

<b>Raynesh v New York City Tr. Auth.</b>
2020 NY Slip Op 33823(U)
November 16, 2020
Supreme Court, New York County
Docket Number: 161884/2019
Judge: J. Machelles Sweeting
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. J. MACHELLE SWEETING PART IAS MOTION 62**

*Justice*

-----X

**INDEX NO. 161884/2019**

LARISA RAYNESH,

**MOTION DATE 05/13/2020**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

NEW YORK CITY TRANSIT AUTHORITY, THE CITY OF  
NEW YORK

**DECISION + ORDER ON  
MOTION**

Defendant.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

were read on this motion to/for DISMISS.

This is an action in which plaintiff alleges that on October 20, 2018, she tripped and fell on the northern stairway at the 181st Street (A Train) subway station located at the intersection of Fort Washington Avenue and West 181st Street in the County, City and State of New York. Plaintiff alleges that a broken step that had been painted over rather than repaired, was the proximate cause of her accident.

Pending before the court is a motion filed by the defendant City of New York (the "City") seeking an order pursuant to CPLR§ 3212, granting summary judgment in favor of the City; dismissing plaintiff's verified complaint and any cross-claims against the City; and striking the City as a named defendant in the caption of this matter.

In the alternative, the City seeks an order granting contractual indemnification and/or common law indemnification in favor of the City and against co-defendant the New York City Transit Authority (hereinafter "NYCTA") and striking all cross-claims against the City for failure

to state a cause of action, on the grounds that the City is not liable for plaintiff's injuries resulting from an incident that occurred inside of a subway train station.

Plaintiff and co-defendant NYCTA each oppose the City's motion, and argue in opposition, that the City failed to include with its motion, an Affidavit of someone with personal knowledge of the actual condition which caused plaintiff's accident. Plaintiff and the NYCTA further argue that the City failed to establish who created the condition; how long the condition existed; or who painted over the condition that concealed the hazardous nature of the condition. Additionally, they argue that even if the NYCTA was the leaseholder of the subway station, including the staircase, there remains a question of fact as to whether the hazardous condition was known by NYCTA to exist at the time of the lease formation. The NYCTA further argues that the City's motion is premature, as no discovery or depositions have taken place, and hence there remains an open question of fact as to whether the subject stairway is covered under Master Lease.

In turn, the City argues that the Master Lease clearly encompasses the subject staircase, and that even if the NYCTA did not know of the defect at the time the lease was formed, it is undisputed that the NYCTA has been the lessee since 1953, which gave the NYCTA ample time (67 years) to discover and remedy the alleged defect.

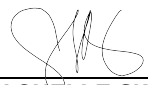
A defendant who moves for summary judgment in a slip and fall case has the initial burden of making a *prima facie* showing that it neither created nor had actual or constructive notice of the unsafe condition. Once that showing is made, the burden shifts to plaintiff to raise a triable issue of fact as to the creation of the defect or notice of it (Rosario v. Prana Nine Properties, LLC, 143 A.D.3d 409 [Sup. Ct. App. Div. 1<sup>st</sup> Dept. 2016]).

Here, the complaint alleges that the accident occurred on the “most Northern located staircase permitting access to the downtown trains” at the “‘A’ train subway stop/station located at 181st Street, New York, New York.” The Master Lease, which was attached to the City’s motion, defines “Leased Property” to include “the transit facilities and any other materials, supplies and property incidental to or necessary for the operation of such transit Facilities.” Under the plain meaning of the words, the staircase on which plaintiff fell is a part of the “transit facilities” and hence was included in the Master Lease.

In fact, the NYCTA admitted in its answer that “at all times mentioned in the verified complaint defendant NEW YORK CITY TRANSIT AUTHORITY operated and maintained a subway system in the City of New York, which included a station designated as the 181st Street Station on the ‘A’ line, New York, New York.” Further, when the City leased the transit system to the NYCTA, the duty to operate and maintain the subway station shifted to the NYCTA. *See Arteaga v. City of New York*, 101 A.D.3d 454 (Sup. Ct. App. Div. 1<sup>st</sup> Dept. 2012) (“Plaintiff served a timely notice of claim on defendant City alleging that she was injured when she slipped and fell on a platform in a subway station. The motion court correctly granted defendant’s motion since it demonstrated that the subway station is leased to the NYCTA, and it is an out-of-possession landlord and not liable for negligence on the part of NYCTA”); *and McGuire v. City of New York*, 211 A.D.2d 428 (Sup. Ct. App. Div. 1<sup>st</sup> Dept. 1995) (“The City was properly dismissed from the action in view of plaintiff’s positions that he slipped on either the street level step or second top step of a stairway leading down to a subway station, since, in either case, the accident occurred at a location incidental to or necessary for the operation of the subway station, and therefore 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 the Transit Authority”).

Accordingly, this motion is GRANTED. The complaint and any cross-claims against the City are dismissed WITH PREJUDICE, and the City’s name is stricken from the caption of this matter. Further, this matter is respectfully transferred to the “Transit” part.

This is the order of the court.

<u>11/16/2020</u> DATE			 J. MACHELLE SWEETING, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED <input type="checkbox"/> DENIED	<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input checked="" type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE