COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS. SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO.: 2384CV00340

LAURA SAPP and KATHLEEN LAMKIN,

Plaintiffs,

v.

KONE, INC., and
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY,

Defendants.

**THE DEFENDANT'S, KONE INC.,
ANSWER TO THE PLAINTIFFS', LAURA SAPP AND KATHLEEN LAMKIN
COMPLAINT**

The Defendant, KONE Inc. (hereafter as "Defendant" and/or "KONE"), hereby makes this its Answer to the Plaintiffs', Laura Sapp and Kathleen Lamkin ("Plaintiffs"), Complaint as follows:

FIRST DEFENSE

THE PARTIES

1. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiffs to prove the same.

2. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiffs to prove the same.

3. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiffs to prove the same.
4. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiffs to prove the same.
5. The Defendant states that this paragraph contains a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant admits the allegations contained in this paragraph.
6. The Defendant states that this paragraph contains a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant admits the allegation contained in this paragraph.
7. The Defendant states that this paragraph contains a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant admits that it has a registered agent in Massachusetts and denies the rent of the allegations contained in this paragraph.

FACTUAL ALLEGATIONS

8. The Defendant repeats and incorporates by reference its answers to paragraphs one (1) through seven (7) and makes them its answer to this paragraph.
9. The Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in this paragraph and calls upon the Plaintiffs to prove the same.

10. The Defendant denies the allegations contained in this paragraph.

11. The Defendant states that this paragraph is a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.

12. The Defendant states that this paragraph is a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.

13. The Defendant states that the referenced document speaks for itself and denies the remaining allegations contained in this paragraph.

COUNT I

CLAIMS AGAINST THE DEFENDANT, MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, PREDICATED ON NEGLIGENCE AND THE FAILURE TO EXERCISE UTMOST CARE

14.-23. The Defendant states that these paragraphs are not directed to it and, therefore, no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in these paragraphs.

WHEREFORE, KONE demands that the Plaintiffs' Complaint be dismissed, and that judgment be entered in favor of KONE, together with its costs, interest, and reasonable attorneys' fees.

COUNT II

CLAIMS AGAINST THE DEFENDANT, KONE, INC., PREDICATED ON NEGLIGENCE

24. The Defendant repeats and incorporates by reference its answers to paragraphs one (1) through twenty-three (23) and makes them its answer to this paragraph.

25. The Defendant states that the referenced document speaks for itself and denies the remaining allegations contained in this paragraph.

26. The Defendant states that this paragraph is a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.
27. The Defendant states that this paragraph is a legal conclusion for which no answer is necessary; however, to the extent a response is required, the Defendant denies the allegations contained in this paragraph.
28. The Defendant denies the allegation contained in this paragraph.
29. The Defendant denies the allegation contained in this paragraph.
30. The Defendant denies the allegation contained in this paragraph.
31. The Defendant denies the allegation contained in this paragraph.
32. The Defendant denies the allegation contained in this paragraph.

WHEREFORE, KONE demands that the Plaintiffs' Complaint be dismissed, and that judgment be entered in favor of KONE, together with its costs, interest, and reasonable attorneys' fees.

SECOND DEFENSE

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent the Plaintiffs fail to state a claim upon which relief can be granted, the Plaintiffs' Complaint should be dismissed pursuant to Rule 12(b)(6).

SECOND AFFIRMATIVE DEFENSE

And further answering, the Defendant states that, to the extent it owed any obligations to the Plaintiffs, such obligations were fully, completely and properly performed in every respect.

THIRD AFFIRMATIVE DEFENSE

And further answering, the Defendant states that it did not receive any reasonable notice of the allegedly dangerous and/or defective condition from any party and/or third party and that no alleged duty was breached to the Plaintiffs in this action and thus the Plaintiffs' claims must fail.

FOURTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiffs' Complaint should be dismissed to the extent it is barred by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiffs' Complaint should be dismissed to the extent it is barred by the doctrine of laches.

SIXTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the acts complained of were not committed by a person or entity for which the Defendant is responsible, and the Plaintiffs' claims must fail.

SEVENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent the Plaintiffs failed to mitigate their damages, they are not entitled to recovery for the damages claimed in the Complaint.

EIGHTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiffs may not recover against the Defendant to the extent any damages were not due to any act or omission of the Defendant but were caused solely by the act or omission of a third-party or parties for whom the Defendant was not responsible.

NINTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiffs may not recover against the Defendant to the extent that the damages resulted from conditions over which the Defendant had no contractual obligation or other duty.

TENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent applicable, the failure of the Plaintiffs to give the required statutory notice of the alleged negligence to the Defendant resulted in delay and prejudice to the Defendant in this case and therefore, the Plaintiffs cannot recover.

ELEVENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that the Plaintiffs' claims should be dismissed to the extent that the Plaintiffs' comparative negligence was greater than that of the Defendants, and the Plaintiffs are thus barred from recovery pursuant to the comparative negligence laws of the Commonwealth of Massachusetts.

TWELFTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent that any alleged accident, injuries, or damages resulted from the Plaintiffs' comparative negligence and that, if any damages are awarded to the Plaintiffs, any recovery by the Plaintiffs is barred or must be reduced in accordance with the comparative negligence of the Plaintiffs pursuant to Mass. Gen. Laws c. 231, §85.

THIRTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that, to the extent applicable, the Plaintiffs' recovery, if any, is barred or limited according to the applicable case law and statutes.

FOURTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent the Plaintiffs' claims resulted from modifications and/or alterations made by other persons or entities for whom the Defendant was not and is not responsible, the Plaintiffs' claims in this action must fail.

FIFTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that to the extent applicable, the Plaintiffs' claims are barred by the doctrine of estoppel.

SIXTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant states that if it is liable or negligent, all of which it expressly denies, the Defendant's liability in any or all of those events is limited and/or barred the intervening acts, omissions, or negligence of others for whose conduct the Defendant is not legally responsible.

SEVENTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant says that the Plaintiffs' claimed damages are not causally related to the Defendant's claimed wrongful conduct.

EIGHTEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant denies that it caused or created any allegedly defective or dangerous condition for which it owed a duty to inspect, repair or remedy and that no duty was owed or breached to the Plaintiffs in this action and therefore, the Plaintiffs' claims must fail.

NINETEENTH AFFIRMATIVE DEFENSE

And further answering, the Defendant reserves the right to raise additional affirmative defenses after discovery under Rule 8(c) of the Massachusetts Rules of Civil Procedure.

JURY CLAIM

THE DEFENDANT, KONE INC., HEREBY CLAIMS A TRIAL BY JURY ON ALL ISSUES RAISED IN THE PLAINTIFFS' COMPLAINT.

Respectfully submitted,
The Defendant,
KONE Inc.,

By its Attorneys,

/s/ Mark B. Lavoie

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CERTIFICATE OF SERVICE
I hereby certify that I served a copy of the foregoing pleading on all parties by electronic service, to all counsel of record.
Signed under the pains and penalties of perjury.
DATED: 5/2/23 MBL