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

PRESENT : DONNA M. MILLS **PART 21**

Justice

GWENDOLYN, RUFFIN

Plaintiff,

-v-

THE CHASE MANHATTAN BANK, N.A., JPMORGAN CHASE & CO., NEW YORK CITY TRANSIT AUTHORITY, METROPOLITAN TRANSPORTATION AUTHORITY and *THE CITY OF NEW YORK*

Defendants.

INDEX NO. 101855/06

MOTION DATE _____

MOTION SEQ. NO. 1

MOTION CAL NO. _____

The following papers, numbered 1 to 2 were read on this motion to dismiss.

	PAPERS NUMBERED
Notice of Motion/Order to Show Cause-Affidavits– Exhibits....	1
Answering Affidavits– Exhibits	2
Replying Affidavits	

CROSS-MOTION: ____ YES ✓ NO

Upon the foregoing papers, it is ordered that this motion is:

DECIDED IN ACCORDANCE WITH ATTACHED MEMORANDUM DECISION.

Dated: 7-27-07

J.S.C.

Check one: ____ FINAL DISPOSITION ✓ NON-FINAL DISPOSITION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 21

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GWENDOLYN RUFFIN,

Plaintiff,

-against- Index No. 101855/06

THE CHASE MANHATTAN BANK, NA, JP MORGAN CHASE & CO., NEW YORK CITY TRANSIT AUTHORITY, and THE CITY OF NEW YORK

Defendants.

----------X

DONNA M. MILLS, J.:

The co-defendant, the City of New York (hereinafter "the City") moves, pursuant to CPLR 3211 and 3212, for an order granting summary judgment dismissing plaintiff's complaint. Plaintiff opposes the motion and the co-defendants, the Chase Manhattan Bank, JP Morgan Chase & Co. and the New York City Transit Authority (hereinafter "Transit"), do not oppose the City's motion.

This is an action to recover damages for personal injuries plaintiff sustained in a trip and fall accident on May 3, 2005. The accident occurred in the early afternoon on a stairway leading from the lobby of 1 Chase Manhattan Plaza to the Wall Street subway station, at or about Wall Street and William Street in the County, City, and State of New York. Plaintiff alleges that she was caused to trip and fall at the subject location due to the fact that the defective non-skid tread that was partially covering the step caused her to slip and fall. Plaintiff allegedly sustained an elbow and ankle injury, requiring surgery to the ankle, a two-week hospital stay, and physical therapy.

Plaintiff commenced this negligence claim against the defendants, her allegations relating to the ownership, operation, control, and maintenance of the stairway leading from the lobby of 1 Chase Manhattan Plaza to the Wall Street subway station. The City now moves to either dismiss plaintiff's claim or for summary judgment, arguing that they cannot be held liable in negligence since they owed plaintiff no duty of care. In support of their contention that they are not culpable the City cites in their moving papers the "Agreement of Lease Between the City of New York and New York City Transit Authority" (hereinafter "Lease") in which the City and Transit entered into agreement whereby all Transit facilities and property incidental to or necessary for the operation of such transit facilities were leased to Transit. Under the terms of the Lease, the City is not liable for any alleged injuries plaintiff may have incurred due to any occurrence taking place on property incidental to or necessary for the operation of the subway system as the City did not maintain or control the subject premises.

Plaintiff opposes the City's motion, arguing that a landlord who has a contractual right to inspect the transferred property may be held liable for negligence on a significant structural or design defect that is contrary to a specific statutory safety provision. Plaintiff further alleges the City violated the NYC Administrative Code Section 27-375 by reason of insufficient treading on the steps of the stairway.

APPLICABLE LAW & DISCUSSION

Summary judgment is a drastic remedy and should not be granted where there is any doubt as to the existence of a triable issue (Rotuba Extruders v. Ceppos, 46 NY2d 223 [1978]). When there is no genuine issue to be resolved, however, the case should be summarily decided, and an unfounded reluctance to employ the remedy will only serve to swell the trial calendar and

thus deny to other litigants the right to have their claims promptly adjudicated (Andre v Pomeroy, 35 NY2d 361 [1974]).

Additionally, it is incumbent upon the moving party to make a prima facie showing based on sufficient evidence to warrant the court to find movant's entitlement to judgment as a matter of law (CPLR § 3212[b]), and must do so by tender of evidentiary proof in admissible form. Once this showing has been made, the burden shifts to the party opposing the motion of summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]).

In the case at bar, the stairway leading to the subway was not under the City's control and hence the City had no connection to the alleged trip and fall. There is no basis to impose liability against the City as a landlord lessor out-of-possession (Mattera v City of New York, 169 AD2d 759 [2nd Dept. 1991]). The City gave up possession and control of the subway system when it leased the property to the New York City Transit Authority (Id.).

Additionally, the Court dismissed the City in a First Department case (McGuire v City of New York, 211 AD2d 428 [1st Dept. 1995]). In McGuire, plaintiff's accident occurred at a location incidental to or necessary for the operation of the subway station; therefore the accident took place on "lease property" within the meaning of the 1953 lease in which the City relinquished possession and control of all of its transit facilities to Transit (Id.). Similarly in the case at bar, the subject stairway, as the entrance to the subway, is necessary for the subway station's operation. Thus, the accident took place on "lease property" and the City owed no duty to plaintiff. The City has shown its entitlement to judgment as a matter of law.

The burden of proof then shifts to plaintiff, who opposes the City's motion, to show that there are questions of fact remaining (Zuckerman v City of New York, 49 NY2d 557, 562 [1980]). Plaintiff has not, however, met this burden. In opposition, plaintiff has failed to cit any case in which the City (post 1953) has been held liable for negligence resulting from an alleged hazardous condition that existed in a stairway leading to the subway. This Court finds Genco, McGuire, and Mattera controlling and persuasive. Thus, it would be imprudent for this court to find the City liable for plaintiff's accident.

Accordingly, it is hereby

ORDERED that the motion for summary judgment is granted and the complaint and all cross-claims is hereby severed and dismissed against the City of New York, and the Clerk is directed to enter judgment in favor of said defendants; and it is further

ORDERED that the remainder of the action shall continue.

Dated: 7/27/07

ENTER:

J.S.C.

DONNA M. MILLS, J.S.C.