

Zabala v JP Morgan Chase Bank

2025 NY Slip Op 33257(U)

September 2, 2025

Supreme Court, New York County

Docket Number: Index No. 155217/2022

Judge: Mary V. Rosado

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This opinion is uncorrected and not selected for official publication.

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

PRESENT: HON. MARY V. ROSADO PART 33M

Justice

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VICTOR ZABALA,

Plaintiff,

- v -

JP MORGAN CHASE BANK, J.P. MORGAN CHASE
NATIONAL CORPORATE SERVICES, INC., 350 W. 125
STREET CORP., METROPOLITAN TRANSPORTATION
AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY

Defendant.

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INDEX NO. 155217/2022

MOTION DATE 01/06/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 171, 172, 173, 174, 179, 180, 182, 184, 185, 186, 187, 188, 190, 191, 192, 193

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, and after a final submission date of June 16, 2025, Defendants JPMorgan Chase Bank, N.A. (s/i/h/a JP Morgan Chase Bank) and J.P. Morgan Chase National Corporate Services, Inc.’s (collectively “Chase”) motion for summary judgment dismissing Plaintiff Victor Zabala’s (“Plaintiff”) Complaint and all crossclaims asserted against them is granted. Defendant 350 W. 125 Street Corp.’s (“350 W. 125 Street”) motion for summary judgment dismissing Plaintiff’s Complaint and all crossclaims asserted against it is granted.

I. Background

On May 11, 2021, Plaintiff tripped and fell on an uneven concrete platform on the subway stairs at the St. Nicholas and 125th Street station (the “Subway Station”) near the building located at 350 West 125th Street, New York, New York (the “Building”) (NYSCEF Doc. 158 at 15; 45-46). Plaintiff testified the area where he fell was part of the Subway Station (NYSCEF Doc. 158 at 54). Chase operated a bank in the Building near the Subway Station (NYSCEF Doc. 158 at 53).

Chase was not responsible for maintaining the outside of the Building or sidewalk (NYSCEF Doc. 160 at 23-25; 48). 350 W. 125 Street owned the Building (NYSCEF Doc. 161 at 9). 350 W. 125 Street's witness testified the area where Plaintiff fell is the responsibility of the Metropolitan Transportation Authority ("MTA") and New York City Transit Authority (collectively "NYCTA") (NYSCEF Doc. 161 at 34; 75-77). NYCTA's witness testified she would inspect the Subway Station weekly and if she noticed any broken or crack concrete in the Subway Station's walkways, she reported it (NYSCEF Doc. 162 at 34). She further testified that NYCTA is responsible for maintaining the location where Plaintiff allegedly fell (NYSCEF Doc. 162 at 35; 116).

Chase moves for summary judgment dismissing Plaintiff's complaint and all crossclaims asserted against it. The only party to oppose the motion is 350 W. 125 Street Corp., which opposes dismissal of its cross claim for contractual indemnification asserted against Chase. 350 W. 125 Street Corp. cross moves for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it. Chase only opposes 350 W. 125 Street Corp.'s cross-motion in the event Chase is not dismissed from this case. Plaintiff opposes 350 W. 125 Street Corp.'s cross-motion on procedural grounds and based on the argument that 350 W. 125 Street Corp. had a duty to maintain the area where Plaintiff fell.

II. Discussion

A. Chase's Motion

Chase's motion for summary judgment is granted. Plaintiff's Complaint asserted against Chase is dismissed as abandoned, as Plaintiff does not oppose Chase's motion. As Plaintiff has abandoned his claims against Chase, and there is no evidence that Chase was in anyway responsible for the area where Plaintiff fell, the crossclaims asserted against Chase are likewise dismissed. Indeed, NYCTA does not even dispute Chase's argument that NYCTA is responsible

for the area where Plaintiff fell, and the NYCTA has not opposed Chase's motion to dismiss NYCTA's crossclaims.

350 W. 125 Street Corp.'s opposition to Chase's motion seeking dismissal of the contractual indemnification crossclaim is without merit. There are no facts that would trigger the indemnification provision given there is no evidence that Chase had any involvement with Plaintiff's accident. "An indemnification clause does not apply to the mere assertion of claims" (*Healy v 169 E. 69th Street Corp.*, 189 AD3d 680, 681 [1st Dept 2020] quoting *JPMorgan Chase Bank, N.A. v Luxor Capital, LLC*, 101 AD3d 575, 575-76 [1st Dept 2012]).

B. 350 W. 125 Street Corp.'s cross motion

350 W. 125 Street Corp.'s cross motion seeking dismissal of Plaintiff's Complaint, and all crossclaims asserted against it is granted. The undisputed evidence shows that the area where Plaintiff fell was under the control and supervision of NYCTA. While 350 W. 125 Street Corp. has a duty to maintain the sidewalk abutting its Building pursuant to New York City Administrative Code § 7-210, there is no statutory provision requiring 350 W. 125 Street Corp. to maintain staircases leading to the 125th Street Subway Station, which all the parties agree was the responsibility of NYCTA.

Given the undisputed evidence, in the interest of justice, and in the interest of narrowing the issues and parties at trial, the Court rejects Plaintiff's argument that 350 W. 125 Street Corp.'s cross motion is procedurally improper (*see generally* CPLR 2001 and 2004). Plaintiff cannot claim any serious prejudice arising from 350 W. 125 Street Corp.'s cross motion as he had ample opportunity to file opposition to the merits of the motion. Instead, Plaintiff's procedural arguments appear aimed at dragging 350 W. 125 Street Corp. to trial even though the undisputed evidence

show the location of Plaintiff's alleged fall was within the control of NYCTA. Therefore, 350 W. 125 Street Corp.'s cross motion is granted.

Accordingly, it is hereby,

ORDERED that Defendants JPMorgan Chase Bank, N.A. (s/i/h/a JP Morgan Chase Bank) and J.P. Morgan Chase National Corporate Services, Inc.'s motion for summary judgment dismissing Plaintiff Victor Zabala's Complaint and all crossclaims asserted against them is granted, and the Complaint and all crossclaims asserted against these Defendants are hereby dismissed; and it is further

ORDERED that Defendant 350 W. 125 Street Corp.'s motion for summary judgment dismissing Plaintiff's Complaint and all crossclaims asserted against it is granted, and the Complaint and all crossclaims asserted against this Defendant are hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendants shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

9/2/2025
DATE

Mary V Rosado J.S.C.
HON. MARY V. ROSADO, J.S.C.

CHECK ONE: CASE DISPOSED NON-FINAL DISPOSITION

GRANTED DENIED GRANTED IN PART OTHER

APPLICATION: SETTLE ORDER SUBMIT ORDER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE