

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT
CIVIL ACTION NO.

23CV01040C

OMAR DREIDI,

Plaintiff,

v.

MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY,
and KONE, INC.

Defendants.

JOHN E. POWERS III
CLERK OF SUPERIOR COURT

2023 MAY -3 P 1:07

SUFFOLK SUPERIOR COURT
CIVIL CLERK'S OFFICE

COMPLAINT AND DEMAND FOR JURY TRIAL

THE PARTIES

1. Plaintiff Omar Dreidi is a resident of the State of California and resides in Los Angeles, California ("Mr. Dreidi" or "plaintiff").
2. Defendant Massachusetts Bay Transportation Authority ("MBTA"), is a public agency of the Commonwealth of Massachusetts with its principal place of business located at 10 Park Plaza, Boston, Suffolk County, Massachusetts. The MBTA is responsible for operating and maintaining subway, commuter rail and public transportation services throughout the Greater Boston area.
3. Defendant Kone, Inc. ("Kone") is a corporation organized and incorporated in the State of Delaware having its principal place of business at One Kone Court, Moline, Rock Island County, Illinois. Defendant Kone is in the business of installing, servicing, testing, and maintaining elevators and escalators.

4. Kone is subject to the personal jurisdiction of the Massachusetts courts because it regularly conducts and transacts business in the Commonwealth of Massachusetts; derives substantial economic benefit from such business; maintains a local office in Massachusetts; has designated Corporation Service Company, 84 State Street, Boston, Suffolk County Massachusetts as its Registered Agent to conduct its business in the Commonwealth; entered into a contract with the MBTA in Massachusetts to maintain the escalator located in Massachusetts that is the subject of this Complaint; and performed maintenance on the escalator before the accident that is the subject of this Complaint. The plaintiff's cause of action against Kone concerns its maintenance and/or its failure to maintain the subject matter escalator and arises out of Kone's conduct in Massachusetts.

FACTUAL ALLEGATIONS

5. The plaintiff incorporates by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.
6. On September 26, 2021 and at all relevant times hereto, the MBTA owned, operated, maintained and controlled an escalator located at and around the passenger station on Dartmouth Street in Boston, Massachusetts, known as the Back Bay Station (hereinafter "the Escalator").
7. On September 26, 2021, the Plaintiff was returning from a New England Patriots' game via the MBTA's commuter rail train. He was accompanied by his friend, Marianne Layousse. He disembarked the commuter rail train at the lower level underground platform of Back Bay Station and walked to and boarded the Escalator

for the purpose of travelling up the approximately 30-40 feet of distance on the Escalator to the street level of Back Bay Station.

8. Plaintiff was lawfully and in the exercise of due care utilizing the Escalator for its intended and reasonably foreseeable purpose of ascending from the underground train platform to ground level of the Back Bay Station.
9. The Escalator was full of other people also ascending. As Ms. Layousse and Mr. Dreidi neared the top, the Escalator suddenly and catastrophically failed causing the metal stairs of the Escalator to rapidly slide in reverse and downward toward the train platform. An eyewitness to the incident stated in news reports that he “[h]eard a lot of people yelling behind me and I saw a pile of bodies down the Escalator.” Mr. Dreidi was one of those unfortunate individuals on the Escalator who was knocked off balance and hurled downwards the length of the Escalator and ended up in the “pile of bodies” on the cement floor. His left leg was pinned and twisted when he landed hard at the bottom of the Escalator and while several other people fell on top of him. Mr. Dreidi experienced immediate, sharp pain in his left ankle, thigh, hip, lower back and both knees from the incident. After extricating himself from the pile of bodies at the bottom of the Escalator, which was described in a Boston Globe article written the day after the incident, as “a bloody, horrific scene”, and assisting Ms. Layousse (who was also seriously injured) out of from under the pile of injured persons, they were both taken by ambulance to the Emergency Department at Tufts Medical Center (“Tufts”) in Boston, MA.
10. As is known to defendants, dozens of people were seriously injured and nine were reportedly taken to local hospitals. In addition, videos of the incident are widely

available on the internet, including a video available through the following website:

<https://www.boston.com/news/local-news/2021/12/21/escalator-accident-back-bay-new-video/>.

11. After arriving at Tufts, Mr. Dreidi was examined/treated by emergency physician Kathryn Lupez. X-rays of his ankle demonstrated a possible distal fibula fracture, and the medical report confirms that he sustained a number of bruises and abrasions during the fall, including, without limitation, to his hip, lower back and both knees. A subsequent CT Scan showed that Mr. Dreidi suffered a “high-grade injury to the anterior tibiofibular ligament with fragmentation of the anterior aspect of the distal fibula.” Mr. Dreidi was discharged from Tufts later that day with, among other things, over the counter pain medications and a prescription for pain relief medications, which he obtained from a pharmacy.
12. Since being discharged from Tufts, Mr. Dreidi has continued to suffer and therefore receive medical treatment for his pain and debilitating injuries sustained as a result of the incident. These treatments include, without limitation, physical therapy sessions, including regular treatment with Tom Burton, PT; All Care Rehab; and Venice Family Clinic. While Mr. Dreidi has slowly but progressively recovered over time, he continues to experience enduring pain and discomfort in his left ankle and lower back area that has intruded upon and impaired his professional and personal activities.
13. On September 26, 2021, and at all relevant times hereto, the MBTA contracted with Kone to test, service and maintain the Escalator. Therefore, both the MBTA and Kone and its parents, subsidiaries, divisions and related entities, had a duty to service, test, and maintain the Escalator at the Back Bay Station in a safe condition and in

compliance with all applicable codes and regulations. The defendants, individually and/or collectively failed horribly with serious consequence for which they are jointly and severally liable.

**COUNT I: CLAIMS AGAINST DEFENDANT MASSACHUSETTS BAY
TRANSPORTATION AUTHORITY FOR NEGLIGENCE AND FAILURE
TO EXERCISE UTMOST CARE**

14. The plaintiff incorporates by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.
15. The MBTA, as a common carrier and the owner of the Escalator and the Back Bay Station, owed a nondelegable duty to the plaintiff, as a lawful passenger on the Escalator, to exercise the highest degree of care, including reasonable care, in providing, inspecting, repairing, and maintaining the Escalator to ensure it operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors using the Escalator for its intended purpose.
16. As a common carrier concerning the transportation of passengers for a fee, the MBTA was bound to exercise the degree of care which the circumstances demanded, including the exercise of the utmost caution which is compatible with the conduct of its business, according to the requirements of the need for public safety and to use all such means and precautions as are reasonably practicable for the protection and safety of its passengers in transit and those on the MBTA's premises for purposes of transportation.
17. The MBTA breached its duty of care to the plaintiff by failing to maintain and repair the Escalator to avoid the dangerous malfunction of the Escalator suddenly running backwards at significant speed and otherwise providing for the public's use an

escalator that was in an unreasonably dangerous and defective condition causing it to malfunction.

18. Plaintiff's injuries are not the type that would occur from riding the Escalator in the absence of the MBTA's negligence and failure to exercise utmost care in owning, providing, inspecting, servicing, repairing and/or maintaining the Escalator. In fact, the catastrophic failure of the Escalator caused injuries to plaintiff that were reasonably foreseeable.
19. Because the incident is not the type that would have occurred in the absence of negligence and the failure to exercise utmost care, the incident gives rise to a reasonable inference that the MBTA negligently committed unspecified acts or omissions and that those acts or omissions caused plaintiff's injuries.
20. But for the MBTA's wrongdoing and as a proximate cause thereof, Mr. Dreidi sustained injury to his left ankle, hip, lower back and both knees as identified herein. These injuries have interfered with his work and job prospects; have interfered with his ability to operate his business; and have prevented him from participating in many of the normal activities of life, in particular the ability to travel and participate in athletic events such as, among other things, an adult soccer league, running and working out regularly at his local gym to the same degree that he was able to do prior to the incident. This has also caused Mr. Dreidi to suffer anxiety, sleeplessness and nightmares. As a direct, proximate result of his physical injuries, Mr. Dreidi has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of enjoyment and quality of life. Mr. Dreidi began working with a mental health professional shortly after the incident to address those issues.

21. Plaintiff 's injuries constitute serious bodily injury within the meaning of the Massachusetts Tort Claims Act, G.L. c. 258, § 2, because they involve bodily injury which results in a permanent disfigurement, or loss or impairment of a bodily function, limb or organ.
22. On August 26, 2022, the plaintiff presented his claims in writing via certified mail to the General Manager of the MBTA at the time of the presentment letter, Steve Poftak. The MBTA failed to respond to the plaintiff's presentment letter.

WHEREFORE, plaintiff demands judgment against the Massachusetts Bay Transportation Authority in an amount sufficient to fully and fairly compensate him for his personal injuries and emotional distress, including prejudgment interest, costs, reasonable attorneys' fees and for all other just or proper relief.

**COUNT II: CLAIMS AGAINST
DEFENDANT KONE. INC. FOR NEGLIGENCE**

23. Plaintiff incorporates by reference all of the allegations contained in the foregoing paragraphs as if they were fully restated herein.
24. Kone entered into a contract with the MBTA to maintain the Escalator and to ensure its proper and safe operation.
25. Kone had a contractual and common law duty to the plaintiff, as a lawful passenger on the Escalator, to exercise reasonable care, in inspecting, repairing, and maintaining the Escalator to ensure it operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors.
26. Kone had a contractual duty to the plaintiff, as a lawful passenger on the Escalator, to perform its obligations under the contract with the MBTA in a workmanlike manner, including the inspecting, repairing, and maintaining of the Escalator to ensure it

operated in a reasonably safe manner to avoid injury to public commuters and other lawful visitors using the Escalator as intended.

27. Kone breached its duties of care to the plaintiff by failing to maintain and repair the Escalator to avoid the dangerous malfunctioning of the Escalator causing it to suddenly stop ascending and to rapidly move backwards resulting in the plaintiff's reasonably foreseeable injuries.
28. The incident that caused the plaintiff's injuries is not the type that would occur in the absence of Kone's negligence in inspecting, servicing, repairing and/or maintaining the Escalator and there was greater likelihood or probability that the harm complained of was due to causes for which Kone was responsible than from any other cause.
29. Because the accident is not the type that would have occurred in the absence of negligence, the accident gives rise to a reasonable inference that Kone negligently committed unspecified acts or omissions and that those acts or omissions caused the plaintiff's injuries.
30. But for Kone's negligence and as a proximate cause thereof, Mr. Dreidi sustained injuries to his body including, but not limited to, injuries to his left ankle, hip, lower back and both knees. These injuries have interfered with his work and job prospects; have interfered with his ability to operate his business; and have prevented him from participating in many of the normal activities of life, in particular, and without limitation, the ability to travel and participate in athletic events such as, among other things, an adult soccer league, running and working out regularly at his local gym to the same degree that he was able to do prior to the incident. This has also caused Mr. Dreidi to suffer anxiety, sleeplessness and nightmares. As a direct, proximate result

of his physical injuries, Mr. Dreidi has incurred medical expenses and endured pain and suffering, mental anguish, emotional distress and the loss of enjoyment and quality of life.

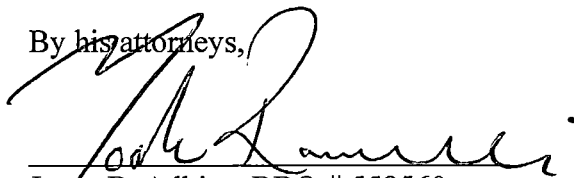
WHEREFORE, the plaintiff demands judgment against Kone, Inc. in an amount sufficient to fully and fairly compensate him for his personal injuries and emotional distress, including prejudgment interest, costs, reasonable attorneys' fees and for all other just or proper relief.

THE PLAINTIFF DEMANDS TRIAL BY JURY ON ALL COUNTS OF HIS COMPLAINT.

Respectfully submitted,

Omar Dreidi,

By his attorneys,



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