

**Vasquez v Port Auth. of N.Y. & N.J.**

2011 NY Slip Op 32936(U)

November 4, 2011

Sup Ct, NY County

Docket Number: 109855/08

Judge: Jane S. Solomon

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: JANE S. SOLOMON  
Justice

PART 05

Index Number : 109855/2008  
VASQUEZ, LIDIA  
vs.  
PORT AUTHORITY  
SEQUENCE NUMBER : 003  
SUMMARY JUDGMENT

INDEX NO. \_\_\_\_\_  
MOTION DATE 9/20/11  
MOTION SEQ. NO. \_\_\_\_\_  
MOTION CAL. NO. \_\_\_\_\_

in this motion to/for \_\_\_\_\_

PAPERS NUMBERED	
1-3	_____
4-7	_____
8-9, 10, 11	_____

NOTICE OF MOTION/ Order to Show Cause — Affidavits Exhibits ...  
Answering Affidavits — Exhibits \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion should be granted  
with the exception of the summary judgment portion of the motion

**FILED**

NOV 14 2011

*Patricia*  
Patricia  
County Clerk's Office  
Dec 8, 2011  
C. P. ...

Dated: 11/4/11

JANE S. SOLOMON  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION  
Check if appropriate:  DO NOT POST  REFERENCE  
 SUBMIT ORDER/ JUDG.  SETTLE ORDER/ JUDG.

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: PART 55

-----X

LIDIA VASQUEZ,

Plaintiff,

Index No. 109855/08

DECISION & ORDER

-against-

PORT AUTHORITY OF NEW YORK AND NEW  
JERSEY, THE NEW YORK CITY TRANSIT  
AUTHORITY AND LARO MAINTENANCE CORP.

Defendants.

-----X

SOLOMON, J.:

**FILED**

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NEW YORK  
COUNTY CLERK'S OFFICE

Plaintiff Lidia Vasquez (Vasquez) sues defendants Port

Authority of New York and New Jersey (Port Authority) and Laro  
Maintenance Corp. (Laro) for injuries suffered in a trip and fall  
in Stairway D of the Port Authority Bus Terminal (the Terminal).

In Motion Sequence 003, Laro moves for summary judgment  
on the ground that it was not responsible for the condition that  
caused Vasquez's fall. Port Authority cross moves for summary  
judgment requiring Laro, its cleaning contractor, to defend and  
indemnify it in this action, and to procure insurance on its  
behalf.

In Motion Sequence 004, by order to show cause, Port  
Authority moves for leave to amend the answer to include  
inadvertently omitted cross claims for indemnification. This  
motion is met with opposition on the merits of the omitted

claims, and, notably, is the subject of the fully briefed cross motion in Motion Sequence 003. Accordingly, it cannot be said that Laro is prejudiced, and the motion to amend is granted.

On July 25, 2007, Vasquez traveled from New Jersey to New York by bus. She arrived at the Terminal and descended the stairs in Stairwell D. When she reached the third step, her sandal caught on a piece of metal sticking up from the stair nosing. She tripped and fell down the remaining stairs, suffering injuries. She only noticed the metal protrusion after her fall (Vasquez Deposition, attached to Griffin Affirmation, Ex. D., p. 9-10).

A: Laro's Motion

Laro argues that it should be dismissed from this action because it was not contractually responsible for maintaining the structural condition of the stairway, and owed no duty to Vasquez. In support, it submits the deposition transcript of Louis Vacca, its vice president of operations. He states that Laro was responsible only for sweeping and mopping (Vacca Deposition, attached to Griffin Affirmation, Ex. F. P. 57-8), and did not have any staff in the Terminal that performed maintenance or repairs. Laro also relies on the deposition of Michael Scanio (Scanio), Port Authority's Maintenance Unit supervisor (Griffin Affirmation, Ex. H), who testified that his

unit is responsible to inspect the Terminal, including the stairways, and perform repairs.

Port Authority counters that Laro had a contractual duty to observe and report any defects it found to Port Authority. It cites to Scanio's testimony that Laro had an obligation to report any defects (though not to repair) (*Id.*, p. 59), and that once a defective condition was discovered and reported by Laro, the area would be secured, a work order would be created, and his unit would make the repair (*Id.*, p. 38-9). He testified that he had not received any report of a damaged stair nosing from Laro prior to Vasquez's fall (*Id.*, p. 58).

The General Cleaning Contract (Contract) (attached to Griffin Affirmation, Ex. G), provides that Laro agreed to perform janitorial and general cleaning services at the Terminal (*Id.*, p. 25), and requires Laro to clean each area or "station" of the Terminal a set number of times per year (anywhere from four times per day to once a year) (*Id.*, p. 37), and to otherwise "police" the stations to maintain cleanliness. The Contract also requires that each station shall be continuously staffed 365 days per year (*Id.*, p. 51). It requires:

S11 - Breakdown, Malfunction or Damage

Immediately upon [Laro's] discovery of any damage or signs of disrepair to, mechanical breakdowns or malfunction of, or cracks or breaks in any item to be cleaned hereunder, he shall advise the Manager and shall

[\*5]  
place such "Out of Order" or warning signs as are appropriate.

(*Id.*, p. 44).

It is uncontested that the stairs and nosings of Terminal Stairway D were areas within a "station" that Laro was contractually obligated to clean (see, Vacco Deposition, attached to Griffin Affirmation, Ex. F. P. 57-8). Laro's argument that it had no duty to repair the alleged defect does not obviate its obligation to report defects and erect warning signs for the public.<sup>1</sup> The argument that Laro was only required to report fluid or debris hazards is defeated by the plain language of the contract.

Laro also argues that there is no evidence that a defect existed that its employees could have observed. Vasquez, however, testified on this matter. It is a question for the jury to determine whether the alleged defect was discoverable by Laro employees during their cleaning and "policing."

Finally, that Port Authority had a duty to inspect and repair does not remove Laro's express contractual obligations to

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<sup>1</sup>Laro repeatedly references Scanio's testimony. Laro argues that Scanio's statements should be discounted because he was unaware of "any writing that required [Laro] to notify anyone of such a condition if they were to observe it" (Scanio Deposition, Griffin Affirmation, Ex. H. P. 59). That he was unaware of the Contract clause governing Laro's duties is immaterial.

report. Accordingly, Laro's motion is denied.

B. Port Authority's Cross Motion

1. Failure to Procure Insurance

Port Authority argues that Laro breached the Contract by failing to procure insurance that named Port Authority as an additional insured. Specifically, section 1, paragraph 9 of the Contract requires that Laro obtain a Commercial General Liability Insurance policy and requires the policy to "name the Port Authority of New York and New Jersey as additional insured" (Contract, attached to Griffin Affirmation, Ex. G, p. 30-1).

Laro supplies a copy of an AIG Commercial General Liability insurance policy (the Policy) in effect on the date of the incident that names Port Authority as an insured (Griffin Reply Affirmation, Ex. A). It contains a "CGL Extension Schedule" that lists "Port Authority [sic]," with an address of "Harrison, NJ 07024" (Griffin Reply Affirmation, Ex. A [unpaginated]). Notably, the Contract lists Port Authority's address as 225 Park Avenue South, 12<sup>th</sup> Floor, New York, New York, 10003.

On December 11, 2007, Port Authority received a letter from AIG, requesting additional documentation to determine coverage (Claim Letter, attached to Alterman Affirmation in Support of Motion 004, Ex. E). Port Authority sent the additional information on April 1, 2008 (*Id.*). AIG has not yet

responded, has not affirmatively disclaimed, and has not provided a defense for Port Authority. AIG's lack of disclaimer and defense is not a question before this court, and AIG is not a party.

Port Authority has not established that Laro did not procure insurance. It states that "[a] close review of the policy indicates that a party to be named as an additional insured must be expressly enumerated as an Insured." It, however, does not explain how it comes to this conclusion, or why the Extension Schedule, despite its asserted defects, is not sufficient. Accordingly, the evidence provided is insufficient to warrant summary judgment on this claim.

2. Defense & Indemnification

Next, Port Authority argues that Laro has a contractual duty to defend and indemnify it.

Paragraph F-20 of Attachment F to the contract provides:

To the extent permitted by law, [Laro] shall indemnify and hold harmless the Port Authority . . . from and against all claims and demands . . . arising out of or in any way connected or alleged to arise out of or alleged to be in any way connected with the Contract and all other services and activities of [Laro] under this Contract and for all expenses incurred by it in the defense . . . thereof . . . whether they arise from the acts or omissions of [Laro], of the Port Authority, or third parties . . . .

(Contract, attached to Griffin Affirmation, Ex. G, Attachment F, p. F-20). Laro's argues that maintaining the stairway was not an activity arising out of the Contract.

Contractual indemnification is not warranted unless the claim falls within the scope of the contract's indemnification provision (see, *Martinez v. Tishman Construction Corp.*, 227 AD2d 298 [1<sup>st</sup> Dept., 1996]). Under the Contract, Laro was charged with monitoring the daily condition of the Terminal, to report any defects to Port Authority found during the cleaning process, and to place warning signs if necessary. The failure to do so is a failure to act within the scope of the Contract.

It is enough for Vasquez to allege that her injury arose from Laro's work to trigger its duty to indemnify, even if, in the end, she is unable to prove it. In her Bill of Particulars (attached to Alterman Affidavit, Ex. D), Vasquez alleges that the defendants failed to give adequate warning of the danger on the stair. This is a duty given to Laro. Accordingly, the claim is within the scope of the indemnification clause, and Laro must indemnify Port Authority for its expenses in this action; and it hereby is

ORDERED that the motion of Port Authority to amend its answer is granted, and the amended answer annexed to Motion Sequence 004 is deemed served upon entry hereof; and it further

is

ORDERED that the motion of Laro Maintenance Corp. for summary judgment dismissing the complaint as to it is denied; and it further is

ORDERED that the cross motion of Port Authority for summary judgment on its cross claim for indemnification is granted; and it further is

ORDERED that counsel shall appear for a pre-trial conference in Part 40, 80 Centre Street, Room 136, New York, NY, on December 8, 2011 at 10 AM.

Dated: 11/4, 2011

**FILED**

NOV 19 2011

Enter:

*J.S.C.*

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J.S.C.

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