

<b>Torres v Town of Islip</b>
2021 NY Slip Op 33290(U)
November 30, 2021
Supreme Court, Suffolk County
Docket Number: Index No. 619656/2018
Judge: John H. Rouse
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

Index Number: 619656/2018

SUPREME COURT - STATE OF NEW YORK  
I.A.S. PART 12 - SUFFOLK COUNTY

**P R E S E N T:**

Hon. John H. Rouse  
Acting Supreme Court Justice

MOTION DATE: 09/22/2021  
ADJ. DATE:  
Mot. Seq. 004-MG  
*e-filed partial participation*

---

Cindy Torres

Plaintiff

-against-

Town Of Islip, Frontier Airlines, Inc, Quickflight Inc. d/b/a  
Quickflight Services,

Defendants

---

**DECISION & ORDER**

**TO:**

SOBO & SOBO, LLP  
BY: MARK P. CAMBARERI, ESQ.  
ONE DOLSON AVENUE  
MIDDLETOWN, NY 10941  
845-343-7626

FREEMAN, MATHIS & GARY LLP  
BY: BEVERLY I. NWANNA, ESQ.  
ATTORNEYS FOR ALL DEFENDANTS  
ONE GATEWAY CENTER, STE 2600  
NEWARK, NJ 07102  
000-000-0000

**U**pon the reading and filing of the following papers in this matter: (1) Notice of Motion by Defendants for an Order pursuant to Rule 3212 of the Civil Practice Law and Rules (“CPLR”) granting Movants summary judgment against Plaintiff, Cindy Torres, and for such other and further relief as the Court may deem just and proper; and (2) e-filed documents 1-79; it is:

**ORDERED** that the motion (Sequence 004) for summary judgment by Defendant Town of Islip is conditionally granted and the Plaintiff’s case against Defendant Town of Islip is dismissed upon the condition that Defendant Town of Islip file an authenticated lease agreement as provided in the order below; and Defendant Quickflight Inc. d/b/a Quickflight Services’ motion for summary judgment is granted and all claims by the Plaintiff against Quickflight Inc. d/b/a Quickflight Services are dismissed; and it is further

**ORDERED** that Defendant Town of Islip is directed to e-file an authenticated lease agreement within 45 days of service of this decision and order with notice of entry; and it is further

**ORDERED** that if, upon the filing of the authenticated lease agreement, the Plaintiff contests the authentication of that lease agreement, Plaintiff shall have leave to re-argue this motion exclusively upon the issue of authentication of the lease agreement; and it is further

**ORDERED** that the moving Defendants are directed to serve upon the Plaintiff, by filing in the NYSCEF system, a copy of this decision and order with notice of entry as soon as is practicable in accordance with CPLR § 2220.

**ENTER**

### DECISION

On October 9, 2018, Plaintiff commenced this action to recover for injuries she sustained on October 14, 2017 in a slip and fall on premises located at Long Island MacArthur Airport, Frontier Terminal 100 Arrival Avenue, Ronkonkoma, NY. On December 5, 2018, Defendant Town of Islip filed its answer with cross claims against Defendant Frontier Airlines, Inc. On January 4, 2019, Defendant Frontier Airlines filed its answer. On February 14, 2019, a Preliminary Conference was held and the parties stipulated that the end date for discovery would be December 1, 2019.

On June 17, 2019, Plaintiff, without leave of court and without objection,<sup>1</sup> filed an Amended Complaint. On July 8, 2019, Defendant Frontier Airlines filed a verified answer to the amended complaint with cross claims against the Town of Islip. On July 24, 2019, Defendant Town of Islip filed its answer to the amended complaint. On July 30, 2019, Defendant Quickflight Inc. d/b/a Quickflight Services filed its answer to the amended complaint. On September 3, 2020, Defendants accepted the joint representation of Freeman, Mathis & Gary LLP. [See e-filed document 32](#). The Court has inquired of defense counsel concerning the possibility of a conflict of interest in such joint representation and counsel is satisfied that the clients have consented.<sup>2</sup>

On December 29, 2020, Defendants moved for summary judgment, but because of filing irregularities the court denied the motion with leave to reargue. [See e-filed document 56, Decision and Order granting reargument](#). The case was scheduled for settlement conference on April 21, 2021. On April 28, 2021, Plaintiff changed counsel and a consent to change attorneys was filed on May 4, 2021.

On July 28, 2021, as previously authorized by the court, Defendants Town of Islip and Quickflight, Inc. now move for summary judgment.

The moving Defendants submitted a statement of material facts as follows:

1. On October 14, 2017, Plaintiff Cindy Torres was on the premises of the “Frontier

---

<sup>1</sup> Plaintiff and Defendant Frontier Airlines stipulated to the amendment to add Quickflight Inc. d/b/a Quickflight Services

<sup>2</sup> See Rules of Professional Responsibility, Rule 1.7  
<https://www.nycourts.gov/LegacyPDFS/rules/jointappellate/NY-Rules-Prof-Conduct-1200.pdf>

Terminal” of Long Island MacArthur Airport (the “Airport”), located at 100 Arrival Avenue, Ronkonkoma, New York 11779. Ex. A, ¶ 19.

2. Plaintiff had just flown in on Frontier Airlines, flight no. F91790, from Southwest Florida International Airport, in Fort Myers. See Ex. F, ¶ 17.

3. Upon exiting her gate, Plaintiff alleges she was caused to slip and fall on an accumulation of muddy rainwater on the floor. Ex. A, ¶¶ 20-21; Ex. F, ¶¶ 15-17.

4. As a consequence, she claims she suffered injuries to her knee, hip and back due to the fall. Ex. A, ¶ 31.

5. Plaintiff concedes that she does not know how long the condition existed at the time of her fall. Ex. E, ¶ 19.

6. She claims that a person at the airport told her it had rained earlier that day, while the air bridge was not properly sealed to the building, Ex. G, 38:8-15.

7. She does not remember who told her about the condition, or whether it was a man or a woman, though she claims he or she worked at the podium near the gate. Id., 38:16-22.  
The Parties’ Agreements

8. On or about July 31, 2017, Town of Islip (the “Town”) and Frontier Airlines (“Frontier”) entered the Town of Islip, Long Island MacArthur Airport, Airline Use and Lease Agreement (“Lease Agreement”). Ex. I, p. 1.

9. Therein, the Town agreed to lease “Aircraft Gate Areas” to Frontier, comprised of “[a] passenger holdroom or boarding area, its contiguous assigned aircraft parking position . . . on the Apron and its loading bridge (if any).” Id., art. 4, §§ 4.01 – 4.02.

10. As set forth in pertinent part, Frontier was responsible for maintaining and repairing spaces assigned for its exclusive and preferential use: Airline [Frontier], except as hereinafter provided, shall not call on Town for any of the following janitorial services or nonstructural repairs to its Exclusive Use or Preferential Space, and Airline shall, at its sole expense and in a manner acceptable to the Town:

(1) Maintain its Exclusive Use Space in the conditions prevailing at the time of beneficial occupancy subject to reasonable wear and tear and damage by fire or other casualty. Preferential Use Space shall be adequately and attractively equipped, furnished and decorated, and kept clean and presentable;

[. . .]

(3) Perform, at its sole expense, ordinary preventive maintenance and ordinary upkeep and nonstructural repair of ticket counters, fixtures, and floor coverings located within its Exclusive Use Space, excluding repairs necessitated by fire or other casualty

caused by the negligence of Town or by the negligence of another air transportation company. Town, at its own expense, shall maintain in good repair and condition the exterior portions of the walls and roof of the Exclusive Use Space, and all central mechanical, electrical and plumbing distribution systems; and

(4) Immediately repair any damage in any other space at the Airport occasioned by the fault or negligence of Airline, its servants, agents, employees, licensees, passengers, and invitees, excluding damage or repairs which fall under the Town's insurance policy.

[Id., art. 7, § 7.01(B).]

11. The Lease Agreement further delineates the Town's responsibilities with regards to the maintenance of the public and common use spaces:

A. Town, during the term of this Agreement, shall . . . keep in good repair or arrange for the operation, maintenance, and good and efficient repair of, the Airport, including, but not limited to, the public space and common use space of the Terminal Building, vehicular parking areas, runways, field lighting, taxiways, aprons, roadways, and all appurtenances, facilities, and services now or hereafter connected with the foregoing, in conformity with standards customarily followed in the aviation industry for airports of like size and character. Town also shall keep the Airport reasonably free from obstruction, including, without limitation, snow, ice, vegetation, stones, and other foreign matter, as reasonably necessary, from the landing area, taxi area, roadways, vehicular parking areas, and aircraft parking areas for the safe, convenient, and proper use of the Airport by Airline.

B. Town shall keep, or make appropriate arrangements to keep, areas accessible by the public in the Terminal Building adequately and attractively equipped, furnished, decorated, clean, and presentable. Town shall provide and supply in such areas of the Terminal Building signs, heat, electric, light, power, air conditioning, wastewater disposal, and janitorial services, including rubbish removal. Interruptions of services shall not constitute a breach of this Agreement by Town.

C. The undertakings by Town under this Section do not relieve Airline of its duties to maintain its Leases Premises and to use Preferential Use and Common Use facilities with due care.

[Id., art. 7, § 7.02.]

12. In addition, Frontier and Quickflight Inc. ("Quickflight") entered the Standard

Ground Handling Agreement, effective as of August 16, 2017. Ex. H, p. 1 (“Ground Handling Agreement”).

13. Therein, the parties established the services to be performed by Quickflight as a ground handling agent for Frontier. Id., ¶ 1.

14. Broadly speaking, the services performed by Quickflight include administration; providing logistical support in transporting flights, passengers and baggage; customer service; loading, unloading and cleaning the aircraft; and security and screening services. See generally id.

15. The Ground Handling Agreement does not require Quickflight to clean or otherwise maintain the gate areas in the terminal. Ibid.

Plaintiff has submitted a Response to the Statement of Material Facts. [See e-filed document 76.](#) In this response the Plaintiff has not made any reference to depositions, affidavits, or affirmations to support her contentions. Plaintiff disputes the description of the rainwater and the origin of that rainwater. Plaintiff denies having knowledge or information concerning the authenticity of the Lease Agreement and the Ground Handling Agreement and argues that custom and practice may modify the plain reading of the contracts.

Defendant Town of Islip has submitted a lease agreement which, if authenticated, makes a *prima facie* case that it was a landlord out of possession and had no duty to Plaintiff to eliminate or warn of a slip hazard from rainwater on the floor attendant to flight operations of Defendant Frontier Airlines. The July 31, 2017 leasehold agreement signed on behalf of the Town of Islip bears a signature identified as being that of Angie Carpenter, Islip Town Supervisor. This Court can take judicial notice that Angie Carpenter was sworn in as Town Supervisor on March 1, 2015 to fill an unexpired term of her predecessor and elected as Town Supervisor for a four-year term in November of 2015 and was the Islip Town Supervisor on the date the lease agreement was purportedly executed by her. Defendant’s counsel, however, cannot personally authenticate the lease agreement in the capacity of attorney of record for the Town of Islip. *See Wells Fargo Bank, N.A. v Sesev, 183 AD3d 780 (2d Dept 2020)*. The lease may be authenticated by Supervisor Carpenter, or it may be authenticated as a business record in accordance with CPLR § 4518. The court further notes that the amended complaint does not plead that Plaintiff served a 90-day notice of claim on the Defendant Town of Islip. *See Davidson v Bronx Mun. Hosp., 64 NY2d 59 (1984); and Bertolotti v Town of Islip, 140 AD3d 907 (2d Dept 2016)*. Accordingly, the motion by Defendant Town of Islip is conditionally granted, the condition being that Defendant Town of Islip e-file a properly authenticated lease agreement.

Defendant Quickflight Inc. moves for summary judgment upon its contention it did not breach any duty owed to the Plaintiff. Defendant Quickflight, Inc. further argues that it did not violate any contractual duty to Frontier Airlines, Inc.

*“A contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third party. However, the New York Court of Appeals has recognized three exceptions to the general rule: (1) where the contracting party, in failing to exercise*

*reasonable care in the performance of his or her duties, launches a force or instrument of harm; (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely. As part of its prima facie showing, a contracting defendant is only required to negate the applicability of those Espinal exceptions that were expressly pleaded by the plaintiff or expressly set forth in the plaintiff's bill of particulars."*

*Coakley v Regal Cinemas, Inc., 188 AD3d 796 (2d Dept 2020)*

Here, the Plaintiff has not alleged any of the exceptions that could give rise to tort liability to the Plaintiff. Accordingly, the Defendant Quickflight Inc.'s motion for summary judgment is granted.

Dated: November 30, 2021

ENTER:

**JOHN H. ROUSE**

ACTING J.S.C.

NON-FINAL DISPOSITION