

de Marmolejos v T.U.C.S. Cleaning Serv., Inc.
2025 NY Slip Op 34633(U)
December 2, 2025
Supreme Court, New York County
Docket Number: Index No. 156977/2022
Judge: Richard Tsai
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. RICHARD TSAI PART 21

Justice

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ESCARLIN G. NUNEZ DE MARMOLEJOS,
Plaintiff,

INDEX NO. 156977/2022

MOTION DATE 11/20/2025

MOTION SEQ. NO. 001

- v -

T.U.C.S. CLEANING SERVICE, INC., THE CITY OF NEW YORK, NEW YORK CITY DEPARTMENT OF TRANSPORTATION, METROPOLITAN TRANSPORTATION AUTHORITY, NEW YORK CITY TRANSIT AUTHORITY, and PORT AUTHORITY OF NEW YORK AND NEW JERSEY,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 24 - 40 were read on this motion to/for DISMISSAL.

In this action, plaintiff Escarlin G. Nunez de Marmolejos alleges that, while using a public escalator labeled as "M/S 180," she was struck with a heavy metal sign resulting in injuries (summons and complaint [NYSFECF Doc. No. 1] ¶ 71).

Defendants the City of New York and New York City Department of Transportation (collectively, the City) now move for summary judgment dismissing plaintiff's complaint and all cross-claims as against them (notice of motion [NYSFECF Doc. No. 24] ¶ 1). Plaintiff submitted an "affirmation in response" stating that "Plaintiff does not oppose the Movants' motion to dismiss (without costs or fees) and has previously executed a stipulation of discontinuance" (plaintiff's affirmation in response [NYSCEF Doc. No. 35] ¶ 3).

According to the complaint, on August 20, 2021, plaintiff Nunez de Marmolejos alleges she was "lawfully traversing the public escalator labeled and designated as 'M/S 180'" when she "was caused to be struck by a heavy metal sign, by reason of the negligence of the Defendants, their agents, servants and/or employees in the

1 The City originally filed a motion to dismiss, pursuant to CPLR 3211 (a) (7). However, this court issued an order converting the motion to summary judgment pursuant to CPLR 3211 (c) (Order – Interim, Motion Related [NYSCEF Doc. No. 38]).

2 Since the stipulation of discontinuance was only signed by plaintiff's counsel—and not the other parties who have cross claims against the City—the motion has not been rendered academic, and the stipulation was not so-ordered.

ownership, operation, direction, supervisor, possession, maintenance, management, [and] control of said premises” (Defendant’s Exhibit B in support of motion [NYSCEF Doc. No. 29] summons + complaint ¶ 71). Subsequently, plaintiff filed a Notice of Claim and, on August 16, 2022, formally initiated this suit by serving the summons and complaint (Defendant’s Exhibit A in support of motion [NYSCEF Doc. No. 28] Notice of Claim; see *also* summons and complaint).

Defendants TUCS Cleaning Service (TUCS), New York City Transit Authority (NYCTA), Metropolitan Transportation Authority (MTA), the Port Authority of New York and New Jersey (Port Authority), and the City all filed their respective answers (Defendant’s Exhibit E [NYSCEF Doc. No. 32] TUCS Answer; Defendant’s Exhibit D [NYSCEF Doc. No. 31] MTA / NYCTA Answer; Defendant’s Exhibit F [NYSCEF Doc. No. 33] Port Authority’s Answer; Defendant’s Exhibit C [NYSCEF Doc. No. 30] City’s Answer).

In their answer, the City specifically denied ownership, operation, control, maintenance, and management of the premises where the escalator is located (City’s Answer, ¶ 1). The City produced an affidavit of Callista Nazaire, a non-party to this action, to support this assertion. Nazaire is “currently employed as an Administrative City Planner for the New York City Department of Citywide Administrative Services (‘DCAS’)” (Defendant’s Exhibit G [NYSCEF Doc. No. 34] DCAS Affidavit of Callista Nazaire, ¶ 1). Nazaire has been “in this position since October 2019” and is “responsible for research pertaining to city-owned properties held in the property records database of DCAS” (*id.*). Nazaire further explains that “DCAS is charged with the duty of overseeing commercial real estate owned by the City of New York” (*id.*, ¶ 2).

“At the request of the Corporation Counsel, [Nazaire] was asked to search DCAS’ records pertaining to ownership or occupancy by the City of New York of the premises located at 625 8th Avenue” which is where the escalator labeled as M/S 180 is located (*id.* ¶ 3). Nazair searched through a “property records database known as the Integrated Property Information System (‘IPIS’)” which is described as “a comprehensive compilation of data pertaining to City-owned and utilized real property” (*id.*). Based on this search, Nazaire “found no records indicated that the Property was leased, owned, occupied, maintained, managed, or controlled by the City of New York ... on August 20, 2021” (*id.* ¶ 4).

In their answer, defendant Port Authority admitted to owning the property, specifically admitting that they “owned, operated, maintained and/or controlled those portions of the premise known as the Port Authority Bus Terminal (‘PABT’) which were not owned, operated, maintained and controlled by others” (Port Authority’s Answer ¶ 5).

“To prevail on a motion for summary judgment, the movant must make a prima facie showing by submitting evidence that demonstrates the absence of any material issues of fact. Once that initial showing has been made, the burden shifts to the opposing party to show there are disputed facts requiring a trial. All facts are viewed in the light most favorable to the non-moving party” (*Nellenback v Madison County*, — NY3d —, 2025 NY Slip Op 02263 [2025] [internal citations omitted]).

Although plaintiff did not oppose the City’s motion for summary judgment, “[a] summary judgment motion should not be granted merely because the party against whom judgment is sought failed to submit papers in opposition to the motion (i.e., ‘defaulted’)” (*Liberty Taxi Mgt., Inc. v Gincherman*, 32 AD3d 276, 277 n * [1st Dept 2006]).

Here, the City has met the prima facie burden entitling the City to summary judgment, as the City has demonstrated an absence of any material issues of fact (*Crimlis v City of New York*, 179 AD3d 575, 575 [1st Dept 2020] [holding that “City established its prima facie entitlement to judgment as a matter of law by submitting evidence demonstrating, among other things, that it did not own the property”]; see also *Branch v County of Sullivan*, 25 NY3d 1079, 1081 [2015] [holding that “in the absence of ownership, occupancy, control, or special use of the property by [defendants] it did not owe [plaintiff] a duty”). Furthermore, plaintiff has not demonstrated any material issues of fact as plaintiff did not oppose the City’s motion. Additionally, the Port Authority’s admission of ownership further demonstrates an absence of material fact.

The Port Authority does not dispute the City’s assertion that it did not lease the subject property. Thus, the Port Authority’s second cross-claim, which seeks contractual indemnification against the other co-defendants, is dismissed as against the City.

Because the City can no longer be held liable to plaintiff, the cross-claims of co-defendants that sound in common-law indemnification and contribution are dismissed by operation of law (see e.g. *Bendel v Ramsey Winch Co.*, 145 AD3d 500, 501 [1st Dept 2016] [in view of the dismissal of the complaint in its entirety as against a defendant, the cross-claims against that defendant are also dismissed]).

Likewise, the City’s own cross-claims for common-law indemnification and contribution against the other co-defendants are dismissed as academic (*Rogers v Rockefeller Group Intl., Inc.*, 38 AD3d 747, 750 [2d Dept 2007]).

CONCLUSION

Accordingly, it is hereby **ORDERED** that defendants City of New York and New York City Department of Transportation’s motion is **GRANTED**, and the complaint is dismissed in its entirety as against said defendants, with costs and disbursements to

said defendants as taxed by the Clerk of the Court, and all cross-claims by and against said defendants are dismissed; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly in favor of said defendants; and it is further

ORDERED that the action is severed and continued against the remaining defendants; and it is further

ORDERED that the remaining parties shall appear at 80 Centre Street, New York, New York, courtroom 280 for the previously scheduled **in-person** status conference on **June 25, 2026, at 10:30 am.**



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<u>12/02/2025</u> DATE					<u>RICHARD TSAI, J.S.C.</u>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED			<input type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>				<input type="checkbox"/>	