

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

Berkovich v. Judlau Contr., Inc.

2022 N.Y. Slip Op. 01733 (App. Div. 2022) · No. 2021-02004 · Decided March 15, 2022

SUMMARY

The Appellate Division, First Department affirmed an order denying Kone, Inc. and Kone Elevators & Escalators of New York City's motion to compel the plaintiff to supplement interrogatory responses. The court held that a products liability plaintiff may proceed through circumstantial evidence and, where the plaintiff presently lacks knowledge of the specific defect, may testify under oath that the defect cannot yet be identified. The court noted that the plaintiff must promptly supplement his responses if he later obtains pertinent information.

CASE DETAILS

|                       |                                                                                                                                                                                                                       |
|-----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of the State of New York, Appellate Division, First Department                                                                                                                                          |
| WRITING FOR THE COURT | Webber, J.P.; Moulton, J.; Kennedy, J.; Mendez, J.; Pitt, J.                                                                                                                                                          |
| JURISDICTION          | New York                                                                                                                                                                                                              |
| DECIDED               | March 15, 2022                                                                                                                                                                                                        |
| DOCKET                | 2021-02004                                                                                                                                                                                                            |
| DISPOSITION           | affirmed                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Defendants Kone, Inc. and Kone Elevators & Escalators of New York City appealed from an order denying their motion to compel plaintiff to supplement answers to interrogatories concerning alleged escalator defects. |
| STANDARD OF REVIEW    | The court reviewed Supreme Court's discovery ruling and determined that defendants' contentions regarding the sufficiency of plaintiff's interrogatory answers were unavailing.                                       |
| PRECEDENTIAL VALUE    | Published appellate decision; precedential within the applicable New York state court hierarchy.                                                                                                                      |
| PARTIES               | Kone, Inc., Kone Elevators & Escalators of New York City v. Albert Berkovich                                                                                                                                          |

TOPICS

discovery dispute

products liability

construction law

personal injury

civil procedure

## PRACTICE AREAS

products liability

civil procedure

discovery

## QUESTIONS PRESENTED

1. Whether plaintiff's interrogatory responses were insufficient because he could not identify the specific defect or component that allegedly caused the escalator to start unexpectedly.
2. Whether a products liability plaintiff who presently lacks knowledge of the specific defect may state that lack of knowledge under oath and supplement the interrogatory responses if pertinent information is later obtained.

## HOLDINGS

1. The interrogatory responses were not insufficient merely because plaintiff could not presently identify the specific defective component. A products liability claim may be proven by circumstantial evidence, and a plaintiff need not identify a specific defect when proceeding under the applicable circumstantial-evidence framework.
2. When a plaintiff presently lacks knowledge sufficient to identify the nature of a product defect, the plaintiff may testify to that lack of knowledge under oath and must promptly supplement the interrogatory answers if the pertinent information is later acquired.

## KEY QUOTATIONS

*"It is well settled that a products liability cause of action may be proven by circumstantial evidence, and thus, a plaintiff need not identify a specific product defect" (223)*

*"a plaintiff must prove that the product did not perform as intended and exclude all other causes for the product's failure that are not attributable to [the] defendants" (223)*

*"presently lacks the knowledge" (941)*

## FACTUAL BACKGROUND

Plaintiff was injured while working in the pit of an escalator at the South Ferry subway station in Manhattan. The escalator allegedly began moving at high speed without warning or intentional human intervention, catching plaintiff's right foot and causing injuries that required amputation of part of his leg. In response to interrogatories, plaintiff identified several alleged design defects but could not identify the specific component that caused the escalator's unexpected movement.

## PROCEDURAL HISTORY

Supreme Court, New York County, denied defendants' motion to compel plaintiff to supplement his interrogatory responses. The Appellate Division, First Department, affirmed the order insofar as appealed from.

## DISPOSITION

affirmed

## CASES CITED

- Ramos v. Howard Indus., Inc., 10 N.Y.3d 218, 223 (2008)
- Speller v. Sears, Roebuck & Co., 100 N.Y.2d 38, 42 (2003)
- Cornachio v. General Motors Corp., 63 A.D.2d 941, 941 (1st Dep't 1978)

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