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

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RUTH HERNANDEZ,

Plaintiff,

Index No. 151088/2013

-against-

DECISION/ORDER

JP MORGAN CHASE & COMPANY and 3770 82ND STREET, LLC,

Defendants.

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HON. CYNTHIA S. KERN, J.S.C.

Recitation, as required by CPLR 2219(a), of the papers considered in the review of this motion for :_____

Papers	Numbered
Notice of Motion and Affidavits Annexed.....	1
Affirmations in Opposition to the Motion	2
Replying Affidavits.....	3
Exhibits.....	4

Plaintiff commenced the instant action to recover damages for personal injuries she allegedly sustained when she tripped and fell on the sidewalk in front of a building located at 3770 82nd Street in Jackson Heights, New York. Defendant JPMorgan Chase Bank, NA, improperly sued herein as JP Morgan Chase & Company, (hereinafter "JPMC") now moves for summary judgment dismissing the complaint and on its claim for contractual indemnification against co-defendant 3770 82nd Street, LLC (hereinafter "3770"). For the reasons set forth below, JPMC's motion is granted.

The relevant facts are as follows. On or about August 17, 2012, plaintiff alleges that she tripped and fell on a "hole" in the sidewalk abutting the premises identified as 3770 82nd Street in

Jackson Heights, New York (the "Building"). At the time of the alleged incident, JPMC occupied the ground floor of the Building pursuant to a lease entered into with 3770, the Building's owner, dated April 30, 2012 (the "Lease"). Pursuant to the Section 7 of the Lease 3770 maintained the duty to "maintain and repair, or cause to be maintained and repaired, in a first class manner, the exterior portions of the Premises (excluding Tenant's storefront and the exterior and interior of all windows, plate glass, showcases, doors, door frames and bucks) roof and floor slabs of the Premises, sidewalks and curbs and all other structural portions of the Building . . . ."

On a motion for summary judgment, the movant bears the burden of presenting sufficient evidence to demonstrate the absence of any material issues of fact. *See Alvarez v. Prospect Hosp.*, 68 N.Y.2d 320, 324 (1986). Summary judgment should not be granted where there is any doubt as to the existence of a material issue of fact. *See Zuckerman v. City of New York*, 49 N.Y.2d 557, 562 (1980). Once the movant establishes a prima facie right to judgment as a matter of law, the burden shifts to the party opposing the motion to "produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim." *Id.*

In the instant case, JPMC has established its prima facie right to summary judgment as it has shown that it had no duty to maintain or repair the sidewalk on which plaintiff tripped and fell and that it did not cause or create the alleged defect and plaintiff has failed to raise an issue of fact. In the context of a trip and fall case, pursuant to Admin. Code § 7-210, a tenant/lessee generally has no legal duty to maintain the abutting sidewalk of a premises as it is the duty of the owner of real property abutting any sidewalk to maintain such sidewalk in a reasonably safe

condition. In order to determine whether a tenant has the duty to maintain the area of a sidewalk where a plaintiff's accident occurred, a court will look to the language of the governing lease agreement between the tenant and the building owner. *See Collado v. Cruz*, 81 A.D.3d 542 (1st Dept 2011). If the evidence shows that the tenant was not contractually responsible for maintaining the area where a plaintiff's accident occurred such that it did not owe a duty to that plaintiff, then that tenant is entitled to summary judgment. *See Cucinotta v. City of New York*, 68 A.D.3d 682 (1st Dept 2009); *see also Morrison v. Gerlitzky*, 282 A.D.2d 725 (2nd Dept 2001). However, a tenant can be held liable if it caused or created the defect. *See Collado*, 81 A.D.3d 542.

In the instant action, JPMC is entitled to summary judgment as it has demonstrated that it was not contractually responsible for maintaining or repairing the sidewalk and there is nothing in the record to suggest that it caused or created the hole that allegedly caused plaintiff's accident. Section 7 of the Lease clearly states that 3770, not JPMC, is responsible for the maintenance and repair of the sidewalk. Further, the record is devoid of any facts attributing the hole to JPMC's actions. Indeed, plaintiff fails to put forth any evidence or even theory as to how the hole was created or caused by JPMC. Thus, JPMC cannot be held liable for plaintiff's alleged injuries and it is entitled to summary judgment dismissing plaintiff's complaint.

Additionally, JPMC's motion for summary judgment on its cross-claim for contractual indemnification and defense against 3370 is granted on the condition that 3770 is found negligent for plaintiff's injuries. Article 14(c) of the Lease provides that 3700 shall "indemnify, defend and save Tenant, its officers, directors and employees harmless from and against all claims of whatever nature against Tenant arising from any wrongful act, omission or negligence of [3770],

its contractors, agents or employees, except to the extent caused by the negligence or wrongful acts of Tenant, its agents, employees, contractors or invitees (while in the Premises)." Thus, if 3770 is found negligent in this action, JPMC is entitled to indemnification in the form of reimbursement of the fees and costs it has incurred in its defense of this matter. To the extent 3770 contends that this portion of JPMC's motion should be denied as it failed to properly authenticate the Lease attached to its moving papers as it is merely attached to its attorney's affirmation, such contention is without merit as "attaching the subject leases to [an] attorney's affirmation [is] sufficient to admit the leases." *DeLeon v. Port Auth. of N.Y. & N.J.*, 306 A.D.2d 146 (1st Dept 2003).

Accordingly, JPMC's motion is granted. It is hereby

ORDERED that this action is dismissed as to JPMC; and it is further

ORDERED that JPMC is entitled to reimbursement from 3770 for the fees and costs it has incurred in the defense of its interest in this matter on the condition that 3770 is found negligent. This constitutes the decision and order of the court.

Dated: 1/9/15

Enter: _____
J.S.C.
CYNTHIA S. KERN
J.S.C.