

Amended Short Form Order

NEW YORK SUPREME COURT - QUEENS COUNTY

Present: HONORABLE THOMAS D. RAFFAELE IA Part 13
Justice

URIS JACKSON, X

Plaintiffs,

-against-

JAMAICA EQUITY, INC. and J & S
WESTCHESTER LLC and BRANDS FOR LESS
d/b/a FULTON CLOSEOUT VALUE DEPOT,
INC.,

Defendants.

Index
Number: 703384/14

Motion Date: 11/20/17

Motion Seq. No. 3

JAMAICA EQUITY, INC., X

Third-Party Plaintiff,

against-

J & S WESTCHESTER LLC and BRANDS FOR
LESS d/b/a FULTON CLOSEOUT VALUE DEPOT,
INC.,

Third-Party Defendants.

FILED
DEC 26 2017
COUNTY CLERK
QUEENS COUNTY

The following papers numbered 1 to 13 read on this motion by defendant/third-party plaintiff Jamaica Equity, Inc., (Jamaica), for an order granting summary judgment dismissing plaintiff's complaint in its entirety against Jamaica and also granting Jamaica summary judgment on its third-party claims and cross claims for contractual indemnification against third-party defendants J & S Westchester LLC and Brands for Less d/b/a Fulton Closeout Value Depot Inc. and for such other and further relief as this court deems just and proper; cross motion by defendants/third-party defendants, J & S Westchester, LLC and Brands for Less, d/b/a Fulton Closeout Value Depot, Inc. (J & S defendants), for an order granting them summary judgment dismissing plaintiff's complaint in its entirety against J & S defendants and pursuant to CPLR section 3212, granting J & S defendants summary judgment dismissing Jamaica Equity's claims and cross claims for contractual indemnification against J & S defendants and in opposition to that part of defendant/third-party plaintiff Jamaica Equity's underlying motion that seeks

orders pursuant to CPLR Section 3212 dismissing plaintiff's complaint and granting Jamaica Equity's claims and counter claims for contractual indemnification against J & S defendants and for such other and further relief as this court deems just and proper.

	<u>Papers Numbered</u>
Notice of Motion - Affidavits - Exhibits.....	1-4
Affirmation in Opposition.....	5-7
Reply Affirmation.....	8-9
Notice of Cross- Motion- Affidavits-Exhibits.....	10-11
Affirmation in Support of Cross Motion.....	12-13

Upon the foregoing papers, the motion in chief by Jamaica Equity is granted in its entirety.

The cross motion by J & S defendants is denied as untimely and procedurally defective.

In the first instance, the court shall address this motion; since it appears to be timely, within sixty days after J & S Westchester LLC's deadline to produce a witness. Further, assuming *arguendo* that this application could appear to be tardy, this court has the authority to address Jamaica's request for summary judgment for "good cause shown" (see *Brill v City of New York*, 2 NY3d 648 [2004]). "Good cause" is established where depositions and other discovery requests remain outstanding (see *Gonzalez v 98 Mag Leasing Corp.*, 95 NY2d 124 [2000]).

In the case at bar, it is undisputed that Jamaica is an out of possession landlord who had no notice of any defective condition and there was no dangerous condition on the property (see *Denemark v 2857 West 8th Street Assocs.*, 111 AD3d 660 [2d Dept 2013]). Plaintiff herself testified that she did not observe any defective conditions on the stairs (see Jackson EBT transcript at 103). She further testified that she "felt her left foot go down" and then "tumbled" down the stairwell (*id* at 38).

The subject incident occurred on July 8, 2013 at 160-16 Jamaica Avenue, Jamaica, New York when plaintiff fell on an interior staircase at the premises while she was shopping at J & S's store. It is undisputed that Jamaica had a lease agreement with J & S requiring J & S to maintain the interior of the store and also required J & S to indemnify and hold Jamaica harmless from any and all liabilities stemming from a breach of the lease agreement (see Exhibit L to moving papers). The record is devoid

of any evidence that Jamaica was given any actual notice of any defective condition concerning the stairwell where the accident occurred. Moreover, Jamaica's property manager Daniel Forrester testified that he never observed any problems with the subject stairwell and he was never informed that any defective condition existed within the area where the accident occurred (see Forrester EBT transcript at 11 and 12). Generally, an out of possession landlord is not liable for negligence; unless the landlord is contractually obligated to make repairs or maintain the premises (see *Mejia v Era Realty Co.*, 69 AD3d 816 [2d Dept 2010]).

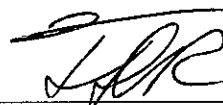
The court finds that defendant/ third-party plaintiff Jamaica Equity, Inc. has established its *prima facie* entitlement to summary judgment as a matter of law. Plaintiff has failed to raise a triable issue of fact.

Accordingly, it is ORDERED that defendant/third-party plaintiff Jamaica Equity, Inc. is granted summary judgment and the complaint is dismissed as against defendant, Jamaica Equity, Inc. Moreover, it is further ORDERED that Jamaica Equity, Inc. is similarly granted summary judgment on its third-party claims and cross claims for contractual indemnification as against defendants/third-party defendants J & S Westchester LLC and Brands for Less d/b/a Fulton Closeout Value Depot, Inc.

All remaining parties are directed to appear in the Trial Scheduling Part of the court, courtroom 25, on Wednesday, December 13, 2017 at 9:30 A.M.

The foregoing constitutes the decision and order of this court.

Dated: December 12, 2017



Thomas D. Raffaele, J.S.C.

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QUEENS COUNTY