

**Chavez v Amtrak**

2025 NY Slip Op 33329(U)

September 5, 2025

Supreme Court, New York County

Docket Number: Index No. 157284/2024

Judge: Hasa A. Kingo

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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. HASA A. KINGO PART 05M**

*Justice*

-----X

ELISSA CHAVEZ,

Plaintiff,

- v -

AMTRAK A/K/A NATIONAL RAILROAD  
PASSENGER CORPORATION D/B/A AMTRAK, THE CITY  
OF NEW YORK, THE LONG ISLAND RAIL ROAD  
COMPANY, NEW JERSEY TRANSIT CORPORATION  
D/B/A NEW JERSEY TRANSIT RAIL OPERATIONS  
INC., PORT AUTHORITY OF NEW YORK AND NEW  
JERSEY

Defendant.

-----X

INDEX NO. 157284/2024

MOTION DATE 08/19/2025

MOTION SEQ. NO. 003

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 003) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67

were read on this motion for DISMISSAL.

This matter comes before the court on the motion of defendant The City of New York (“the City”) pursuant to CPLR § 3211(a)(1) (documentary evidence) and CPLR § 3211(a)(7) (failure to state a cause of action) seeking dismissal of the complaint and of any cross-claims against the City. For the reasons set forth below, the motion is granted in its entirety; judgment is entered in favor of the City and the case is referred to the inventory of a general IAS part as ordered below.

**BACKGROUND AND PROCEDURAL HISTORY**

Plaintiff Elissa Chavez (“Plaintiff”) commenced this action with a summons and verified complaint filed August 8, 2024, asserting, among other things, that she slipped and fell on the underground interior staircase leading to Tracks 11 and 12 at Pennsylvania Station (the “Station”) on January 25, 2024, and asserting negligence claims against multiple defendants including Amtrak, the Long Island Rail Road, New Jersey Transit, the Port Authority, and the City. A notice of claim was served on the City on or about September 3, 2024. The City interposed its verified answer and thereafter moved to dismiss pursuant to CPLR §§ 3211(a)(1) and (a)(7). The motion papers include, *inter alia*, (i) the affidavit/record title search of David Schloss showing record title to the relevant parcel (Block 781, Lot 2; 392 Seventh Avenue) in the National Railroad Passenger Corporation d/b/a Amtrak as of January 25, 2024, together with the deed and tax map (Exhibits E and F), and (ii) the affidavit of Kerry Lowe of the Department of Citywide Administrative Services (“DCAS”) attesting that DCAS records show no ownership, occupancy, control, lease, license, or other arrangement by which the City owned, occupied, maintained or controlled the property on January 25, 2024. The City submits that these documents are dispositive and entitle it to dismissal.

## ARGUMENT

The City contends that documentary proof—specifically the title search and recorded deed showing Amtrak as record owner and the DCAS affidavit demonstrating no City ownership, lease or license—conclusively disproves the essential allegation that the City owned, occupied, maintained, or controlled the premises where the incident occurred. Under CPLR §§ 3211(a)(1) and (a)(7), the City argues dismissal is warranted because liability for the dangerous condition alleged is predicated on ownership, occupancy or control and those facts are negated by the documentary evidence. The City also points to controlling authority applying this principle in analogous Penn Station cases.

The motion is unopposed.

## DISCUSSION

CPLR § 3211(a)(1) authorizes dismissal of a cause of action where the defense is founded upon documentary evidence. To warrant dismissal under this provision, the proffered evidence must utterly refute the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Leon v. Martinez*, 84 NY2d 83, 88 [1994]). Likewise, CPLR § 3211(a)(7) permits dismissal where the pleading fails to state a cognizable cause of action. In evaluating such a motion, courts are obliged to afford the pleading a liberal construction, accept the facts alleged as true, and accord the plaintiff the benefit of every favorable inference (*Rovello v. Orofino Realty Co.*, 40 NY2d 633, 634 [1976]; *Cron v. Hargro Fabrics, Inc.*, 91 NY2d 362, 366 [1998]). However, the court need not credit bare legal conclusions or allegations that are inherently incredible or flatly contradicted by the documentary submissions (*Whitebox Concentrated Convertible Arbitrage Partners, L.P. v. Superior Well Servs., Inc.*, 20 NY3d 59, 63 [2012]).

Moreover, in considering a CPLR § 3211 motion, the court may review not only the four corners of the pleading but also documentary evidence that would be admissible upon a motion for summary judgment (*Leon*, 84 NY2d at 88, *supra*). The inquiry, therefore, is whether, when the well-pleaded factual allegations are taken as true—save for those negated by admissible documentary evidence—the complaint nevertheless provides sufficient notice of the transaction or occurrence at issue and adequately pleads the requisite elements of a cognizable claim.

Here, the gravamen of Plaintiff's negligence claims is that the defendants owned, controlled, operated, maintained, or were otherwise responsible for the Station area where Plaintiff allegedly slipped and fell, and that defendants breached a duty to maintain safe premises. However, liability for a dangerous condition is predicated upon ownership, occupancy, or control of the premises. Documentary evidence that negates ownership, occupancy, or control thus may be dispositive. The moving papers submit precisely that kind of evidence: a title search and deed showing record title in Amtrak as of June 27, 2005 (and on the relevant date, January 25, 2024), and a DCAS property search affidavit that yields no record of City ownership, occupancy, lease or license for the parcel in question. Those documents, if credited, conclusively establish that the City neither owned nor exercised control over the location where the accident allegedly occurred (*see TIMAC Realty v. G&E Tremont LLC*, 121 AD3d 457 [1st Dept 2014]; *DeSimone v. City of*

*New York*, 121 AD3d 420 [1st Dept 2014]; *Amarosa v. City of New York*, 51 AD3d 596 [1st Dept 2008]; *Blount v. Bovis Lend Lease Holdings, Inc.*, 35 AD3d 310 [1st Dept 2006]).

While a complaint must be liberally construed at the pleading stage, the court is not bound to accept allegations that are either conclusory in nature or flatly contradicted by admissible documentary evidence (*see* CPLR § 3026; *Leon*, 84 NY2d at 87–88, *supra*). Here, although Plaintiff alleges that multiple defendants—including the City—owned, operated, or maintained the portion of Pennsylvania Station where the incident occurred, the documentary record submitted by the City conclusively demonstrates otherwise, establishing that the City neither owned nor occupied the premises and that Amtrak held record title. Pursuant to CPLR § 3211(c), the court may consider such documentary evidence in resolving a dismissal motion, and where the evidence disproves an essential allegation of the complaint, dismissal is warranted.

The Appellate Division, First Department, has consistently applied this principle in cases where documentary proof negated allegations of ownership or control. For example, in *TIMAC Realty*, 121 AD3d 457, *supra*, the Appellate Division, First Department, affirmed dismissal where documentary evidence established that the defendant had no ownership interest in the subject property. Similarly, in *DeSimone*, 121 AD3d 420, *supra*, dismissal was upheld where the City’s documentary submissions established lack of ownership or control over the accident location. In *Blount*, 35 AD3d 310, *supra*, and *Amarosa*, 51 AD3d 596, *supra*, the Appellate Division, First Department, reiterated that absent ownership, occupancy, or control, liability may not be imposed.

Taken together with additional authorities such as *McGuire v. Sterling Doubleday Enters., L.P.* (19 AD3d 660 [2d Dept 2005]), *Snyder v. Voris, Martini & Moore, LLC* (52 AD3d 811 [2d Dept 2008]), and *Mill Fin., LLC v. Gillett* (122 AD3d 98 [1st Dept 2014]), these cases reinforce the conclusion that documentary evidence which directly contradicts the complaint’s allegation of City ownership or control is dispositive and requires dismissal of the claims asserted against the City.

Plaintiff may attempt to argue that a triable issue of fact exists as to who maintained or controlled the staircase. But establishing such an issue requires evidence that the City in fact exercised maintenance or control through ownership, lease, license, statutory duty, or some other operative relationship. The City’s DCAS affidavit affirmatively represents that there are no records showing City ownership, occupancy, maintenance, lease or license with respect to the Property as of the relevant date. The title search and recorded deed demonstrate record ownership by Amtrak. Absent evidence of an operational relationship or other admissible proof that the City in fact undertook maintenance or control of the stairway notwithstanding the recorded ownership, Plaintiff’s bare allegations are insufficient to raise a triable issue. Indeed, the aforementioned cases dismissing claims against municipal defendants where documentary evidence established non-ownership/control are directly on point and controlling.

Finally, the complaint’s generalized assertions that various defendants including Amtrak, LIRR, NJ Transit, the Port Authority and the City owned, operated, or controlled the Station do not salvage the claims against the City where documentary evidence establishes the City had no ownership or control. The City is not a common carrier of the type that would, by operation of law, be responsible for train station facilities owned and operated by Amtrak (a distinct corporate

entity). Plaintiff has presented no admissible evidence showing that the City, rather than Amtrak or another transit entity, owned or controlled the precise premises where the event occurred. Thus, any theory of liability premised on the City’s status as a common carrier, operator, or maintainer of the Station fails as a matter of law.

In sum, because the documentary submissions disprove an essential element of Plaintiff’s negligence cause of action as against the City (ownership/occupancy/control and thus duty), dismissal is warranted under CPLR §§ 3211(a)(1) and (a)(7). The court finds the City has met its burden to demonstrate that it is not a proper party to this action and that no material issue of fact exists regarding ownership or control by the City of the subject premises on January 25, 2024. Accordingly, the complaint and any cross-claims against the City must be dismissed. The dismissal is with prejudice as to the City because the documentary record conclusively eliminates the City as a potential defendant with respect to the premises liability theory advanced here.

Accordingly, it is hereby

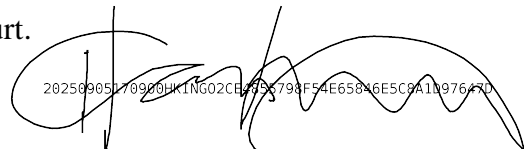
ORDERED that the motion is granted, and the complaint and all cross-claims as against defendant THE CITY OF NEW YORK are dismissed, with prejudice, for failure to state a cause of action and because documentary evidence conclusively establishes that the City did not own, occupy, maintain, control, or operate the portion of Pennsylvania Station where Plaintiff alleges she was injured on January 25, 2024; and it is further

ORDERED that the Clerk is directed to enter judgment in favor of defendant THE CITY OF NEW YORK and against plaintiff ELISSA CHAVEZ on the claims asserted against the City; and it is further

ORDERED that the Clerk shall amend the caption to remove defendant THE CITY OF NEW YORK from this proceeding; and it is further

ORDERED that upon entry of judgment, the Clerk is directed to refer this matter to the inventory of a general IAS part for further proceedings as to the remaining parties.

This constitutes the decision and order of the court.

  
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HASA A. KINGO, J.S.C.

9/5/2025  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<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