAL ELEVATOR INC., THYSSSENKRUPP ELEVATOR CORPORATION, McGLYNN HAYES & CO., INC., RICHMOND ELEVATOR COMPANY, INC. and SCHINDLER ELEVATOR CORP.,

Defendants.

INDEX NUMBER: **28798/2017E**

Present:
HON. **ALISON Y. TUITT**
Justice

The following papers numbered 1-3,

Read on this Defendant Richmond Elevator Company Inc.'s Motion for Summary Judgment

On Calendar of **9/24/18**

Notice of Motion-Exhibits and Affirmation 1

Affirmation in Opposition 2

Reply Affirmation 3

Upon the foregoing papers, defendant Richmond Elevator Company, Inc.'s ("Richmond") motion for summary judgment is granted for the reasons set forth herein.

The within action arises from an accident on September 18, 2014 when the elevator doors at North Central Bronx Hospital, where she worked, closed on her hitting both of her shoulders and allegedly causing injuries. Richmond had a contract with plaintiff's employer the New York City Health and Hospital Corporation ("NYCHHC") to service some of the hospital's elevators. Johnson Controls, Inc., the hospital's property manager terminated the contract on May 15, 2013, 16 months before plaintiff's accident. Richmond submits a letter dated April 17, 2013 from Steve Duffy of Johnson Controls Sourcing Manager to Richmond wherein showing that it terminated the contract within 30 days of the letter. Richmond last performed service

work on the elevators in the hospital in May 2013. Thereafter, NYCHHC used Shindler Elevator Corp. to service the elevators. Richmond now moves for summary judgment dismissing plaintiff's complaint and the cross-claims against it on the grounds that its contract with the hospital terminated 16 months before plaintiff's accident. Plaintiff opposes arguing that the motion should be denied because discovery is outstanding as Richmond has not yet produced a witness for a deposition. Plaintiff argues that without discovery, there is no opportunity to determine if Richmond was negligent.

The court's function on this motion for summary judgment is issue finding rather than issue determination. Sillman v. Twentieth Century Fox Film Corp., 3 N.Y.2d 395 (1957). Since summary judgment is a drastic remedy, it should not be granted where there is any doubt as to the existence of a triable issue. Rotuba Extruders v. Ceppos, 46 N.Y.2d 223 (1978). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. Zuckerman v. City of New York, 49 N.Y.2d 557, 562 (1980). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. Stone v. Goodson, 8 N.Y.2d 8, (1960); Sillman v. Twentieth Century Fox Film Corp., *supra*.

The proponent of a motion for summary judgment carries the initial burden of production of evidence as well as the burden of persuasion. Alvarez v. Prospect Hospital, 68 N.Y.2d 320 (1986). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the "burden of production" (not the burden of persuasion) shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. 300 East 34th Street Co. v. Habeeb, 683 N.Y.S.2d 175 (1st Dept. 1997).

Defendant Richmond's motion must be granted. "An elevator company which agrees to maintain an elevator in a safe 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." Rogers v. Dorchester Associates, 32 N.Y.2d 553 (1973). However, Richmond's contract with NYCHHC was terminated 16 months before plaintiff's accident and, therefore, Richmond no longer had a duty to anyone, including plaintiff, at the hospital. See, Remekie v 740 Corp., 861 N.Y.S.2d 618 (1st Dept. 2008)(In the absence of a contract for routine or systematic maintenance, an independent repair contractor has no duty to inspect or warn of any purported defects); Daniels v. Kromo Lenox Associates, 791 N.Y.S.2d 17(1st Dept. 2005).

Moreover, plaintiff's opposition is without merit. Defendant met its burden on this motion for summary judgment and plaintiff has failed to raise an issue of fact precluding dismissal of the action. A grant of summary judgment cannot be avoided by a claimed need for discovery unless some evidentiary basis is offered to suggest that discovery may lead to relevant information. Bailey v. New York City Transit Authority, 704 N.Y.S.2d 582 (1st Dept 2000). For the court to delay action on the motion, there must be a likelihood of discovery leading to evidence that will justify opposition to the motion. Jeffries v. New York City Housing Authority, 780 N.Y.S.2d 1 (1st Dept. 2004). The mere hope that discovery will lead to evidence sufficient to defeat the motion is insufficient. Id. Here, it is clear that the contract was terminated 16 months before plaintiff's accident. Thus, defendant Richmond owed plaintiff no duty of care.

Accordingly, defendant Richmond's motion for summary judgment dismissing plaintiff's complaint and the cross-claims against it is granted.

This constitutes the decision and Order of this Court.

Dated: 1/22/19

A. Y. Tuitt

Hon. Alison Y. Tuitt