

St. Germain v Seaman
2021 NY Slip Op 31700(U)
May 19, 2021
Supreme Court, New York County
Docket Number: 158114/2015
Judge: Suzanne J. Adams
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS PART IAS MOTION 21

Justice

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ADELQUINE ST. GERMAIN,
Plaintiff,

- v -

REBECCA SEAMAN AKA REBECCA DIANE COLIN, EVA
USDAN & SAMUEL FLUG COLIN 2004 LEGACY TRUST,
THE NEW YORK CITY TRANSIT AUTHORITY, HSBC
BANK USA, NATIONAL ASSOCIATION, JONES LANG
LASALLE AMERICAS, INC., PIPESTONE PROPERTY
SERVICES LLC,

Defendant.

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DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 275, 276, 277, 278, 279, 334, 335, 336, 337, 338, 343, 349, 352, 353, 354, 355, 356, 357, 362, 397, 398

were read on this motion to/for JUDGMENT - SUMMARY

Upon the foregoing documents, and oral argument having been heard via videoconference on April 20, 2021, it is ordered that the motion for summary judgment of defendants Rebeca Colin Seaman a/k/a Rebecca Diane Colin, Eva Usdan & Samuel Flug Colin 2004 Legacy Trust (collectively, the "Colin Defendants") and the cross-motion of defendant Pipestone Property Services, LLC ("Pipestone") are both granted to the extent set forth below. This personal injury matter arises out of an incident that occurred on March 2, 2015, at approximately 4:40 a.m., at or near the corner of 14th Street and Sixth Avenue in Manhattan. Plaintiff alleges that she slipped and fell in front of and/or around the entrance to the F Train subway station located on that corner, due to an icy or slippery condition in said area.

The Colin Defendants own the property known as 531-537 Sixth Avenue, also known as 101 West 14th Street, which is at the same corner as the F Train station at issue. The property was leased to their tenant, defendant HSBC Bank USA National Association (“HSBC”), who in turn retained defendant Jones Lang LaSalle Americas, Inc. (“JLL”) as its property manager. JLL thereafter contracted with Pipestone to provide snow and ice removal, including at the 531-537 Sixth Avenue location. The Colin Defendants now move pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims as against them, and for summary judgment as against HSBC on their cross-claim for contractual indemnification. Pipestone cross-moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims as against it. Plaintiff and defendant New York City Transit Authority (“NYCTA”) oppose the motion and the cross-motion. HSBC partially opposes the motion, and opposes the cross-motion. JLL partially opposes the motion and cross-motion. (In separate motion sequences, HSBC, JLL and NYCTA all move for summary judgment dismissing the complaint and the cross-claims respectively asserted as against them. These motions are being decided separately and concurrently with the instant motion and cross-motion.)

It is well-settled that “the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact.” *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). If such a showing is made, then a party opposing the motion must “demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so].” *Zuckerman v. City of New York*, 49 N.Y.2d 557, 560 (1980). *See also Winegrad*, 64 N.Y.2d at 853.

Here, the evidence before the court establishes as a matter of law that NYCTA, not the Colin Defendants, and by extension, not Pipestone, was responsible for maintaining the area at issue herein. It is not disputed that plaintiff testified she fell in the area indicated in the photograph marked at her deposition, which is the street-level landing of the stairway leading to the subway station in question. (Affirmation in Support of motion, Exhibit W, NYSCEF #190) The deposition testimony of NYCTA's witness, Zaire Stevens, established that NYCTA was responsible for cleaning and maintaining the three-foot area of the landing from the top of the stairway at the street level. (Affirmation in Support of motion, Exhibit Z, NYSCEF #193, pp. 20-21) Ms. Stevens marked a photograph at her deposition to indicate the area she was responsible for cleaning, and it clearly encompasses the area where plaintiff claims she fell. (Affirmation in Response to Motion and In Support of Cross-Motion for Summary Judgment, Exhibit B, NYSCEF #200)

It has been long acknowledged by the courts that areas incidental to or necessary for the operation of a subway station are considered "lease property" within the meaning of the 1953 lease in which the City [of New York] relinquished possession and control of all of its transit facilities to [NYCTA]." *McGuire. v. City of New York*, 211 A.D.2d 428, 429 (1st Dep't 1995). NYCTA thus has a duty to, *inter alia*, safely maintain the means of ingress and egress to its system. *Echevarria. v. New York City Tr. Auth.*, 45 A.D.3d 492, 429 (1st Dep't 2005). Further, the installation of a subway entrance is considered a "special use" of that area by NYCTA, thereby obligating NYCTA to maintain it in a reasonably safe condition. *Weiskopf v. City of New York*, 5 A.D.3d 202, 203 (1st Dep't 2004). *See also Mitchell v. 350 W. 125 Street Corp.*, 53 Misc. 3d 1219(A) (Sup. Ct. N.Y. County 2016). Therefore, neither the Colin Defendants nor

Pipestone had a responsibility to remove snow or ice from the area at issue, and as such neither defendant owed a duty of care to plaintiff.

Moreover, it follows that because the Colin Defendants were not responsible for cleaning or maintaining the area where plaintiff alleges she fell, there is no basis for their indemnification by their tenant, HSBC, for any purported failure to remove snow or ice from the area. Because cleaning and maintaining the area was the responsibility of NYCTA, as discussed above, said area is not part of the premises for which HSBC assumed responsibility pursuant to its lease with the Colin Defendants.

Accordingly, it is hereby

ORDERED that the Colin Defendants' motion for summary judgment dismissing the complaint herein is granted and the complaint and all cross-claims and counterclaims are dismissed in their entirety as against the Colin Defendants, and the Clerk is directed to enter judgment accordingly in favor of the Colin Defendants; and it is further

ORDERED that the remainder of the Colin Defendants' motion is denied; and it is further

ORDERED that Pipestone's cross-motion for summary judgment dismissing the complaint herein is granted and the complaint and all cross-claims and counterclaims are dismissed in their entirety as against Pipestone, and the Clerk is directed to enter judgment accordingly in favor of Pipestone; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the caption be amended to reflect the dismissals and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for the Colin Defendants shall serve a copy of this order with notice of entry upon the Clerk of the Court (60 Centre Street, Room 141B) and the Clerk of the General Clerk's Office (60 Centre Street, Room 119), who are directed to mark the court's records to reflect the change in the caption herein; and it is further

ORDERED that such service upon the Clerk of the Court and the Clerk of the General Clerk's Office shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of the court.

5/19/2021
DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	