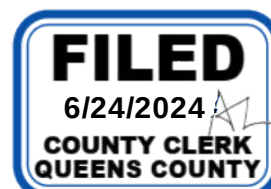


Streppone v OTG JFK T5 Venture, LLC
2024 NY Slip Op 35389(U)
June 18, 2024
Supreme Court, Queens County
Docket Number: Index No. 704788/2019
Judge: Leonard Livote
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SHORT FORM ORDER

NEW YORK STATE SUPREME COURT - QUEENS COUNTY

Present: HONORABLE Leonard Livote

Supreme Court Justice

IAS TERM, PART 33

-----X

ANNETTE STREPPONE

Plaintiff(s),

Index No: 704788/19

-against-

Motion Date: 11/21/23

OTG JFK T5 VENTURE, LLC, OTG
MANAGEMENT JFK, LLC, OTG
MANAGEMENT, LLC, OTG MANAGEMENT,
INC., JETBLUE AIRWAYS CORPORATION and
ROMA CLEANING, INC.

Defendant(s).

Seq. Nos: 3 and 4

-----X

The following papers numbered below read on this motion by defendants OTG JFK T5 Venture, LLC; OTG Management, LLC; OTG Management, Inc.; OTG Management JFK, LLC. (OTG defendants); and JetBlue Airways Corporation(JetBlue) (**seq. 3**) for an Order:

(a) Pursuant to CPLR § 3025(b) permitting and granting defendant JetBlue Airways Corporation leave to amend its Verified Answer to plaintiff's Complaint to assert cross-claims for contractual indemnification, breach of contract for failure to procure insurance and common law indemnification against defendant Roma Cleaning Inc.;

(b) For Conditional Summary Judgment on behalf of JetBlue Airways on the grounds of contractual law indemnification, breach of contract for failure to procure insurance and common law indemnification as against Roma Cleaning, Inc.;

(c) Granting Summary Judgment to defendants OTG JFK T5 Venture, LLC, OTG MANAGEMENT JFK, LLC, OTG Management, LLC, OTG Management, Inc. and JetBlue Airways Corporation pursuant to CPLR §3212 and dismissing the Complaint and any and all cross claims;

(d) Granting Conditional Summary Judgment to defendants OTG JFK T5 Venture, LLC, OTG MANAGEMENT JFK, LLC, OTG Management, LLC, OTG

Management, Inc. and JetBlue Airways Corporation on the grounds of common law indemnity as against Roma Cleaning Inc.;

and by defendant Roma Cleaning for an Order:

a) Pursuant to CPLR § 3212, granting summary judgment dismissal of the cause of action sounding in common law negligence asserted by Plaintiff, ANNETTE STREPPONE, against defendant, ROMA CLEANING, INC.;

b) Pursuant to CPLR § 3212, granting summary judgment dismissal of all cross-claims of defendants, OTG JFK T5 VENTURE, LLC, OTG MANAGEMENT JFK, LLC, OTG MANAGEMENT, LLC, and OTG MANAGEMENT, INC., against ROMA CLEANING, INC.; and

c) Pursuant to CPLR § 8303-a and NYCRR 130-1.1, granting costs to defendant, ROMA CLEANING, INC. for co-defendants' frivolous conduct in pursuing meritless crossclaims against ROMA CLEANING, INC..

**PAPERS
NUMBERED**

SEQ. 3

Notice of Motion, Affirmation, Affidavits and Exhibits.....	96-114, 149
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SEQ. 4

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Upon the foregoing papers, the within motions are determined as set forth herein:

BACKGROUND

This is a personal injury action in which the plaintiff Annette Streppone seeks to recover damages for personal injuries which she allegedly sustained on October 12, 2018, at approximately 2:45a.m. when she slipped and fell in a puddle of water accumulated on the tile floor between the CNBC Store (the Newstand) and the OTG Flo Bar (OTG Bar) while walking from the restroom located across the concourse of JetBlue Terminal 5 towards the waiting area near Gate 6. An action was commenced against JetBlue, the lessee of Terminal 5; the OTG defendants, the business of which is operating restaurants and markets within Terminal 5; and Roma Cleaning Inc. which provided cleaning services to specific sections of Terminal 5 pursuant to contracts with JetBlue and OTG.

DISCUSSION

Defendant JetBlue moves pursuant to CPLR 3025(b) for leave to amend its verified answer to plaintiff's complaint to assert crossclaims for contractual indemnification, breach of contract for failure to provide insurance and common law indemnification against defendant Roma. "Leave to amend a pleading should be granted where the amendment is neither palpably insufficient nor patently devoid of merit, and the delay in seeking amendment does not prejudice or surprise the opposing party" (*First Natl. Bank of Long Is. v Four Keys Realty, LLC*, 213 AD3d 639, 641, 182 N.Y.S.3d 274, quoting *DLJ Mtge. Capital, Inc. v David*, 147 AD3d 1024, 1025, 48 N.Y.S.3d 234 [alterations omitted]; see *Lucido v Mancuso*, 49 AD3d 220, 226-227, 851 N.Y.S.2d 238). The burden of establishing prejudice is on the party opposing the amendment (see *Kimso Apts., LLC v Gandhi*, 24 NY3d 403, 411, 998 N.Y.S.2d 740, 23 N.E.3d 1008). 'In

determining a motion for leave to amend a pleading, a court shall not examine the legal sufficiency or merits of a pleading unless such insufficiency or lack of merit is clear and free from doubt' (*Recine v Recine*, 201 AD3d 830, 831, 157 N.Y.S.3d 395; *see United Fairness, Inc. v Town of Woodbury*, 113 AD3d 754, 755, 979 N.Y.S.2d 365; *Lucido v Mancuso*, 49 AD3d at 227)' (*Dray v Staten Is. Univ. Hosp.*, ___AD3d___, 2024 NY Slip Op 02300, *2 [2024]).

Here, the proposed crossclaims for contractual indemnification, breach of contract for failure to provide insurance and common law indemnification against defendant Roma are not palpably insufficient or patently devoid of merit. Moreover, the defendant Roma has not established to this court's satisfaction that it would be prejudiced or surprised by the amendments (*Dray v Staten Is. Univ. Hosp.*, ___AD3d___, 2024 NY Slip Op 02300 [2024]).

Next, JetBlue and the OTG defendants move for an order pursuant to CPLR 3212 granting summary judgment dismissing the Complaint and any and all cross claims. In support of their motion, JetBlue and OTG Management submit copies of the summons and complaint; answer; verified bill of particulars; supplemental verified bill of particulars; further supplemental verified bill of particulars; deposition transcripts of plaintiff Annette Streppone and defendants OTG Management by Moataz Sharif, JetBlue by Erik Espinosa and Roma Cleaning by Luis Peguero; accident report; JetBlue floor plan and Domestic Services Agreement between JetBlue and Roma. JetBlue and OTG Management argue that they do not owe plaintiff Streppone a duty of care; and even if a question of fact exists with respect to this issue, they did not cause or create or have notice of the water which allegedly caused plaintiff Streppone to slip and fall.

Defendant Roma Cleaning also moves for summary judgment pursuant to CPLR § 3212, seeking an order granting summary judgment dismissal of the cause of action sounding in common law negligence asserted by plaintiff Streppone, against defendant, Roma Cleaning and summary judgment dismissal of all crossclaims of the OTG defendants asserted against Roma as well as costs to defendant, Roma for co-defendants' frivolous conduct in pursuing meritless crossclaims against Roma. In support of its motion Roma submits, inter alia, copies of the summons and complaint; answers of defendants JetBlue, OTG and Roma Cleaning; JetBlue/OTG agreement; OTG/Roma agreement; GI/JetBlue agreement; JetBlue floor plan; Port Authority of New York and New Jersey

accident report to support its position that it owes no duty to plaintiff Streppone or the JetBlue/OTG defendants.

The branch of the motion by JetBlue for an order pursuant to CPLR 3212 is granted as follows. The issue is whether JetBlue owes plaintiff Streppone a legal duty to maintain the tile floor walkway where plaintiff slipped and fell, free of a slipping hazard. JetBlue and OTG entered into a Concessionaire Sublease Agreement dated May 30, 2008, wherein OTG is obligated to “keep all portions of the Master Lease premises in good order and repair, and in full compliance with all Legal Requirements” and Jet Blue is obligated to “maintain, operate, and keep in good repair the public areas of the Master Lease Premises, including all appurtenances, facilities, and services now or hereafter connected therewith but excluding the Concessionaire Premises”. JetBlue and Roma entered into an Agreement for Domestic Airport Services on January 1, 2018, wherein Roma is obligated to provide specific services in JetBlue’s Terminal 5 including cleaning all hard surface floors using a ride-on floor scrubbing machine on a daily overnight basis. Plaintiff Streppone slipped and fell in a puddle of water accumulated on the tile floor between the CNBC Store (the Newstand) and the OTG Flo Bar (OTG Bar) while walking from the restroom located across the concourse of JetBlue Terminal 5 towards the waiting area near Gate 6. While JetBlue is obligated to “maintain, operate, and keep in good repair the public areas of the Master Lease Premises”, JetBlue contracted with Roma, a cleaning company, to clean all hard surface floors. “Under our decisional law a contractual obligation, standing alone, will generally not give rise to tort liability in favor of a third party (*see Eaves Brooks*, 76 N.Y.2d at 226)” (*Espinal v Melville Snow Contrs.*, 98 NY2d 136, 138 [2002]). However, under certain circumstances “a party who enters into a contract to render services may be said to have assumed a duty of care--and thus be potentially liable in tort--to third persons: (1) where the contracting party, in failing to exercise reasonable care in the performance of his duties, “launches a force or instrument of harm” (*Moch*, 247 NY at 168); (2) where the plaintiff detrimentally relies on the continued performance of the contracting party's duties (*see Eaves Brooks*, 76 N.Y.2d at 226) and (3) where the contracting party has entirely displaced the other party's duty to maintain the premises safely (*see Palka*, 83 N.Y.2d at 589). These principles are firmly rooted in our case law, and have been generally recognized by other authorities (*see e.g.* Restatement [Second] of Torts § 324A)” (*Id.* at 141). None of these circumstances apply to give rise to imposing a legal duty on JetBlue towards plaintiff Streppone. In light of this finding, the branch of JetBlue’s motion for conditional summary judgment on the grounds of contractual law indemnification, breach of contract

for failure to procure insurance and common law indemnification as against Roma is granted. The court notes that some of the agreements are not signed by any party and other agreements are signed by only one party.

The branch of the motion by defendant OTG for an order pursuant to CPLR 3212 is denied as follows. Plaintiff Streppone testified that when she was lying on the floor after she fell, she observed a trail of water leading to the OTG Bar and that the water was seeping out from the Bar area. OTG fails to address this testimony in its moving papers and fails to proffer any proof that it did not create this condition. Accordingly, OTG fails to establish a prima facie entitlement to a summary judgment award, and the court need not consider plaintiff Streppone's opposition papers. In light of this finding, the branch of OTG's motion for an order granting conditional summary judgment on the grounds of common law indemnity is denied.

The branch of the motion by defendant Roma for an order pursuant to CPLR 3212 is denied as follows. Roma argues that it owes no duty to plaintiff Streppone or the JetBlue/OTG defendants because it is not contractually obligated to clean the walkway where plaintiff Streppone slipped and fell. Roma entered into agreements with both JetBlue and OTG to provide cleaning services throughout JetBlue Terminal 5. The location of plaintiff's accident on a tile floor located within Terminal 5 is undisputed. A reading of the Roma agreements establishes to this court's satisfaction that Roma is contractually obligated to maintain the walkway where plaintiff's accident occurred. Applying the *Espinal* analysis, Roma, as the party who entered into two separate contracts to provide cleaning services in JetBlue Terminal 5, has entirely displaced the other party's duty to maintain the premises safely (*see Espinal*, 98 NY2d at 141). Accordingly, Roma may be said to have assumed a duty of care--and thus be potentially liable in tort--to plaintiff Streppone. Having established a duty owed to plaintiff Streppone by Roma, Roma, as a defendant moving for summary judgment in a slip-and-fall action, "is required to demonstrate, prima facie, that it maintained the subject property in a reasonably safe condition and that it neither created the alleged dangerous condition nor had actual or constructive notice thereof" (*see Rodriguez v Shoprite Supermarkets, Inc.*, 119 AD3d 923, 923, 989 NYS2d 855 [2014]). "To meet its burden on the issue of constructive notice, a defendant must offer some evidence as to when the area in question was last cleaned or inspected relative to the time when the plaintiff fell" (*Schwartz v Gold Coast Rest. Corp.*,

139 AD3d 696, 697 [2d Dept 2016]). Here, Roma fails to proffer any evidence demonstrating when the tile floor walkway was last cleaned or inspected relative to the time when the plaintiff fell. Accordingly, Roma fails to establish prima facie entitlement to a summary judgment award. The court notes that since no maintenance logs of any kind have been submitted with Roma's motion, Roma will be precluded from any attempt to introduce maintenance logs at a later date. **(Judge: since sj is a trial on paper I think if there were logs they should have been included with motion... you may not agree with this insertion)** In light of this finding, the branch of Roma's motion for an order granting summary judgment dismissal of all crossclaims of the OTG defendants asserted against Roma is denied. The branch of Roma's motion for an order awarding costs to defendant, Roma for co-defendants' frivolous conduct in pursuing meritless crossclaims against Roma is denied.

It is hereby

ORDERED, that the branch of the motion for an order pursuant to CPLR 3025(b) for leave to amend JetBlue's verified answer to plaintiff's complaint to assert crossclaims for contractual indemnification, breach of contract for failure to provide insurance and common law indemnification against defendant Roma is granted: and it is further,

ORDERED, that the branch of the motion by JetBlue for an order pursuant to CPLR 3212 is granted and the complaint and all crossclaims are dismissed; and it is further,

ORDERED, that the branch of the motion by OTG for an order pursuant to CPLR 3212 is denied ; and it is further,

ORDERED, branch of the motion by defendant Roma for an order pursuant to CPLR 3212 is denied; and it is further,

ORDERED, that the branch of the motion by JetBlue for an order for Conditional Summary Judgment on behalf of JetBlue Airways on the grounds of

contractual law indemnification, breach of contract for failure to procure insurance and common law indemnification as against Roma Cleaning, Inc. is granted; and it is further,

ORDERED, that the branch of the motion order granting conditional summary judgment on the grounds of common law indemnity is denied; and it is further,

ORDERED, that the branch of Roma's motion for an order granting summary judgment dismissal of all crossclaims of the OTG defendants asserted against Roma is denied; and it is further,

ORDERED, that the branch of Roma's motion for an order awarding costs to defendant, Roma for co-defendants' frivolous conduct in pursuing meritless crossclaims against Roma is denied; and it is further,

ORDERED, that the Clerk of the Court shall enter judgment in favor of defendant JetBlue Airways Corporation; and it is further,

ORDERED, that the amended caption shall read as follows:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

ANNETTE STREPPONE

Plaintiff(s),

-against-

OTG JFK T5 VENTURE, LLC, OTG MANAGEMENT JFK, LLC, OTG
MANAGEMENT, LLC, OTG MANAGEMENT, INC., and ROMA CLEANING,
INC.

Defendant(s).

Any other and/or further relief requested and not specifically addressed is denied.

This constitutes the Order of the Court.

Dated: June 18, 2024



Leonard Livote, J.S.C.

