

<b>St. Germain v Seaman</b>
2021 NY Slip Op 31701(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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INDEX NO. 158114/2015
MOTION DATE 4/14/21
MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 280, 307, 308, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 339, 340, 344, 350, 358, 359, 360, 361, 402

were read on this motion to/for SUMMARY JUDGMENT(AFTER JOINDER)

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 defendant HSBC Bank USA National Association ("HSBC") is 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.

Defendants Rebeca Colin Seaman a/k/a Rebecca Diane Colin, Eva Usdan & Samuel Flug Colin 2004 Legacy Trust (collectively, 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 HSBC, their tenant, who in turn retained defendant

Jones Lang LaSalle Americas, Inc. (“JLL”) as its property manager. JLL thereafter contracted with defendant Pipestone Property Services, LLC (“Pipestone”) to provide snow and ice removal, including at the 531-537 Sixth Avenue location. HSBC now moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims as against it, and for summary judgment as against JLL and Pipestone on its cross-claims for contractual and common law indemnification. Plaintiff and defendant New York City Transit Authority (“NYCTA”) oppose the motion, and JLL partially opposes the motion. (In separate motion sequences, the Colin Defendants, JLL and NYCTA all move, and Pipestone cross-moves, 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.)

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 HSBC, 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, Exhibit N, NYSCEF #251) 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, Exhibit O, NYSCEF #252, 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 Support, Exhibit Q, NYSCEF #254)

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 (1<sup>st</sup> 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 (1<sup>st</sup> 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 (1<sup>st</sup> Dep’t 2004). *See also Mitchell v. 350 W. 125 Street Corp.*, 53 Misc. 3d 1219(A) (Sup. Ct. N.Y. County 2016). Therefore, HSBC did not have a responsibility to remove snow or ice from the area at issue, and as such did not owe a duty of care to plaintiff.

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

ORDERED that HSBC’s 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 HSBC, and the Clerk is directed to enter judgment accordingly in favor of HSBC; and it is further

ORDERED that the remainder of HSBC’s motion is denied; 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 dismissal and that all future papers filed with the court bear the amended caption; and it is further

ORDERED that counsel for HSBC 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](http://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:

CASE DISPOSED  
GRANTED  
SETTLE ORDER  
INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: