KAUFMAN | DOLOWICH

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Matthew Rosen

Partner

Overview

Matthew Rosen is a partner at Kaufman Dolowich and concentrates his practice in the areas of general liability defense, premises liability, general negligence, and construction accidents arising under Labor Law 240 and 241.

He focuses on vertical transportation cases, arising out of elevator and escalator personal injuries. Mr. Rosen regularly defends elevator maintenance companies in claims allegations of leveling issues, improper door and erratic operations.

Mr. Rosen handles auto insurance liability, and oversees insurance carrier litigation work for automobile accident claims involving bodily injury, as well as wrongful death cases. Additionally, Mr. Rosen defends building owners in matters involving ceiling collapses, improper maintenance and building code violations. He has argued numerous cases before the Appellate Divisions of the First Department and Second Department, and obtained numerous reversals of lower Court decisions, resulting in the dismissal of all claims.

Previously, Mr. Rosen served as an Assistant District Attorney in Bronx County, New York, serving in the Criminal Court and Grand Jury Bureaus, and the Asset Forfeiture Unit, where he assisted in securing the assets of crimes.

During law school, he took part in a civil advocacy group and assisted the efforts of seekers of political asylum from China and Sudan. Additionally, Mr. Rosen served as a law clerk in a criminal defense firm, assisting in the investigation and defense of a high-profile homicide case.

Admissions

- New York
- U.S. District Court
  - U.S. District Court, Southern District of New York
  - U.S. District Court, Eastern District of New York

Education

- State University of New York at Binghamton, B.A.
- New York Law School, J.D.

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Related Practices

• General Liability Defense
• Third-Party Claims for Bodily Injury
• Automobile
• Labor Law 240 and 241
• Premises Liability
• Construction Accidents
• Appellate Law

Membership

- New York State Bar Association

Experience

Experience

NOTABLE DECISIONS ON APPEALS and MOTIONS

- Torres-Martinez v Macy's

Plaintiff was utilizing an escalator at Macy's Department Store in Bronx, NY when, according to Plaintiff, she heard a loud noise, the escalator shook, and the steps moved from left to right and increased in speed. The escalator continued to operate after the incident without any observable problems. At the conclusion of discovery, our client, the escalator maintenance company, moved for summary judgment. The lower Court granted our motion and the Appellate Division – Second Department affirmed, agreeing that our client did not have notice of a relevant defect. The Appellate Court also determined that the incident as described by Plaintiff was a mechanical impossibility, as such an incident would have resulted in a catastrophic failure and required a significant repair, which was not necessary.

- Gell-Tejada v Macy's

The infant plaintiff was injured while travelling on the wooden escalators at Macy's Herald Square store. These escalators were installed in 1922 and were maintained by our client, who were resident mechanics. At the bottom of the escalator, the infant Plaintiff's hand became caught in a metal comb plate where the moving stairs meet the floor, causing a finger to be severed. The Appellate Division-First Department reversed the lower Court and dismissed the Complaint against the escalator maintenance company. In doing so, the Court determined that, per the terms of the elevator maintenance contract, our client's responsibility for particular repairs or replacements of the wooden escalator was limited and the escalator maintenance company was prohibited from making any upgrades to the escalator without Macy's written approval. Furthermore, even assuming that there was a defect in the escalator that caused the accident, our client neither created the condition nor had notice of it.

- Reis v. William & John Street Associates

Plaintiff was stepping into the elevator car when she felt as though the doors were closing in. Plaintiff decided to step out of the elevator, but claimed that, as she was doing so, the elevators doors struck her left hand. The elevator had a hard

retractable safety device on the door that would cause the door to stop and re-open only if something came into contact with the device itself. Our client, which maintained and repaired the elevators at the location, was found liable at trial and its motion to set aside the verdict was denied. The Appellate Division-Second Department reversed and dismissed the complaint, reasoning that plaintiff did not establish that our client created or had notice of the alleged defective condition which caused the elevator doors to close on her hand and failed to establish that the elevator was negligently maintained.

- Espinoza v Federated Department Stores

The infant plaintiff was injured when he tripped at the top of an escalator in a Macy's store and his arm got caught in the handrail return. Plaintiff claimed that the incident occurred because the handrail return guard was missing. Our client, which maintained and repaired the escalators at the location, argued that the handrail return guard was in its proper place when maintenance was performed three weeks prior to the incident and that the affidavits of Plaintiff's expert and Macy's expert were speculative and without evidentiary basis. Reversing the lower Court, the Appellate Division-First Department determined that Defendant established that, even assuming a missing or defective handrail return guard, it was not negligent, because they did not create the condition, they had received no previous complaints about such a condition, and the records of the regular monthly preventive maintenance they performed three weeks before the accident indicated no problems. It was further demonstrated that the affidavit from Plaintiff's and Macy's respective experts failed to raise an issue of fact.

- Josephson v RXR Realty

Plaintiff, a nasal and endoscopic surgeon, was injured when he tripped and stumbled while climbing the escalator between the first and second floors of the building located at 926 RXR Plaza in Uniondale, New York. RXR owned the building. KDV's client was responsible for maintaining, servicing, and repairing the escalator. Plaintiff first testified that as he stepped off the escalator, it grabbed his left flipflop and he tripped on the escalator platform. He later clarified that he did not know what part of the escalator contacted his flipflop, as he did not remember if he was looking down at his feet at the time of the accident and he did not actually see his flipflop get caught. He suffered an injury to his left foot. Our client's route mechanic testified that the only repairs made in the six months prior to the incident were regarding the handrail speed monitor and were unrelated to the comb plate. The mechanic also demonstrated that monthly maintenance as performed and no issues with the comb plate were ever noted. Furthermore, a video of the incident depicted Plaintiff stumbling prior to reaching the comb plate at the top of the escalator. The Supreme Court granted summary judgment to our client, determining that our client did not create or have notice of a relevant

defect. Further, the Court ruled that the doctrine of res ipsa loquitur was inapplicable because Plaintiff's conduct contributed to the incident and the extensive public use of the escalator negated the element of exclusive control. Finally, the affidavit submitted by Plaintiff in opposition to Defendants' summary judgment motions, in which he stated that his foot was lacerated when it was caught in the comb plate, was contradictory to his deposition testimony and tailored to avoid the consequences of his testimony.

- *Caban v Rockefeller Center North Inc.*

Plaintiff testified that, while traversing downward on an escalator, which was maintained and serviced by KDV's client, at the subject location, which was owned by Rockefeller Center North. Plaintiff testified that he was four or five steps from the bottom of the escalator when the step he stood on became wobbly and pivoted back and forth with a grinding sound, causing him to lunge forward and hit the floor hard. Plaintiff confirmed that he was the second of two people seen travelling on the subject elevator in the video shot from a building security camera. While plaintiff claimed that the escalator step pivoted back and forth, the video showed that there was no movement of plaintiff's body until he began his fall at the very bottom of the escalator. Notably, plaintiff's co-worker stated that he turned his body once he got off the escalator and saw plaintiff's body shake and that plaintiff was only two-thirds of the way down the escalator when he fell down the steps. This was wholly contradicted by the video of the incident. The Department of Buildings inspected the escalator after the incident and determined that Plaintiff's incident was the result of human error – to wit, his own fault. The Supreme Court Bronx County granted Defendants' motions for summary judgment and dismissed the case, determining that there was no notice of a defect, and the affidavit of Plaintiff's expert was speculative and unsupported by the evidence.

- *Lozano v Mt. Hope Place Properties Inc.*

Plaintiff claimed that he was injured when the ceiling in his bathroom collapsed upon him. The Defendant building owner moved for summary judgment on the grounds that they did not have notice of this defect prior to the incident and that the collapse was caused by an overflowing bathtub in the apartment located two floors above. The Supreme Court Bronx County granted summary judgment and the Appellate Division-First Department affirmed.

- *Grullon v 642-654 Whippersnapper LLC at al.*

Plaintiff was traversing the external stairs of the building owned by Defendant when she fell due to an alleged defective condition. Plaintiff claims that her incident was caused by the lack of an intermediate handrail, a height differential of the stairs in relation to the existing handrail, uneven step height, inadequate lighting, and slippery step material. Defendants argued that Plaintiff could not sufficiently identify what caused her to fall; that the lack of an intermediate handrail was irrelevant because Plaintiff allegedly fell on the side of the stairs, where there was a handrail that Plaintiff was holding; that the steps heights were code-compliant; and that the incident occurred during daylight hours and the lack of lighting was a non-factor. The Supreme Court Bronx County granted the motion in its entirety and the case was dismissed.

Publications

- *Kaufman Dolowich's Westchester Co-MP On Expansion Plans, Law 360 Pulse, featuring John Mancebo, October 5, 2021*