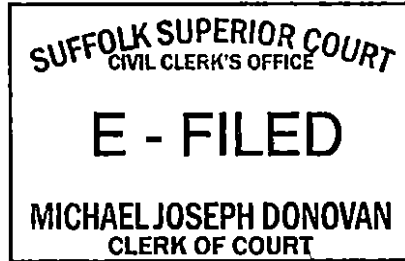


COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

TRIAL COURT OF THE COMMONWEALTH
SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 21-2246 F

KARSON BETHAY and HOLLY BETHAY,)
Individually and as the Parents and Guardians of)
SAVANNAH BETHAY and KARSON BETHAY, JR.,)
Plaintiffs,)
v.)
KONE, INC., MASSACHUSETTS BAY)
TRANSPORTATION AUTHORITY and JOHN DOE,)
Defendants.)



COMPLAINT AND JURY CLAIM

A. The Action

1. This is a civil action wherein the plaintiffs, Karson and Holly Bethay, assert claims of negligence against Kone, Inc. and John Doe (a party whose identity has yet to be ascertained) to compensate them for the many severe injuries they and their minor children sustained on September 26, 2021, when an escalator malfunctioned and failed at the Back Bay transportation terminal in Boston, Massachusetts. Such injuries include multiple fractures of the upper and lower extremities; extensive and deep lacerations to the face and head; and other serious injuries. The plaintiffs also seek a Restraining Order from this Honorable Court to prevent the Massachusetts Transportation Authority and its contractor/vendor, Kone, Inc., from destroying, tampering or altering evidence relating to the subject matter controversy and to preserve such evidence.

B. The Parties

2. The plaintiff, Karson Bethay, resides at 1200 Papworth Avenue in Metairie, Louisiana.

3. The plaintiff, Holly Bethay, resides at 1200 Papworth Avenue in Metairie, Louisiana.

4. The plaintiffs, Karson and Holly Bethay, are the parents of Savannah Bethay and Karson Bethay, Jr. and bring this action individually and as the parents and next friends of their minor children.

5. The defendant, Kone, Inc., is a corporation organized and existing under the laws of the State of Delaware having its principal place of business at One Kone Court in Moline, Illinois. The defendant regularly conducts and transacts its business within this Commonwealth; derives substantial economic benefit from such business; maintains a local office in Massachusetts; and has designated Corporation Service Company, 84 State Street, Boston, County of Suffolk, Massachusetts as its Registered Agent to conduct its business in this Commonwealth.

6. The Massachusetts Bay Transportation Authority (MBTA) is a public agency in the Commonwealth of Massachusetts responsible for operating subway, commuter rail and transportation services throughout the Greater Boston area having its principal office at 10 Park Plaza, Boston, County of Suffolk, Massachusetts. The Massachusetts Bay Transportation Authority is a party to this action only for purposes of obtaining a Temporary Restraining Order at this time.

7. The defendant, John Doe, is a person or business entity located in this Commonwealth whose identity has yet to be ascertained.

C. General Allegations Applicable to All Counts

8. On September 26, 2021, the Massachusetts Bay Transportation Authority owned, operated, and/or controlled an escalator located at and around an intermodal passenger station on Dartmouth Street in Boston, Massachusetts known as Back Bay Station.

9. On September 26, 2021, the plaintiffs and their children were lawfully utilizing the escalator, in the exercise of due care, to ascend from the underground train platform to street-level at Back Bay Station when the escalator malfunctioned and failed causing the stairs of the escalator to

rapidly slide backwards and downward toward the train platform.

10. On September 26, 2021, and at all relevant times, the defendant, Kone, Inc., its parents, subsidiaries, divisions, and related entities, was responsible and contractually bound to service, test and maintain the escalator that malfunctioned and failed at the Back Bay Station in compliance with all applicable codes and in a safe condition.

11. On September 26, 2021, and prior thereto, the defendant, Kone, Inc., its parents, subsidiaries, divisions, and related entities, failed to maintain the escalator in compliance with the applicable codes and in a safe condition and, as a direct result of these failures, the plaintiffs were caused to sustain severe injuries, including multiple fractures, deep and extensive lacerations on the face, head and body and other personal injuries. These injuries have required inpatient treatment at Massachusetts General Hospital and will require further treatment.

12. The Massachusetts Bay Transportation Authority still owns and/or controls the escalator involved in the subject incident and, upon information and belief, intends to repair the escalator in the near future to place it back into service.

D. Claims

COUNT I – KARSON BETHAY and HOLLY BETHAY, Individually and as Parents of SAVANNAH BETHAY and KARSON BETHAY, JR. v. KONE, INC. and JOHN DOE - - NEGLIGENCE; PERSONAL INJURIES

13. The plaintiffs repeat and reallege all the allegations set forth in the preceding paragraphs one through twelve of this Complaint with like force and effect as if fully repeated herein.

14. On September 26, 2021, and at all relevant times, the defendants, Kone, Inc. and John Doe, were negligent and careless with respect to the inspection, testing, servicing, safety, maintenance and repair of the escalator the plaintiffs and their family were utilizing when the escalator malfunctioned and failed.

15. As a direct and proximate result of the negligence and carelessness of the defendants, Kone, Inc. and John Doe, the plaintiffs and their children were caused to suffer severe personal injuries, including multiple fractures, extensive lacerations, scarring and disfigurement; suffer a loss of function; incur substantial expense for medical, therapeutic and rehabilitative care, treatment, and attendance; sustain a loss of wages and an impairment of earning capacity; suffer great pain of body and anguish of mind; and were otherwise injured.

COUNT II – KARSON BETHAY and HOLLY BETHAY, Individually and as Parents of SAVANNAH BETHAY and KARSON BETHAY, JR. v. KONE, INC. and MASSACHUSETTS BAY TRANSPORTATION AUTHORITY - - INJUNCTIVE RELIEF; ISSUANCE OF TEMPORARY RESTRAINING ORDER

16. The plaintiffs repeat and reallege all the allegations set forth in the preceding paragraphs one through fifteen of this Complaint with like force and effect as if fully repeated herein.

17. Given the defendants' ongoing possession, custody, control and exclusive access to the escalator and its component parts, its service and maintenance records and the surveillance and other recordings depicting the events leading up to and at the time of the malfunctioning and failure of the escalator, the plaintiffs move this Honorable Court to issue a Restraining Order pursuant to Rule 65 of the Massachusetts Rules of Civil Procedure prohibiting the TRO defendants from:

- a. repairing, servicing, testing or altering the subject escalator until the plaintiffs' expert can inspect and examine the escalator and observe the post-incident testing and repair of the escalator.
- b. disposing of, tampering with, altering and failing to preserve any of the parts of the escalator that caused or contributed to the malfunctioning and failure of the escalator.
- c. disposing, altering and failing to preserve any and all surveillance recordings and any other images and recordings showing the events leading up to, at the time of, and subsequent to the happening of the escalator's malfunction and failure; and
- d. disposing, altering, or failing to preserve any and all sales, maintenance,

testing, repair and service records applicable to the subject escalator.

18. It is respectfully submitted that unless this Court grants the requested Temporary Restraining Order, immediate and irreparable harm will result to the plaintiffs. Such harm includes the inability of the plaintiffs' expert to examine, inspect, and test the precise instrumentality (escalator) that caused the injury before it is repaired and placed back into operation under circumstances where the defendants have exclusive control of the escalator; the defendants will garner an unfair advantage over the plaintiffs as the defendants and their experts and staff have unrestricted access to the escalator and all its component parts and, accordingly, can conduct any inspections, examinations and testing of the escalator they deem necessary to protect their own interests, to the substantial detriment of the plaintiffs; and the risk that the defendants may dispose, alter or lose relevant evidence for the use at trial.

19. A copy of the plaintiffs' motion for the issuance of the Temporary Restraining Order is appended to this Complaint as well as a proposed Order.

E. Relief

20. WHEREFORE, the plaintiffs demand judgment against the defendants, Kone, Inc. and John Doe, in the amount of their damages together with interest, costs and as this Honorable Court may otherwise deem just as to Count I of this Complaint.

21. WHEREFORE, the plaintiffs move this Honorable Court for the issuance of a Temporary Restraining Order as to the Massachusetts Bay Transportation Authority and Kone, Inc. as set forth in Count II of this Complaint.

JURY CLAIM

THE PLAINTIFFS CLAIM A TRIAL BY JURY
ON ALL ISSUES SO TRIABLE RAISED BY THIS COMPLAINT

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and as Parents and Guardians of Savannah Bethay
and Karson Bethay, Jr., Plaintiffs
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Dated: September 30, 2021