

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Diaz v. Rotavele El., Inc.

2026 NY Slip Op 03115 (1st Dep't 2026) · No. Index No. 157664/20; Appeal No. 6652; Case No. 2025-03132 ·
Decided May 19, 2026

SUMMARY

The Appellate Division, First Department reversed an order denying Mayore Estates LLC summary judgment on its contractual indemnification cross-claim against Rotavele Elevator, Inc. The court held that the indemnification provision was triggered because the plaintiff's injury arose from Rotavele's elevator work, but awarded only conditional indemnification because Mayore did not establish its freedom from negligence as a matter of law. The court also held that the lower court should have considered maintenance logs submitted in reply.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; Scarpulla, J.; Kapnick, J.; Shulman, J.; Michael, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	May 19, 2026
DOCKET	Index No. 157664/20; Appeal No. 6652; Case No. 2025-03132
DISPOSITION	reversed
PROCEDURAL POSTURE	Mayore Estates LLC appealed from an order of Supreme Court, New York County, denying its motion for summary judgment on its cross-claim for contractual indemnification against Rotavele Elevator, Inc.
STANDARD OF REVIEW	Summary judgment is appropriate where the movant establishes entitlement to judgment as a matter of law and the opposing party fails to raise a triable issue of fact. The court reviewed the summary-judgment motion on the law.
PRECEDENTIAL VALUE	Published intermediate appellate decision; precedential under New York law, subject to correction and official-report publication procedures.
PARTIES	Mayore Estates LLC v. Rotavele Elevator, Inc., Chanel Diaz

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QUESTIONS PRESENTED

1. Whether Mayore established that Diaz's claim arose out of Rotavele's work so as to trigger the contractual indemnification provision.
2. Whether Rotavele raised a triable issue of fact concerning whether the elevator misleveling was caused by something outside the scope of its contractual duties.
3. Whether Mayore established its freedom from negligence as a matter of law, or was instead entitled only to conditional contractual indemnification.
4. Whether the maintenance logs submitted by Mayore in reply should have been considered where Rotavele did not object to them and argued for their admissibility.

HOLDINGS

1. The indemnification provision in Mayore's service agreement with Rotavele was triggered because Mayore established that Diaz's claim arose out of Rotavele's elevator-maintenance work.
2. The maintenance logs submitted by Mayore in reply should have been considered because Rotavele did not object to them and affirmatively argued for their admissibility in supplemental briefing.
3. Rotavele failed to raise an issue of fact because it offered no evidence that the misleveling was caused by anything outside the scope of its contractual duties.
4. Mayore was not entitled to unconditional contractual indemnification because it failed to establish its freedom from negligence as a matter of law; Rotavele was therefore entitled to conditional contractual indemnification.

KEY QUOTATIONS

“However, Mayore failed to establish its freedom from negligence as a matter of law, and thus Rotavele is entitled to conditional contractual indemnification” ([*1])

“The court should have considered the maintenance logs, which Mayore submitted in reply, because Rotavele never objected to them and, in fact, argued for their admissibility in supplemental briefing” ([*1])

FACTUAL BACKGROUND

Chanel Diaz alleged that she tripped and fell on August 27, 2019, because of a misleveled elevator. Mayore Estates LLC owned the building, and Rotavele Elevator, Inc. had a service agreement requiring it to maintain the elevator and indemnify Mayore for liability claims arising from the agreement's performance. Evidence showed that Rotavele serviced the elevators, including attempting to correct a misleveling problem on May 7, 2019. The

property manager acknowledged that there was no set protocol for reporting elevator complaints, while Diaz testified that she had complained about the misleveling approximately one month before the accident.

PROCEDURAL HISTORY

Supreme Court, New York County, denied Mayore's motion for summary judgment on its contractual-indemnification cross-claim. The Appellate Division reversed and granted the motion to the extent of awarding Mayore conditional contractual indemnification.

DISPOSITION

reversed

CASES CITED

- *Antoniak v. P.S. Marcato El. Co., Inc.*, 144 AD3d 407, 408 (1st Dep't 2016)
- *Strongbow Consulting Group LLC v. PricewaterhouseCoopers LLP*, 195 AD3d 532, 532 (1st Dep't 2021), lv dismissed and lv denied 38 NY3d 997 (2022)
- *Ortiz v. Fifth Ave. Bldg. Assoc.*, 251 AD2d 200, 201-202 (1st Dep't 1998)

OPINION

Diaz v. Rotavele El., Inc. 2026 NY Slip Op 03115

PER CURIAM.

Diaz v Rotavele El., Inc. - 2026 NY Slip Op 03115 skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Diaz v Rotavele El., Inc. 2026 NY Slip Op 03115 May 19, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Chanel Diaz, Plaintiff-Respondent, v Rotavele Elevator, Inc., Defendant-Respondent, Mayore Estates LLC, Defendant-Appellant. Decided and Entered: May 19, 2026 Index No. 157664/20|Appeal No. 6652|Case No. 2025-03132| Before: Moulton, J.P., Scarpulla, Kapnick, Shulman, Michael, JJ. Kahana & Feld LLP, New York (Christina Pingaro of counsel), for appellant. Heidell, Pittoni, Murphy & Bach, LLP, New York (Michele Rosenblatt of counsel), for Rotavele Elevator, Inc., respondent. [*1] Order, Supreme Court, New York County (Shlomo S. Hagler, J.), entered April 11, 2025, which, to the extent appealed from as limited by the briefs, denied the motion of defendant Mayore Estates LLC for summary judgment on its cross-claim for contractual indemnification against defendant Rotavele Elevator, Inc., unanimously reversed, on the law, without costs, and the motion granted to the extent of awarding conditional contractual indemnification to Mayore. Plaintiff alleges that she tripped and fell on August 27, 2019, as a result of a misleveled elevator. Mayore, the building owner, established that plaintiff's claim arose

out of Rotavele's work, and thus the indemnification provision in Mayore's service agreement with Rotavele was triggered (see *Antoniak v P.S. Marcato El. Co., Inc.* , 144 AD3d 407, 408 [1st Dept 2016]). The agreement obligated Rotavele to maintain the elevator and indemnify Mayore against any liability claims arising out of the performance of the agreement. Testimony from Mayore's property manager and Rotavele's vice president established that Rotavele performed work on the elevators in May 2019 and that no one other than Rotavele serviced the elevators. Further, Rotavele's maintenance logs show that Rotavele attempted to correct a misleveling issue of the elevator on May 7, 2019. The court should have considered the maintenance logs, which Mayore submitted in reply, because Rotavele never objected to them and, in fact, argued for their admissibility in supplemental briefing (see *Strongbow Consulting Group LLC v PricewaterhouseCoopers LLP* , 195 AD3d 532, 532 [1st Dept 2021], lv dismissed and lv denied 38 NY3d 997 [2022]). In opposition, Rotavele failed to raise an issue of fact, offering no evidence that the misleveling was caused by anything outside the scope of its duties. However, Mayore failed to establish its freedom from negligence as a matter of law, and thus Rotavele is entitled to conditional contractual indemnification (see *Antoniak* , 144 AD3d at 408; *Ortiz v Fifth Ave. Bldg. Assoc.* , 251 AD2d 200, 201-202 [1st Dept 1998]). The service agreement required Mayore to promptly notify Rotavele of any elevator issues, yet Mayore failed to submit any evidence establishing its practice and procedures with respect to that obligation. Mayore's property manager admitted that there was "[n]o set protocol" for reporting complaints and that she never received complaints or observed the elevator misleveling, despite plaintiff's testimony that she complained about the elevator's misleveling roughly one month before the accident. Although Mayore relies on the maintenance logs to show that the property manager contacted Rotavele on May 1 and 7, 2019, that evidence fails to establish Mayore's protocol for handling and reporting elevator complaints. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: May 19, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them. PER CURIAM.

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<p>Chanel Diaz, Plaintiff-Respondent,</p> <p>v</p> <p>Rotavele Elevator, Inc., Defendant-
Respondent, Mayore Estates LLC, Defendant-Appellant.</p> </div> <p>Decided and Entered:
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THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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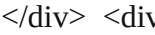
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PER CURIAM.

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Appellate Division, First Department

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v

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