

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

Filed: _____

INDEX NO.

MARGARITA A. GUILTY, As Proposed Administrator of the Estate
of CARLOS A. ALVAREZ, Deceased and MARGARITA A. GUILTY, Plaintiff designates Bronx
County as the place of trial.
Individually,

Plaintiff,

S U M M O N S

-against-

The basis of venue is
Location of accident:
Intervale Avenue Subway
Station

NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN
TRANSPORTATION AUTHORITY, Bronx, New York 10459

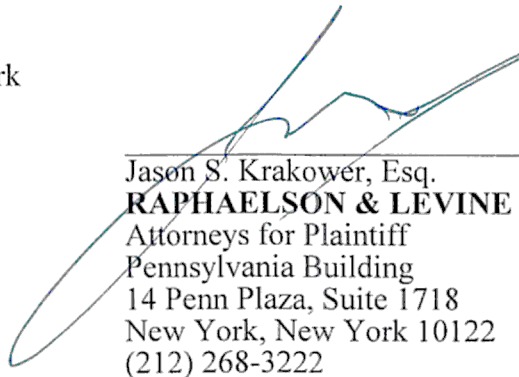
Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a
copy of your answer on the plaintiff's attorneys within 20 days after the service of this summons,
exclusive of the day of service of this summons, or within 30 days after service of this summons is
complete if this summons is not personally delivered to you within the State of New York.

In case of your failure to answer this summons, a judgment by default will be taken against
you for the relief demanded in the complaint, together with the costs of this action.

Dated: New York, New York
November 20, 2019



Jason S. Krakower, Esq.
RAPHAELSON & LEVINE LAW FIRM, P.C.
Attorneys for Plaintiff
Pennsylvania Building
14 Penn Plaza, Suite 1718
New York, New York 10122
(212) 268-3222

DEFENDANTS:

NEW YORK CITY TRANSIT AUTHORITY
Claims Division
Legal Department
130 Livingston Street, 10th Floor, Room 1077
Brooklyn, New York 11201

METROPOLITAN TRANSPORTATION AUTHORITY
347 Madison Avenue
New York, New York 10017

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

INDEX NO.

MARGARITA A. GUILTY, As Proposed Administrator of the Estate
of CARLOS A. ALVAREZ, Deceased and MARGARITA A.
GUILTY, Individually,

VERIFIED COMPLAINT

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY and
METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants.

Plaintiff, by her attorneys, **RAPHAELSON & LEVINE LAW FIRM, P.C.**, as and for her
Verified Complaint, respectfully alleges, upon information and belief:

1. The Decedent, **CARLOS A. ALVAREZ**, died intestate while a resident of the
County of Bronx, State of New York.

2. That at all times herein mentioned, defendant, **NEW YORK CITY TRANSIT
AUTHORITY**, was and still is a municipal corporation, created, organized and existing under and
by virtue of the laws of the State of New York.

3. That at all times herein mentioned, defendant, **METROPOLITAN
TRANSPORTATION AUTHORITY**, was and still is a municipal corporation, created, organized
and existing under and by virtue of the laws of the State of New York.

4. Prior to the commencement of this action, a notice of claim in writing was served on
behalf of **MARGARITA A. GUILTY, As Proposed Administrator of the Estate of CARLOS A.
ALVAREZ, Deceased**, upon defendants, **NEW YORK CITY HOUSING AUTHORITY** and
METROPOLITAN TRANSPORTATION AUTHORITY, in accordance with Section 50-e of
the General Municipal Law.

5. Within ninety days (90) of the occurrence herein, a notice of claim in writing was
served on behalf of **MARGARITA A. GUILTY, As Proposed Administrator of the Estate of
CARLOS A. ALVAREZ, Deceased**, upon defendants, **NEW YORK CITY HOUSING**

AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY, in accordance with Section 50-e of the General Municipal Law.

6. Prior to the commencement of this action, notice of the intention of **MARGARITA A. GUILTY, As Proposed Administrator of the Estate of CARLOS A. ALVAREZ, Deceased**, to commence an action, unless the claim presented was adjusted within the prescribed time as set forth by applicable law to adjust such claims, was served on behalf of **MARGARITA A. GUILTY, As Proposed Administrator of the Estate of CARLOS A. ALVAREZ, Deceased**, upon defendants, **NEW YORK CITY HOUSING AUTHORITY and METROPOLITAN TRANSPORTATION AUTHORITY**.

7. Although more than thirty (30) days have elapsed since service of such notice of claim, defendants have neglected and has refused to pay said claim or adjust same.

8. A hearing pursuant to General Municipal Law 50-h has been held.

9. This action is commenced within one (1) year and ninety (90) days from October 14, 2018 the date the accident as herein set forth occurred.

10. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, owned the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

11. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, leased the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

12. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, lessee the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

13. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, lessor the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

14. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT**

AUTHORITY, defendant's servants, agents and/or employees operated the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

15. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees maintained the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

16. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees managed the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

17. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees controlled the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

18. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees supervised the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

19. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees repaired the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

20. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees inspected the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

21. That at all times herein mentioned, the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees designed the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

22. That at all times herein mentioned, it was the duty of the defendant, **NEW YORK CITY TRANSIT AUTHORITY**, defendant's servants, agents and/or employees to maintain said premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York, in a reasonably safe and suitable condition and in good repair.

23. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, owned the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

24. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, leased the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

25. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, lessee the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

26. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, lessor the premises located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

27. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees operated the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

28. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees maintained

the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

29. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees managed the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

30. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees controlled the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

31. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees supervised the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

32. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees repaired the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

33. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees inspected the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

34. That at all times herein mentioned, the defendant, **METROPOLITAN TRANSPORTATION AUTHORITY**, defendant's servants, agents and/or employees designed the aforesaid premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York.

35. That at all times herein mentioned, it was the duty of the defendant,

METROPOLITAN TRANSPORTATION AUTHORITY, defendant's servants, agents and/or employees to maintain said premises and more particularly the escalators located at Intervale Avenue Subway Station, in the County of Bronx, City and State of New York, in a reasonably safe and suitable condition and in good repair.

36. That on or about October 14, 2018, at approximately 3:45 A.M., at Intervale Avenue Subway Station, Bronx, New York, decedent **CARLOS ALVAREZ** was going up the interior escalator when he was caused to and did fall and got his shirt stuck in the escalator mechanism. More specifically, the claim arose as a result of a defective, dangerous, hazardous and trap-like stair condition located at the interior escalator and the failure to properly maintain said escalator.

37. Solely as a result of the defendants' negligence, carelessness and recklessness the deceased plaintiff was caused to suffer severe and serious personal injuries to mind and body, and further, that the plaintiff was subjected to great physical pain and mental anguish which resulted in his demise.

38. Upon information and belief, defendants, their agents, servants, contractees and/or employees were negligent, careless and reckless in the ownership, operation, inspection, supervision, maintenance, control and repair of the aforesaid premises in that said property, premises and stairways/escalators were caused, permitted and allowed to be, become and remain broken, defective, dangerous and hazardous for a long and/or unreasonable period of time; defendants, their agents, servants and/or employees were negligent, careless and reckless in the ownership, operation, inspection, supervision, maintenance, control and repair of the aforesaid property, premises and specifically the escalator located thereat in that they were caused, permitted and allowed to be, become and remain in a broken deteriorated and worn condition for a long and/or unreasonable period of time. The aforesaid occurrence was due solely by reason of the carelessness, recklessness and negligence of defendants, their agents, servants, contractees and/or employees in the ownership, operation, management, maintenance and control of the aforesaid premises and more particularly the interior stairway; in causing, permitting and allowing same to be, become and remain in a dangerous and hazardous condition in that said escalator was broken, uneven, irregular, deteriorated, worn, improperly designed and the area thereat was dark and improperly and inadequately illuminated,

resulting in decedent plaintiff, falling thereat; in failing to make the proper and necessary repairs thereto; in making improper repairs thereto; in failing to provide sufficient lighting thereat; in failing to provide an automatic cut-off mechanism to the escalator; in failing to properly maintain said escalator; in failing to properly maintain the automatic cut-off mechanism of said escalator; in permitting and allowing the aforescribed conditions to remain thereat for a long and/or unreasonable period of time, all to the notice and knowledge of defendants; in failing to make the proper and necessary inspections thereat, so as to ascertain the dangerous and hazardous conditions which existed; in that defendants, knew or should have known that said stairway, in its aforescribed defective condition, could and would, result in an occurrence similar to the one involved herein; in failing to give decedent plaintiff any warning of the dangers present thereat; in failing to provide decedent plaintiff with a safe premises; in maintaining a trap and nuisance condition thereat; in failing to place warnings and/or barricades about this dangerous and hazardous condition; and in failing to obey the applicable statutes, ordinances, laws, codes, rules and regulations in such cases made and provided for.

39. **NEW YORK CITY TRANSIT AUTHORITY** and **METROPOLITAN TRANSPORTATION AUTHORITY**, their agents, servants and/or employees were negligent, careless and reckless in the management, inspection, supervision, retention, control, the aforesaid premises and in the negligent retention of unfit persons to perform the responsibilities of the premises.

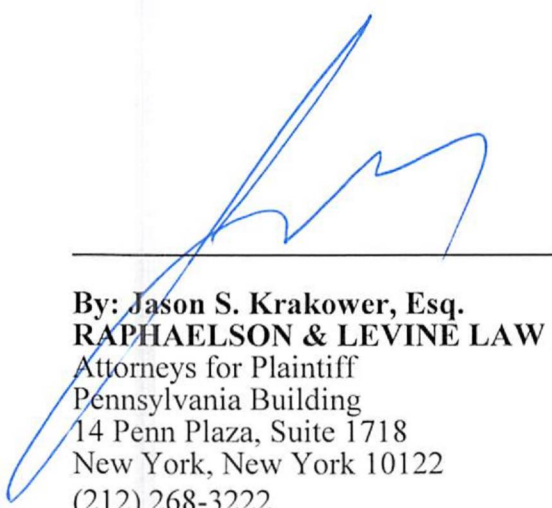
40. The aforesaid occurrence was caused by the negligence of the defendants', without any culpable conduct on the part of the deceased plaintiff.

41. This action falls within one or more of the exceptions set forth in Section 1602 of the Civil Practice Law and Rules.

42. Due to defendants' negligence, deceased plaintiff is entitled to damages.

WHEREFORE, the plaintiff demands judgment awarding damages, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with interest and the costs and disbursements of this action, and such other and further relief as to this Court seems just and proper.

Dated: New York, New York
November 20, 2019



By: Jason S. Krakower, Esq.
RAPHAELSON & LEVINE LAW FIRM, P.C.
Attorneys for Plaintiff
Pennsylvania Building
14 Penn Plaza, Suite 1718
New York, New York 10122
(212) 268-3222

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MARGARITA A. GUILTY, As Proposed Administrator of the Estate
of CARLOS A. ALVAREZ, Deceased and MARGARITA A.
GUILTY, Individually,

INDEX NO.

Plaintiff,

**ATTORNEY'S
VERIFICATION**

against-

NEW YORK CITY TRANSIT AUTHORITY and
METROPOLITAN TRANSPORTATION AUTHORITY,

Defendants.

Jason S. Krakower, Esq., an attorney duly admitted to practice law in the State of New York, makes the following affirmation under the penalty of perjury:

I am a partner of the firm of RAPHAELSON & LEVINE LAW FIRM, P.C., the attorneys of record for the plaintiff.

I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters, I believe them to be true.

This verification is made by affirmant and not by plaintiff because she is not in the County of New York, which is the County where your affirmant maintains offices.

The grounds of affirmant's belief as to all matters not stated upon affirmant's knowledge are correspondence had with the said plaintiff, information contained in the said plaintiff's file, which is in affirmant's possession, and other pertinent data relating thereto.

Dated: New York, New York
November 20, 2019



JASON S. KRAKOWER, ESQ.

Index No.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

MARGARITA A. GUILTY, As Proposed Administrator of the Estate of CARLOS A. ALVAREZ,
Deceased and MARGARITA A. GUILTY, Individually,

Plaintiff,

-against-

NEW YORK CITY TRANSIT AUTHORITY and METROPOLITAN TRANSPORTATION
AUTHORITY,

Defendants.

SUMMONS and VERIFIED COMPLAINT

RAPHAELSON & LEVINE LAW FIRM, P.C.
Attorneys for Plaintiff
Pennsylvania Building
14 Penn Plaza, Suite 1718
New York, New York 10122
(212) 268-3222