SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. SUZANNE J. ADAMS **PART** IAS MOTION 21

Justice

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ADELQUINE ST. GERMAIN,

Plaintiff,

- v -

REBECCA SEAMAN AKA REBECCA DIANE COLIN, EVA USDAN & SAMUEL FLUG COLIN 2004 LEGACY TRUST, THE NEW YORK CITY TRANSIT AUTHORITY, HSBC BANK USA, NATIONAL ASSOCIATION, JONES LANG LASALLE AMERICAS, INC.,PIPESTONE PROPERTY SERVICES LLC,

Defendant.

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INDEX NO. 158114/2015

MOTION DATE 04/14/2021

MOTION SEQ. NO. 007

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 007) 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 404, 405

were read on this motion to/for DISMISS.

Upon the foregoing documents, and oral argument having been heard via videoconference on April 20, 2021, it is ordered that the motion for summary judgment of defendant New York City Transit Authority ("NYCTA") is denied. This personal injury matter arises out of an incident that occurred on March 2, 2015, at approximately 4:40 a.m. at or near the corner of 14th Street and Sixth Avenue in Manhattan. Plaintiff alleges that she slipped and fell in front of and/or around the entrance to the F Train subway station located on that corner, due to an icy or slippery condition in said area.

Defendants Rebeca Colin Seaman a/k/a Rebecca Diane Colin, Eva Usdan & Samuel Flug Colin 2004 Legacy Trust (collectively, the "Colin Defendants") own the property known as 531-537 Sixth Avenue, also known as 101 West 14th Street, which is at the same corner as the F Train

station at issue. The property was leased to defendant HSBC Bank USA National Association ("HSBC"), their tenant, who in turn retained defendant Jones Lang LaSalle Americas, Inc. ("JLL") as its property manager. JLL thereafter contracted with defendant Pipestone Property Services, LLC ("Pipestone") to provide snow and ice removal, including at the 531-537 Sixth Avenue location. NYCTA now moves pursuant to CPLR 3212 for summary judgment dismissing the complaint and all cross-claims as against it. Plaintiff, HSBC, JLL and Pipestone oppose the motion, and the Colon Defendants partially oppose the motion. (In separate motion sequences, the Colin Defendants, HSBC and JLL all move, and Pipestone cross-moves, for summary judgment dismissing the complaint and the cross-claims respectively asserted as against them. These motions are being decided separately and concurrently with the instant motion.)

It is well-settled that "the proponent of a summary judgment motion must make a *prima facie* showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact." *Alvarez v. Prospect Hospital*, 68 N.Y.2d 320, 324 (1986) (citing *Winegrad v. New York University Medical Center*, 64 N.Y.2d 851 (1985)). If such a showing is made, then a party opposing the motion must "demonstrate by admissible evidence the existence of a factual issue requiring a trial of the action or tender an acceptable excuse for his failure...to do [so]." *Zuckerman v. City of New York*, 49 N.Y.2d 557, 560 (1980). *See also Winegrad,* 64 N.Y.2d at 853.

Here, the evidence before the court establishes as a matter of law that NYCTA was responsible for maintaining the area at issue herein. It is not disputed that plaintiff testified she fell in the area indicated in the photograph marked at her deposition, which is the street-level landing of the stairway leading to the subway station in question. (Pipestone's Opposition to

NYCTA's Motion for Summary Judgment, ¶ 6 and citations therein) The deposition testimony of NYCTA's witness, Zaire Stevens, established that NYCTA was responsible for cleaning and maintaining the three-foot area of the landing from the top of the stairway at the street level. (Pipestone's Opposition to NYCTA's Motion for Summary Judgment, ¶ 8) Ms. Stevens marked a photograph at her deposition to indicate the area she was responsible for cleaning, and it clearly encompasses the area where plaintiff claims she fell. (Pipestone's Opposition to NYCTA's Motion for Summary Judgment, ¶ 10 and citations therein)

It has been long acknowledged by the courts that areas incidental to or necessary for the operation of a subway station are considered "'lease property' within the meaning of the 1953 lease in which the City [of New York] relinquished possession and control of all of its transit facilities to [NYCTA]." *McGuire. v. City of New York*, 211 A.D.2d 428, 429 (1st Dep't 1995). NYCTA thus has a duty to, *inter alia*, safely maintain the means of ingress and egress to its system. *Echevarria. v. New York City Tr. Auth.*, 45 A.D.3d 492, 429 (1st Dep't 2005). Further, the installation of a subway entrance is considered a "special use" of that area by NYCTA, thereby obligating NYCTA to maintain it in a reasonably safe condition. *Weiskopf v. City of New York*, 5 A.D.3d 202, 203 (1st Dep't 2004). *See also Mitchell v. 350 W. 125 Street Corp.*, 53 Misc. 3d 1219(A) (Sup. Ct. N.Y. County 2016). Thus, NYCTA had the responsibility to remove snow or ice from the area at issue, and as such owed a duty of care to plaintiff.

NYCTA maintains that, assuming it had a duty to plaintiff regarding the area in question, it nevertheless could not be held liable by virtue of NYC Administrative Code § 16-123 and the "storm in progress" doctrine. Section § 16-123 provides that snow and ice must be removed by the responsible party within four hours after the snowfall ends, excepting the period between 9:00 p.m. and 7 a.m. (*i.e.*, overnight). The statute is applied so as to allow a party until 11:00

a.m. to remove snow where a snowfall ended after 11:00 p.m. *Bi Fang Zhou v. 131 Christie St. Realty Corp.*, 125 A.D.3d 429, 430 (1st Dep't 2015). Under the "storm in progress" doctrine, "there is no liability for injuries related to falling on accumulated snow and ice until after the storm has ceased, in order to allow workers a reasonable period of time to clean the walkways [citation omitted]." *Powell v. MLG Hillside Assoc.*, 290 A.D.2d 345 (1st Dep't 2002). Here, NYCTA has proffered climatological data indicating that the snowfall at issue ended at 10:46 p.m. on the evening of March 1, 2015 (Affirmation in Support, Exhibit A), while plaintiff alleges she fell at 4:40 a.m. on March 2, 2015. As such, NYCTA would not be liable to plaintiff pursuant to both the statute and the "storm in progress" doctrine. However, plaintiff has testified that she slipped on hard ice that was covered with snow. (Affirmation in Opposition to Defendant Colin's SJ Motion, Exhibit F, pp. 180-81, NYSCEF #209) Her testimony raises an issue of fact as to whether the alleged icy condition of the area was present for an extended period of time prior to the overnight snowstorm of March 1-2, 2015. Therefore, summary judgment must be denied.

Accordingly, it is hereby

ORDERED that NYCTA's motion is denied in its entirety.

This constitutes the decision and order of the court.

5/19/2021
DATE

SUZANNE J. ADAMS, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE