SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. BARBARA JAFFE **PART** IAS MOTION 12EFM

Justice

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MICHAELLE LAGUERRE,

Plaintiff,

- v -

ELTECH INDUSTRIES, INC.,
210 EAST 80TH STREET LLC,

Defendants.

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INDEX NO. 450185/2017

MOTION DATE _____

MOTION SEQ. NO. 003

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 110-124, 128-137 were read on this motion for discovery.

By notice of motion, plaintiff moves pursuant to CPLR 3124 for an order compelling defendant/third-party plaintiff Eltech Industries, Inc. to respond to plaintiff's discovery demand dated November 22, 2019, and/or pursuant to CPLR 3126 for an order precluding Eltech from introducing evidence opposing plaintiff's claims regarding the subject elevator. Eltech opposes.

Plaintiff alleges that on March 15, 2014, she was injured when she was forced to jump from a moving elevator car. She contends that in May 2014, a modernization proposal for the elevator was submitted and that the modernization commenced in March 2015, before the action was commenced and her expert could inspect the elevator. Thus, as part of plaintiff's discovery demands, she requested "[a]ll work order tickets both handwritten and contained in a computerized log, for the subject elevator (including all exterior elevator doors) for the date of [her] accident, and the period of six months thereafter." (NYSCEF 111).

By a compliance conference stipulation so-ordered on December 18, 2019, Eltech agreed to respond to plaintiff's discovery demand within 30 days. (NYSCEF 114). In a discovery

response dated February 19, 2020, Eltech objected to the demand on the ground that it seeks post-accident repair records which are neither discoverable nor admissible at trial. (NYSCEF 117).

While plaintiff agrees that post-accident maintenance and repair records are generally not discoverable or admissible, she argues that there are exceptions to the rule, several of which apply here. Such records are discoverable, she maintains, to show the condition of the instrumentality that caused the accident at the time of the incident and before any modification thereto, and to show that a particular condition was dangerous. Plaintiff claims that the elevator was modernized before her expert could inspect it, and that, in any event, the records may be used to establish prior notice of a dangerous condition. She observes that no governmental investigation was undertaken related to her accident, and thus there is no official evidence of causation. Without the records, plaintiff claims, she will be unable to prove the condition of the elevator at the time of her accident. (NYSCEF 111).

Eltech denies that the records may be disclosed, and observes that it provided plaintiff with the elevator's maintenance, repair, and inspection records for the two years up to and including the date of her accident. Post-accident records are not discoverable here, it maintains, as the only recognized exceptions to the rule involve issues of maintenance or control or a mechanical or manufacturing defect, neither of which is applicable to plaintiff's accident. Moreover, evidence as to the condition of the elevator at the time of her accident would be contained within the records that were exchanged records. (NYSCEF 128).

In reply, plaintiff claims that she was deprived of an investigation into the cause of the accident as by the absence of a formal report and investigation by governmental authorities and by the modernization of the elevator after her accident, and that Eltech "is potentially in the sole

custody of documents concerning the alleged dangerous elevator condition at the time of the accident." (NYSCEF 138).

Evidence of post-accident repairs is neither discoverable nor admissible, absent certain exceptions. (*Kaplan v Einy*, 209 AD2d 248 [1st Dept 1994]). One exception is where the plaintiff needs such evidence to ascertain the condition of an elevator before admitted modifications to it. (*Id.*).

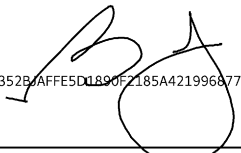
In *Casiano v Start Elevator, Inc.*, the Court denied the movant's request for post-accident records related to an elevator accident, finding that there was no issues presented of control or maintenance of the elevator nor of the condition of the elevator at the time of the accident, and there was no allegation of a design defect. (126 AD3d 614 [1st Dept 2015]).

Here, plaintiff concedes that she received records reflecting the condition of the elevator up to and on the date of her accident and does not explain why those records are insufficient proof of the elevator's condition that day. Moreover, plaintiff submits no affidavit or other evidence establishing that her expert is unable to formulate an opinion as to the accident's cause absent the post-accident records or that she is otherwise unable to prove the condition of the elevator on the date of her accident. (*See Stolowski v 234 E. 178th St. LLC*, 89 AD3d 549 [1st Dept 2011] [post-accident records not discoverable as other evidence showed existence of dangerous condition]).

Moreover, plaintiff does not allege that a mechanical defect caused her accident, and thus her reliance on *Cochin v Metro. Tr. Auth.*, is misplaced. There, the court held that disclosure of post-accident repair records was warranted as it may have led to evidence "that could either prove or rule out the existence of a mechanical defect." (2015 WL 6166977 [Sup Ct, New York County 2015], *affd* 140 AD3d 557 [1st Dept 2016]).

Accordingly, it is hereby

ORDERED, that plaintiff's motion to compel and/or to strike is denied.



7/2/2020
DATE

BARBARA JAFFE, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE