

**Batt v 77 Bleecker St. Corp.**

2026 NY Slip Op 30626(U)

January 7, 2026

Supreme Court, New York County

Docket Number: Index No. 157277/2016

Judge: Gerald Lebovits

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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. GERALD LEBOVITS PART 07

Justice

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INDEX NO. 157277/2016

ERIC BATT, AS ADMINISTRATOR OF THE ESTATE OF ROBIN SIEGEL,

MOTION SEQ. NO. 006 007 008 009

Plaintiff,

- v -

77 BLEECKER STREET CORP., CENTURY MANAGEMENT SERVICES, INC., WILLIAM LIPSCHUTZ, JOSE IBIETATORRENDIA, BETH GOTTLIEB, TERRI CUDE, MARJORIE GINSBURG, BRUCE AZUS, and AFFILIATED ADJUSTMENT GROUP LTD.,

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 006) 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 212, 213, 214, 215, 216, 217, 356

were read on this motion for DISCOVERY.

The following e-filed documents, listed by NYSCEF document number (Motion 007) 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 289, 290, 291, 294, 297, 318, 322, 359

were read on this motion for SUMMARY JUDGMENT (AFTER JOINDER).

The following e-filed documents, listed by NYSCEF document number (Motion 008) 218, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 287, 292, 295, 298, 299, 300, 301, 302, 308, 309, 310, 311, 312, 317, 319, 324, 325, 326, 327, 328, 357

were read on this motion for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 009) 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 288, 293, 296, 303, 304, 305, 306, 307, 313, 314, 315, 316, 320, 323, 358

were read on this motion for SUMMARY JUDGMENT (AFTER JOINDER).

Davidoff Hutcher & Citron, New York, NY (Ian J. Brandt of counsel), and Wilk Auslander LLP, New York, NY (Michael T. Contos of counsel), for plaintiff.

Alan B. Brill, P.C., New City, NY (Alan B. Brill of counsel), for defendants 77 Bleecker Street Corp., Century Management Services, Inc., William Lipschutz, Jose Ibiatorremendia, Beth Gottlieb, Terri Cude, and Marjorie Ginsburg.

L'Abbate, Balkan, Colavita & Contini, L.L.P., Melville, NY (Amy M. Monahan of counsel) for defendants Affiliated Adjustment Group Ltd. and Bruce Azus.

Gerald Lebovits, J.:

This action arises from water damage to a cooperative apartment in Manhattan. Plaintiff is Eric Batt as administrator of the estate of Robin Siegel. Siegel was proprietary lessee of an apartment in the co-op. Defendants are a co-op, 77 Bleecker Street Corp.; the co-op's managing agent, Century Management Services, Inc.; co-op board directors William Lipschutz, Jose Ibieta Torremendia, Beth Gottlieb, Terri Cude, and Marjorie Ginsburg (collectively, the co-op defendants) and adjusters Affiliated Adjustment Group Ltd. and Bruce Azus.

On January 4, 2014, after Siegel was away from her apartment for several weeks and New York City faced freezing temperatures, a ceiling sprinkler burst in Siegel's apartment. The co-op's plumber fixed the sprinkler. According to Siegel, the building superintendent, Angel Torres, entered her apartment and found and took custody of a broken pipe and sprinkler head. (*See* NYSCEF No. 188 at 2; *see also* NYSCEF No. 191 at 139-141.)

On January 10, 2014, Siegel noticed that a leak was flowing from a toilet in the upstairs neighbor's apartment into plaintiff's apartment. (NYSCEF No. 26 at ¶ 16 [amended complaint].) That leak persisted for eight months. (*Id.* at ¶ 8.)

Siegel filed a claim with her homeowner's insurer, State Farm Fire and Casualty Company, for both incidents. (*Id.* at ¶ 19.) The co-op retained defendant Affiliated as its public adjuster to negotiate repair reimbursements with the co-op's general liability insurer, Greater New York Insurance Co. (*Id.* at ¶ 20.) GNY also sent adjuster agents from LaMarche Associates Inc. to the apartment to evaluate the damage and its cause.

By January 22, 2014, Torres had allegedly handed the pipe and sprinkler head over to insurance agents. The pipe and sprinkler head then inexplicably disappeared.

The co-op offered to make the repairs to Siegel's apartment. The co-op and Azus told Siegel that that the co-op was responsible only for components of her apartment that were "original" to the building. (NYSCEF No. 26 at ¶ 23.) Azus told Siegel that she had the option of using the co-op's contractor or choosing her own contractor but paying part of the co-op's insurance deductible and a fee to Azus. (*Id.*) Siegel opted to use her own contractor.

Siegel also stopped paying her maintenance. In response, the co-op brought two nonpayment proceedings against Siegel in Housing Court (L&T Index nos. 76937/2015 and 54254/2015). The parties settled those proceedings. Under the settlement agreement, plaintiff is deemed the prevailing party in those proceedings. (NYSCEF No. 247 at 3 [settlement agreement].)

Plaintiff claims Siegel spent \$234,568.70 to repair her apartment. Plaintiff claims that Siegel received \$75,390.74 in indemnity from State Farm for "dwelling coverage" and \$19,983.26 from the co-op under the parties' settlement agreement. (*See* NYSCEF No. 284 at 10-11.) Plaintiff seeks the balance.

Siegel brought this action for (i) negligence in failing to maintain and repair the sprinkler system; (ii) breach of warranty of habitability; (iii) breach of proprietary lease; (iv) breach of fiduciary duty; (v) private nuisance; (vi) tortious interference with contract; (vii) negligence against the adjuster; and (viii) constructive eviction. (*See* NYSCEF No. 26 [amended complaint].) On motion sequences 003 and 004, this court dismissed Siegel's claims for breach of fiduciary duty; private nuisance; negligence on the part of the adjuster; and constructive eviction. (*See Siegel v 77 Bleecker St. Corp.*, 2018 NY Slip Op 32830[U], \*8 [Sup Ct, NY County 2018]). This court also dismissed plaintiff's breach-of-warranty-of-habitability and breach-of-proprietary-lease claims against the co-op except to the extent Siegel sought reimbursement for her out-of-pocket repair expenses. (*See id.*) This court also dismissed the individual co-op board members from this action. (*See id.*)

In August 2025, Siegel died. (*See* NYSCEF No. 342.) In September 2025, Eric Batt, as administrator of Siegel's estate, was substituted as plaintiff in Siegel's place. (*See* NYSCEF No. 351.)

Now, on motion sequence 006, plaintiff seeks spoliation sanctions against the co-op and Century for losing the pipe and sprinkler head. That branch of the motion is granted in part and denied in part. Plaintiff also moves to reargue part of this court's decision on motion sequence 005 in which this court denied disclosure of certain documents to plaintiff. That branch of plaintiff's motion is granted.

On motion sequence 007, plaintiff seeks reimbursement for out-of-pocket expenses Siegel incurred in repairing her apartment. He seeks summary judgment on the breach-of-warranty-of-habitability claims and breach-of-proprietary-lease claims against the co-op. Plaintiff's motion is granted in part and denied in part.

On motion sequence 008, the co-op defendants seek summary judgment dismissing plaintiff's claims against them for breach of warranty of habitability, breach of proprietary lease, and negligence. The co-op defendants' motion is denied.

On motion sequence 009, Affiliated and Azus seek summary judgment dismissing plaintiff's tortious-interference-with-contract claim against them. Their motion is granted.

The motions are consolidated for disposition.

## DISCUSSION

### I. Motion Sequence 006

#### A. Branch of Plaintiff's Motion for Spoliation Sanctions Against Co-op and Century

Plaintiff moves for spoliation sanctions against the co-op and Century. According to plaintiff, the co-op and Century lost a water pipe and sprinkler head that broke off when the sprinkler system burst and damaged Siegel's apartment. (NYSCEF No. 188 at 1.) Plaintiff seeks

a preclusion order prohibiting defendants “from presenting evidence at trial, including, but not limited to expert reports or opinions opposing Plaintiff’s negligence claims or supporting the Coop Defendants’ affirmative defenses as they pertain to the maintenance of the crucial, Missing Sprinkler Pipe at issue.” (NYSCEF No. 203 at 3.) Alternatively, plaintiff seeks an adverse inference “that examination of the Missing Sprinkler Pipe . . . would have revealed facts detrimental to the Coop Defendants’ defenses in this action at trial.” (NYSCEF No. 203 at 1.) Plaintiff’s motion is granted in part and denied in part.

Spoliation sanctions may be granted at the court’s discretion. (*See Harry Winston, Inc. v Eclipse Jewelry, Corp.*, 215 AD3d 421, 422 [1st Dept 2023] [“Supreme Court has broad discretion to determine a sanction for the spoliation of evidence.”].) To demonstrate entitlement to a spoliation sanction, the moving party must show that the party controlling the evidence was required “to preserve it at the time of its destruction, that the evidence was destroyed with a ‘culpable state of mind,’ and ‘that the destroyed evidence was relevant to the party’s claim or defense such that the trier of fact could find that the evidence would support that claim or defense.’” (*Pegasus Aviation I, Inc. v Varig Logistica S.A.*, 26 NY3d 543, 547 [2015], quoting (*VOOM HD Holdings LLC v EchoStar Satellite L.L.C.*, 93 AD3d 33, 45 [1st Dept 2012].) Gross negligence, intentional destruction of evidence, and ordinary negligence are culpable states of mind. (*See VOOM HD Holdings LLC*, 93 AD3d at 45.) If “the evidence is determined to have been intentionally or wilfully destroyed, the relevancy of the destroyed documents is presumed.” (*Pegasus Aviation I, Inc.*, 26 NY3d at 547.) But “if the evidence is determined to have been negligently destroyed, the party seeking spoliation sanctions must establish that the destroyed documents were relevant to the party’s claim or defense.” (*Id.* at 547-548).

Plaintiff claims that the building superintendent, Angel Torres, trespassed into her apartment and took the pipe and sprinkler head. (NYSCEF No. 188 at ¶ 10.) Torres testified that he gave the items to insurance agents whose name he could not recall. Plaintiff argues, however, that the engineer (Fidellow) and the adjuster (Andersen), whom the co-op’s insurer assigned to her case, testified that they never took the items. (*See* NYSCEF No. 194 at 33-34 [Fidellow deposition]; NYSCEF No. 197 at 148-149 [Anderson deposition].) And the engineer testified that Torres expressed that he was retaining them. (NYSCEF No. 194 at 34.) Plaintiff claims that Torres either lost or destroyed those items. (*See* NYSCEF No. 188 at ¶10.)

The co-op and Century did, however, try to preserve the evidence by instructing Torres to retain the pipe in his office. (*See* NYSCEF No. 193.) Additionally, at his deposition, Torres testified that he gave the pipe to an insurance-company agent and received that person’s business card (although he could not identify which business card corresponds to the agent). (NYSCEF No. 191 at 141-145.)

Under the circumstances here, plaintiff is not entitled to an order of preclusion. This court is unpersuaded that Torres’s transfer of the pipe to the unidentified insurance agent evinces gross negligence or an intent to destroy the evidence. And plaintiff has not shown that she will be unable to prove her claims without the physical pipe and sprinkler head. (*See Am. Intern. Ins. Co. v A. Steinman Plumbing & Heating Corp.*, 93 AD3d 559, 560 [1st Dept 2012] [declining to dismiss defendant’s answer on grounds of spoliation when plaintiff made “no showing as to how the discarded evidence would have allowed it to prove its case”].) Accordingly, this court

concludes that a sanction precluding defendants from presenting evidence about maintenance of the missing pipe is too drastic. (*See Harry Winston Inc.*, 215 AD3d at 422 [“Where the moving party has not been deprived of the ability to establish its case or defense, a less severe sanction is appropriate.”].)

But plaintiff is entitled to an adverse inference. Losing the pipe and sprinkler head constitutes negligent conduct—whether on defendants’ part or the insurance agency to whom it entrusted the items. Such negligence is sufficient to warrant an adverse inference. (*See Hussain v Nowak*, 38 AD3d 1342, 1342 [4th Dept 2007] [holding adverse inference warranted when plaintiffs “submitted evidence establishing that defendants’ insurance company, to whom defendants had entrusted the [physical evidence], had either lost or destroyed it”].) Accordingly, this court concludes that plaintiff is entitled to an adverse inference that plaintiff’s examination of the pipe and sprinkler head would have revealed facts that undermine the co-op and Century’s defenses.

### **B. Branch of Plaintiff’s Motion to Reargue**

Plaintiff moves to reargue certain portions of this court’s April 2023 order on motion sequence 005. On that motion, plaintiff moved, in part, to compel nonparties Levine Fidellow Consulting, Inc., and LaMarche Associates Inc., to produce “(i) unredacted versions of emails sent to and from an engineer (Alan Fidellow) who was retained to investigate the cause of the flooding damage to Siegel’s apartment; and (ii) the file for this casualty generated by an insurance adjuster (LaMarche Associates) retained by [the co-op’s] general-liability carrier,” respectively. (*Siegel v 77 Bleecker St. Corp.*, 2023 WL 3225712, \*1 [Sup Ct, NY County 2023].) After in camera review of the emails and report, this court held that those documents were not subject to disclosure, because they were prepared in anticipation of litigation. (*Id.*, citing CPLR 3101 [d] [2].)

Plaintiff now argues that the emails and LaMarche report are discoverable because they were prepared only for subrogation-analysis purposes. (*See* NYSCEF No. 203 at 18.) They further argue that even if these materials were prepared in anticipation of litigation, they were not prepared in anticipation of *this* litigation.<sup>1</sup> (*See* NYSCEF No. 217 at 7.) Defendants argue that this court did not err in determining that the materials were non-discoverable as materials created in anticipation of litigation. (*See* NYSCEF No. 213 at 13-14.)

CPLR 3101 (d) (2) provides a qualified immunity for evidence “prepared in anticipation of litigation or for trial by or for another party, or by or for that other party’s representative (including an attorney, consultant, surety, indemnitor, insurer or agent).” A party asserting the protection must establish that the requested documents were “prepared primarily, if not solely, in anticipation of litigation.” (*JP Foodservice Distribs., v Sorrento, Inc.*, 305 AD2d 266, 266 [1st Dept 2003].) If that burden is met, the opposing party, to obtain that discovery, must show that it has a “substantial need and inability to obtain this information without undue hardship.” (*Matter*

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<sup>1</sup> Plaintiff contends that in light of the missing pipe and sprinkler head, these emails are even more necessary to establish the cause of the sprinkler burst and the co-op and Century’s liability. (NYSCEF No. 179 at 4-5.)

of *Peerenboom v Marvel Entertainment, LLC*, 160 AD3d 439, 440 [1st Dept 2018], citing CPLR 3101 [d] [2].)

This court concludes that Fidellow’s emails and La Marche report are subject to disclosure. These documents were *not* created for *this* litigation—but for *potential subrogation litigation*. (See *Marten v Eden Park Health Services Inc.*, 250 AD2d 44, 47 [3d Dept 1998] [holding that materials prepared only for the “instant” litigation are privileged under CPLR 3101 [d] [2].) Fidellow now produces an affidavit from a GNY employee who represents that any communication arising from the investigation was “generated solely in anticipation of, and in preparation for, litigation that was expected to arise from the incident of January 7, 2014.”<sup>2</sup> (NYSCEF No. 163 at ¶7.) But on motion sequence 005, Fidellow and LaMarche’s attorney represented that Fidellow “was retained by [GNY’s subrogation counsel] to investigate the incident for a possible *subrogation* action and to investigate the incident from a litigation standpoint.” (NYSCEF No. 161 at 7 [emphasis added].) Moreover, Fidellow and LaMarche could not have been preparing for a subrogation action when they created those documents. A subrogation action will not be “anticipated until the cause of the [burst] ha[s] been ascertained.” (*New York Schools Ins. Reciprocal v Milburn Sales Co., Inc.*, 105 AD3d 716, 718 [2d Dept 2013].) And the documents (as this court reviewed *in camera*) reflect that these materials were prepared before any causation determinations were made.

The branch of plaintiff’s motion to reargue is granted. Fidellow and LaMarche must turn over to plaintiff the Fidellow emails Bates-Numbered 000032-000035 and the LaMarche report.

## II. Motion Sequences 007 and 008

On motion sequence 007, plaintiff moves for summary judgment on his claims for breach of the warranty of habitability (second cause of action) and breach of proprietary lease (third cause of action) against the co-op and to dismiss defendants’ affirmative defenses.<sup>3</sup> (See NYSCEF No. 259 at 10-11 [amended complaint].) The motion is granted in part and denied in part.

On motion sequence 008, the co-op defendants move for summary judgment dismissing plaintiff’s complaint against them. The motion is denied.

### A. Claim for Breach of Warranty of Habitability Against the Co-op (Second Cause of Action)

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<sup>2</sup> This court further finds that employee’s affidavit conclusory. (See *Hewitt v Palmer Veterinary Clinic, PC*, 145 AD3d 1415, 1416 [3d Dept 2016] [holding that conclusory affidavits “baldly asserting” that portions of materials was created in anticipation of litigation are insufficient]; *State of N.Y. ex rel. Murray v Baumslag*, 134 AD3d 451, 452 [1st Dept 2015] [holding that a “conclusory statement is insufficient to invoke the work-product privilege”].)

<sup>3</sup> Plaintiff’s motion does not seek summary judgment on her claim against the affiliated defendants. Nor does her motion target those defendants’ affirmative defenses.

Implied in every residential lease is landlord's warranty that the premises "are fit for human habitation and for the uses reasonably intended by the parties and that the occupants of such premises shall not be subjected to any conditions which would be dangerous, hazardous or detrimental to their life, health or safety." (Real Property Law § 235-b [1].) The warranty "sets forth a minimum standard to protect tenants against conditions that render residential premises uninhabitable or unusable." (*Matter of Solow v Wellner*, 86 NY2d 582, 588 [1995].)

Plaintiff claims that Siegel's apartment suffered water damage from the sprinkler burst and defective toilet installation from the unit above. In an affidavit, Siegel represents that she was unable to reside in the apartment for 16 months, until she completed the repairs. (*See* NYSCEF No. 284 at ¶3 [Siegel affidavit].) According to plaintiff, the co-op "failed to restore [Siegel's] Apartment to a habitable condition by repairing it or reimbursing [Siegel] for repairs to the walls, floors, ceilings, pipes, wiring and conduits" and "instead conditioned its repair and reimbursement obligations to Plaintiff only in exchange for a release and miniscule fraction of the reimbursement costs." (NYSCEF No. 283 at 10; NYSCEF No. 284 at ¶¶ 28-29 [Siegel's affidavit]; NYSCEF No. 275 [emails].)

The co-op argues that it did not breach the warranty of habitability. The co-op contends that it offered to repair the premises right away (*see* NYSCEF No. 270 at 9 [pdf pagination] [email from Azus to Siegel]) but that plaintiff declined the offer in favor of bringing in her own preferred contractor, which resulted in the delay (*see* NYSCEF No. 253 at 227 [Siegel deposition]; NYSCEF No. 289 at ¶ 11 [memo of law].) The co-op also asserts that the apartment was habitable and that mold-inspection reports suggest that Siegel could have stayed in her home. (*See* NYSCEF No. 278 at 70-74, 94-98 [pdf pagination] [mold-inspection reports].) The co-op further contends that plaintiff has not proven burst's cause or that the burst is attributable to the co-op. (NYSCEF No. 289 at 7.) Finally, the co-op claims that plaintiff is not entitled to recover out-of-pocket expenses because she already recovered for damages in the settlement agreement in the form of a complete rent abatement from January 2014 through April 30, 2015 (when the apartment was habitable again). (*See* NYSCEF No. 240 at 16.)

1. To prevail on a claim for breach of the warranty of habitability, plaintiff "must show the extensiveness of the breach, the manner in which it affected the health, welfare or safety of the tenants, and the measures taken by the landlord to alleviate the violation." (*Diamond v New York City Hous. Auth.*, 179 AD3d 525, 527 [1st Dept 2020].) This court agrees that plaintiff has made out a prima facie case for breach of the warranty of habitability. Although she provides no evidence that the mold rendered the apartment uninhabitable, she provides images that reflect that conditions on the premises "constitute deficiencies that prevent the premises from serving their intended function of residential occupation." (*Solow*, 86 NY2d at 589; *see* NYSCEF No. 281 [images].)

At the same time, this court concludes that the co-op has not made out its prima facie case for summary judgment dismissing this claim. It has not provided evidence that the leaks were *not* hazardous, particularly given the mold inspection report in January 2014 indicated the presence of certain unacceptable mold levels. (*See* NYSCEF No. 278 at 73 [pdf pagination]; *see also Shultz v Cambridge Dev., L.L.C.*, 200 AD3d 624, 624 [1st Dept 2021] [affirming summary judgment dismissing breach of warranty claims when "plaintiffs' allegations are sufficiently

serious to potentially warrant liability on these claims”). And it provides no evidence refuting plaintiff’s showing that the premises were otherwise “unusable for their intended function of residential occupation.” (*Adler v Ogden CAP Properties*, 126 AD3d 544, 545 [1st Dept 2015].) Moreover, the authority the co-op cites to support the existence of a causation requirement for breach of the warranty of habitability does not support that proposition. (*See Edstrom v St. Nicks All. Corp.*, 194 AD3d 518, 519 [1st Dept 2021] [holding that a dispute of fact arose about the habitability of the apartment, *not* on the cause of the potentially uninhabitable condition].)

2. Although plaintiff has made out a prima facie case for breach of the warranty of habitability, this court concludes that the co-op has raised an issue of fact about whether Siegel unreasonably refused to use the building’s contractor to repair the damage quickly.

If a landlord refuses to remedy the condition inducing uninhabitability, “the tenant may undertake to remedy that condition and is entitled under the warranty to recoup from the landlord the reasonable cost incurred in remedying the habitability impairing condition.” (*Katurah Corp. v Wells*, 115 Misc 2d 16, 17 [App Term, First Dept 1982].) In her deposition testimony, Siegel asserted that she refused the co-op’s offer for three reasons: (1) her concern that the co-op’s contractor’s work would not be up to par; (2) defendants’ refusal to fix electrical problems in the apartment; and (3) defendant Azus told her that if she used the building’s contractor, she would not have to pay him a fee. (*See* NYSCEF No. 253 at 227-228; NYSCEF No. 270 at 2 [email correspondence from Azus].) Given that the co-op offered to have its own contractor make the repairs, the question is whether Siegel’s declination of that offer negates plaintiff’s contention that defendants *willfully* refused to make the repairs, as is required for plaintiff to recover costs incurred in making the repairs herself. (*See Charles v 751 Union St., LLC*, 2019 NY Slip Op 51958(U), \*2 [App Term, 2d Dept, 2d, 11th & 13th Jud Dists 2019] [affirming trial court’s decision to deny reimbursement to plaintiff for costs incurred in repairing her apartment when “plaintiff failed to establish that defendant had willfully refused to make required repairs”].)

3. With respect to defendant’s contention that the parties’ settlement agreement prohibits plaintiff from recovering the costs incurred to repair the apartment, this court disagrees. The settlement agreement resolved plaintiff’s withholding of *maintenance*, not costs incurred to repair the apartment. (*See* NYSCEF No. 247 at 4 [settlement agreement].) Indeed, plaintiff explicitly reserved her right to seek reimbursement for out-of-pocket repairs in the agreement. (*See id.* at 5.)

The branch of plaintiff’s motion for summary judgment on his breach-of-warranty-of-habitability claim (mot seq 007) is denied. The branch of defendants’ motion to dismiss this claim against the co-op (mot seq 008) is denied.

### **B. Claim for Breach of Proprietary Lease Against the Co-op (Third Cause of Action)<sup>4</sup>**

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<sup>4</sup> Plaintiff’s breach-of-contract claim is not duplicative of his breach-of-warranty-of-habitability claim. The Court of Appeals has noted that the warranty “statute’s nonwaiver clause (Real Property Law § 235-b [2]) indicates a legislative intent to insure the independence of the warranty of habitability from the specific terms of a lease.” (*Solow*, 86 NY2d at 589.) And

Plaintiff's second cause of action is for breach of the proprietary lease. This court previously dismissed most of this claim, but not the portion seeking out-of-pocket repair expenses. (*See Siegel*, 2018 Slip Op 32830[U], at \*5.) Plaintiff now seeks summary judgment on his claim for out-of-pocket repair expenses (mot seq 007). Defendants seek summary judgment dismissing that claim (mot seq 008).

### 1. Waiver

Plaintiff argues that the co-op breached section 4 (a) of the lease, which provides that the co-op will assume most repairs after a casualty event and obligates the co-op to “repair or replace or cause to be repaired or replaced (with materials of a kind and quality then customary in buildings of the same type as the Building).” (NYSCEF No. 283 at 14, quoting NYSCEF No. 273 at § 4 [a] [emphasis omitted].) According to plaintiff, Siegel was advised that (1) the co-op's obligations to repair were “minimal” and that the co-op would only repair parts of her apartment “original to the building,” and (2) the co-op had no obligation to fix her Packaged Terminal Air Conditioner (PTAC) unit or windows. (*See* NYSCEF No. 283 at 14; NYSCEF No. 322 at 9; NYSCEF No. 270 at 3 [email from Azus noting that co-op will repair only “original” building property].) Plaintiff contends that § 4 (a) does not limit the co-op's obligation to make repairs to parts of the apartment that are “original to the building” and that § 18 (b) requires the co-op to replace the PTAC system and windows. (NYSCEF No. 322 at 9-10.)

The co-op argues that it should not be held responsible for failing to repair damages to Siegel's apartment, because it offered to make those repairs. (NYSCEF No. 289 at ¶ 25.) In essence, the co-op contends that Siegel waived her right under the lease to have the co-op effect the repairs.<sup>5</sup> It further contends that the work Siegel paid for exceeds that for which the co-op could be held responsible for funding. (NYSCEF No. 289 at ¶¶ 30-31.)

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“section 235–b was intended to provide an objective, uniform standard for essential functions, while the trial court's standard creates an individualized subjective standard dependent on the specific terms of each lease.” (*Id.*)

<sup>5</sup> To the extent, defendants further argue that Multiple Dwelling Law § 78 “does not entitle the plaintiff herein to recover for the repairs that she claims was the responsibility of the defendants herein” (NYSCEF No. 240 at 14), this court disagrees. Although § 78 did not “permit the present lessee to do work which he claims the statute required the lessor to do, and to counterclaim for the value of such work on the theory of breach of contract” (*Emigrant Indus. Sav. Bank v One Hundred Eight W. Forty Ninth St. Corp.*, 255 AD 570, 576 [1st Dept 1938], *affd* 280 NY 791 [1939]), that rule ceased to apply after the warranty of habitability was recognized in New York courts and passed into law under Real Property Law § 235-b (*see Jangla Realty Co. v Gravagna*, 112 Misc 2d 642, 644-645 [Civ Ct, Queens County 1981] [explaining legal history].) Instead, the landlord must perform “ordinary maintenance and repair work” and need not make “unnecessary improvements” unless otherwise required by the lease or common law. (*Broadway Cent. Prop. Inc. v 682 Tenant Corp.*, 298 AD2d 253, 253-254 [1st Dept 2002].) Therefore, the questions are whether the repairs plaintiff paid for were necessary to rectify breach of the warranty of habitability or, if they were not, whether landlord otherwise contracted to undertake such repairs.

Section 4 (a) of the proprietary lease provides that if plaintiff's apartment is damaged by a casualty, the co-op "shall at its own cost and expense, . . . repair or replace or cause to be repaired or replaced (with materials of a kind and quality then customary in buildings of the same type as the Building) . . . the Apartment." (NYSCEF No. 273 at § 4 [a].) The provision excludes from the co-op's responsibility to repair "equipment, fixtures, furniture, furnishings or decorations installed by the Tenant-Shareholder . . . or replace wallpaper or other decorations in the Apartment or to refinish floors located therein." (*Id.*)

The court agrees with plaintiff that § 4 (a) does not limit the scope of the co-op's repair obligations to parts of the apartment that are original to the building. The co-op need not repair items installed by tenant or which are merely decorative aspects of the apartment. (*See id.*) With respect to the branch of plaintiff's claim that the co-op breached § 18 of the lease by failing to repair windows, this court agrees. Section 18 provides that tenant is not responsible for keeping the windows in good repair. (*See* NYSCEF No. 273 at § 18 [a].) As for the branch of plaintiff's claim that co-op breached § 18 by failing to replace the PTAC unit, that branch of the claim must be dismissed as a matter of law. Section 18 provides that the co-op is responsible for making repairs to heating units, and that plaintiff would be responsible for replacing those units. (*See id.*)

With respect to the sort of repairs to which plaintiff is entitled under §§ 4 (a) and 18, therefore, the remaining question is whether Siegel waived her contractual right to have the co-op make and fund the repairs or whether she retained that right notwithstanding her finding and paying her own contractor to conduct the work. The lease contains no provision explaining who gets to choose the contractor to repair damage caused by a casualty. (*Cf. TAG 380 LLC v JP Morgan Chase Bank*, 2006 Slip Op 51156[U], \* 3 [Civ Ct, NY County 2006], *affd* 2008 Slip Op 51095 [App Term, 1st Dept 2008] [noting lease provision providing that "[a]ll alterations shall be done only by contractors or mechanics first approved by landlord".]) It says only that "the Apartment Corporation shall at its own cost and expense, with reasonable dispatch after receipt of notice of said damage, repair or replace or cause to be repaired or replaced (with materials of a kind and quality then customary in buildings of the same type as the Building)." (NYSCEF No. 273 at ¶ 4[a].) Even assuming that the co-op has the right to choose the contractor as a precondition to making repairs at its own expense, the question is whether plaintiff waived her right to have the co-op pay for the repairs "knowingly, voluntarily and intentionally." (*Macklowe Inv. Properties LLC v MIP 57th Dev. Acquisition LLC*, 241 AD3d 1204, 1204 [1st Dept 2025] ["Contractual rights may be waived if they are knowingly, voluntarily and intentionally abandoned. Such abandonment may be established by affirmative conduct or by failure to act so as to evince an intent not to claim a purported advantage."]) [internal quotation marks omitted].)

The co-op points to Siegel's testimony that she hired her own contractor because she was in a rush to return to her apartment. (NYSCEF No. 253 at 127.) The co-op also points to Siegel's testimony in which she explains her additional three reasons for opting to hire her own contractor: (1) her concern that the co-op's contractor's work would not be up to par; (2) defendants' refusal to fix electrical problems in the apartment; and (3) that defendant Azus told her that if she used the building contractor, she would not have to pay him a fee. (*Id.* at 227-228.) Additionally, the record reflects that Azus told plaintiff that if she used her own contractor, she would have to pay part of the co-op's insurance deductible in addition to Azus's fee. (*See* NYSCEF No. 290 at 2 [pdf pagination].)

This court concludes, however, that this evidence is insufficient to raise an issue of fact about whether plaintiff evinced an intent to waive her right under §§ 4 (a) and 18 (a) to have the *co-op* pay for the repairs. Defendants' evidence does not reflect that plaintiff *knew* that if she paid for her own contractor, she would be unable to seek reimbursement for costs she incurred. (*See Macklowe Inv. Properties*, 241 AD3d at 1204 [“[W]aiver should not be lightly presumed’ and must be based on a clear manifestation of intent to relinquish a contractual protection.”] [internal quotation marks omitted].)

## 2. Subrogation of Personal Property Losses

The *co-op* argues that Siegel already received funds from her insurance carrier to cover damage to her personal property and living expenses and therefore that her claims for those damages should be dismissed. (NYSCEF No. 240 at ¶19.) According to defendants, the proprietary lease's valid subrogation waiver and plaintiff's State Farm policy—which contained an option to waive subrogation—combine to inhibit plaintiff from recovering for personal property damage. (*Id.* at ¶ 22.)

Plaintiff argues that § 4 (d) applies only “to losses covered by insurance and where the insured waives subrogation” (NYSCEF No. 317 at 7) and serves to prevent the tenant from “receiving indemnity under the homeowner's policy and then pursuing the same contract damages against the Coop” (*id.* at 8). Plaintiff contends that defendants produce no evidence of a subrogation waiver from plaintiff and that the State Farm policy to which defendant refer contains no subrogation waiver. (*Id.* at 9.)

Section 4 (d) of the lease provides that if tenant suffers damage for which the *co-op* is liable, and tenant “carries insurance which covered such loss or damage and such insurance policy or policies contain a waiver of subrogation against the [co-op], then in such event the [tenant] releases the [co-op] from any liability with respect to such loss or damage.” (NYSCEF No. 273 at § 4 [d].) The State Farm policy provides only that “[a]n insured may waive in writing before a loss all rights of recovery against any person.” (NYSCEF No. 326 at 38 [pdf pagination]; *see also* NYSCEF No. 249 at 23, 37 [pdf pagination].) But the State Farm provision does not state whether plaintiff actually waived her right to recover. (*See Baker v 40 E. 80 Apt. Corp.*, 204 AD3d 462, 463 [1st Dept 2022] [holding that proprietary lease did not relieve landlord of liability when plaintiffs' insurance policy “provided only that plaintiffs ‘may waive in writing before a loss all rights of recovery against any person,’ with no indication as to whether they in fact did so”].)

The branch of plaintiff's motion for summary judgment for the repairs as covered by §§ 4 (a) and 18 (a) is granted on liability (mot seq 007), except to the extent summary judgment is predicated on defendants' failure to provide a new PTAC unit. Summary judgment on the PTAC branch of plaintiff's breach-of-contract claim is denied, and summary judgment dismissing that portion of the claim is granted to the *co-op* as a nonmoving party. The branch of defendants' motion for summary-judgment dismissing plaintiff's breach-of-contract claim on grounds of subrogation (mot seq 008) is denied.

With respect to damages on plaintiff's breach-of-lease claim, plaintiff argues that he has invoices recording all the repair costs. But the co-op defendants argue that some of those expenses exceed the scope of co-op's obligation to make repairs, because they are beyond the "building standard," *i.e.* because plaintiff used materials not "of a kind and quality then customary in buildings of the same type as the Building" or because those repairs constitute repair or replacement of equipment or decorations. (*See* NYSCEF No. 274 at ¶ 4 [a].) This disagreement—and the extent, if any, to which plaintiff's damages on this claim overlap with his damages on his negligence and breach-of-warranty claims—must be resolved at trial.

### C. Claim for Negligence Against Co-op and Century (First Cause of Action)

The co-op and Century move for summary judgment dismissing plaintiff's negligence claim (mot seq 008).<sup>6</sup> They argue that it was Siegel's obligation to keep the inside of her apartment—including the ceiling sprinkler—in good repair and that it was the upstairs tenant's responsibility to ensure that her toilet did not leak into Siegel's apartment. (*See* NYSCEF No. 273 at ¶ 18.)

Plaintiff argues that the co-op (1) "has a duty under the NYC Housing Maintenance Code and MDL to maintain the Building and apartments in good repair"; (2) "breached the duty in failing to keep the plumbing free of rust and aged decompensation and/or avoid interior Building freezing"; (3) "these conditions caused the sprinkler piper to burst"; and (4) the burst sprinkler caused the catastrophic water damage in the Apartment." (NYSCEF No. 317 at 18.)

On reply, the co-op and Century argue that plaintiff does not specify which Multiple Dwelling Law (MDL) or New York City Housing Maintenance Code provisions they allegedly violated. (NYSCEF No. 324 at ¶ 26.) Nor, they say, have plaintiffs provided evidence of breach of duty—that the co-op and Century failed to maintain or inspect the sprinkler system.

The elements of a negligence claim are "(1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom." (*Solomon by Solomon v City of New York*, 66 NY2d 1026, 1027 [1985].) On a motion for summary judgment to dismiss a claim, the onus is on defendant to demonstrate that plaintiff cannot prove that claim. (*See Metropolitan Prop. & Cas. Ins. Co. v Pentair Residential Filtration, LLC*, 242 AD3d 513, 514 [1st Dept 2025] [holding that defendant was not entitled to summary judgment dismissing products liability claim "as it did not sustain its burden of showing the absence of such a defect"].)

The court first concludes that the lease did not require Siegel to maintain the sprinkler. Section 18 of the lease provides that the tenant shall keep the interior of the apartment "in good repair" and is "solely responsible" for maintaining plumbing. (NYSCEF No. 273 at ¶ 18 [a].) But that provision further provides that plumbing "shall not include gas, steam, water or other pipes or conduits within the walls, ceilings or floors." (*Id.*) Accordingly, Siegel had no obligation under section 18 (a) of the lease to maintain the in-ceiling sprinkler pipe. Moreover, MDL § 78 (1) and Administrative Code of City of NY § 27–2005 (a) impose independent statutory duties

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<sup>6</sup> Plaintiff does not move for summary judgment on her negligence claim.

on *landlords*—and the co-op was Siegel’s landlord (NYSCEF No. 273 [lease])—to keep premises in good repair. (*See Baker*, 204 AD3d at 463 [holding that negligence claim did not duplicate breach-of-contract claim because plaintiffs claimed that defendant “had independent legal duties stemming from Multiple Dwelling Law § 78 (1) and Administrative Code of City of NY §§ 27–2005 (a) and 27–2027 (b)”].)

Regardless, summary judgment dismissing the negligence claim as related to the sprinkler must be denied. The co-op and Century submitted no evidence that they properly maintained the plumbing in Siegel’s apartment. According to the co-op and Century, “[t]here were no prior instances within plaintiff’s apartments, no prior complaints by the plaintiff, and there was no work completed to the subject sprinkler head and water pipe prior to the burst to suggest any negligence in the care thereof” and “no evidence whatsoever that the building sprinkler system was improperly maintained or defective.” (NYSCEF No. 324 at 11; *see* NYSCEF No. 240 at 22.) But they do not provide affirmative evidence supporting a lack of actual or constructive notice of a defective condition. Instead, they suggest that (1) the burst was caused by Siegel’s failure to heat her apartment during freezing temperatures (without addressing whether plaintiff had an obligation to keep the heat on in her apartment) (*see* NYSCEF No. 240 at 61) and (2) that warm water (at 80 degrees) flows around the building such that the building would not be prone to freezing (*see* NYSCEF No. 324 at ¶ 33, citing NYSCEF No. 254 at 68-72 [Sirotkin deposition testimony].)

Nor have the co-op and Century shown that they are not liable for the toilet leak stemming from the apartment above Siegel’s unit. Under the lease, it is the tenant’s responsibility to maintain plumbing fixtures but not “pipes or conduits within the walls, ceilings, or floors.” (NYSCEF No. 273 at § 18 [a].) Plaintiff claims that the leak was caused by an improperly installed waste-line connected to the tenant above’s toilet. (*See* NYSCEF No. 299 at 10 [pdf pagination] [Siegel affidavit]; *id.* at 97 [pdf pagination] [Exhibit H].) But the co-op and Century have provided no evidence that they are not responsible for maintaining and repairing waste lines.

The co-op and Century have not established that they did not breach their duties to Siegel. The branch of those defendants’ motion for summary judgment dismissing plaintiff’s negligence claim (mot seq 008) is denied.

#### **D. Affirmative Defenses**

Plaintiff moves for summary judgment to dismiss the co-op defendants’ affirmative defenses and the adjuster defendants’ affirmative defenses (mot seq 007). Plaintiff argues that the co-op defendants’ affirmative defenses should be dismissed because they lack particularity under CPLR 3013 and have no merit. (NYSCEF No. 283 at 18.)

##### **1. Co-op Defendants’ Affirmative Defenses**

**i.** The co-op defendants’ first affirmative defense is that plaintiff’s third cause of action has been dismissed except as to out-of-pocket costs for repairs. (NYSCEF No. 115 at ¶ 38.) This is a restatement of procedural posture, not a defense. The first affirmative defense is dismissed.

ii. The co-op defendants' second affirmative defense is that Siegel's damages were caused by her own negligence. Similarly, their eleventh affirmative defense is that if Siegel incurred any damages, then those damages were caused solely by others' conduct over whom they had no control. Plaintiff has provided no evidence conclusively establishing that these defendants will not succeed on this defense. The branch of plaintiff's motion to dismiss these defenses is denied.

iii. The co-op defendants' third affirmative defense is that the complaint is not pleaded with particularity and fails to state a cause of action. They contend that the portion of the defense that plaintiff fails to state a cause of action may not be dismissed as "as this amounts to an endeavor by the plaintiff to test the sufficiency of his or own claim." (*Lewis v U.S. Bank N.A.*, 186 AD3d 694, 697 [2d Dept 2020].) This court agrees. The branch of the motion to dismiss the failure-to-state a claim defense is denied. The rest of this affirmative defense is dismissed.

iv. The co-op defendants' fourth affirmative defense is that they are protected by the business judgment rule. Plaintiff wants to dismiss the fourth affirmative defense because the business judgment rule does not extinguish defendants' duties under the warranty of habitability. (NYSCEF No. 283 at 19.) The co-op defendants' argue that this affirmative defense should not be dismissed, because it pertains to whether the co-op's decisions on how and when the repairs were to be made are protected. (NYSCEF No. ¶41.) This court agrees with defendants. The branch of the motion to dismiss this affirmative defense is denied.

v. The co-op defendants' fifth affirmative defense is that plaintiff's action is barred by doctrine of equitable estoppel. Their sixth defense is that the complaint is barred by the doctrine of unclean hands. Their seventh defense is that plaintiff failed to mitigate damages. The co-op defendants argue that these affirmative defenses should remain, because they present issues of fact related to the cause of the pipe burst and the extent of the repairs required compared the repairs Siegel made. (NYSCEF No. 289 at ¶40.)

This court disagrees with the co-op defendants. They provide no support for their defenses of equitable estoppel and unclean hands. And they provide no lease provision supporting that plaintiff must mitigate damages.

vi. The co-op defendants' eighth affirmative defense is that plaintiff's action is barred by the statute of frauds. Their ninth affirmative defense is that plaintiff's action is barred by documentary evidence. And their tenth affirmative defense is that plaintiff's claims are time-barred. Defendants do not meaningfully oppose dismissal of these defenses. These defenses are dismissed.

## 2. Affiliated and Azus's Affirmative Defenses

With respect to the branch of his motion to dismiss the Affiliated and Azus's affirmative defenses, plaintiff opposes only those defendants' second affirmative defense: that plaintiff's action is time-barred. But in making that argument, plaintiff focuses only on the statute of limitations "in connection with *Coop's* Warranty and contractual obligations." (NYSCEF No.

283 at 20 [emphasis added].) The branch of plaintiff's motion to dismiss Affiliated and Azus's affirmative defenses is denied.

### **E. Attorney Fees**

Both plaintiff and the co-op defendants seek attorney fees incurred in this action. Plaintiff, however, also seeks attorney fees incurred in two prior Housing Court nonpayment proceedings brought by the co-op against plaintiff for unpaid maintenance. The parties settled those actions. (See NYSCEF No. 262 [settlement agreement].) And their settlement agreement provides that Siegel was the prevailing party on those actions and entitled to legal fees. (*Id.* at 3.) The court in those proceedings directed that the amount of Siegel's legal fees be determined by Supreme Court in *this* action. (NYSCEF No. 263 at 4.)

This court agrees that, under the settlement agreement, plaintiff is the prevailing party in the Housing Court actions. This court also agrees that plaintiff has prevailed on its breach-of-lease claim in this action thus entitling him, but not the co-op defendants, to attorney fees.<sup>7</sup> (Real Property Law § 234.) Plaintiff's request is granted. The co-op defendants' request is denied. The amount of attorney fees to which plaintiff is entitled will be determined at the conclusion of the case.

### **III. Motion Sequence 009**

On motion sequence 009, defendants Affiliated Adjustment Group and Azus (Affiliated defendants) seek summary judgment dismissing plaintiff's complaint against them. (NYSCEF No. 219 at 1 [notice of motion].) Plaintiff's sole remaining cause of action against these defendants is for tortious interference with contract.

In the amended complaint, plaintiff alleges that the Affiliated defendants induced the co-op to breach the lease by (1) demanding payment of Affiliated defendants' unlawful fee and deductible contributions from plaintiff; (2) failing to advocate for or obtain indemnity from the co-op's insurer; (3) refusing to identify the scope of repairs that the co-op would make to the apartment aside from stating that repairs would be limited to "original" components of the apartment; and (4) refusing to provide plaintiff with a complete adjustment for the repairs which deprived plaintiff of the info necessary to make a decision on the co-op compensation offer. (See NYSCEF No. 26 at ¶ 83 [amended complaint].)

A tortious-interference-with-contract claim has four elements: "(1) the existence of a valid contract between plaintiff and a third party; (2) the defendant's knowledge of that contract; (3) the defendant's intentional procuring of the breach; and (4) damages." (*DeLiberio v Duloc*, 199 AD3d 600, 600 [1st Dept 2021] [internal quotation marks omitted].) Plaintiff has established that the co-op breached the lease. And the Affiliated Defendants concede that they knew about the lease. The remaining question is whether the Affiliated defendants can demonstrate that plaintiff will not be able to satisfy the last two criteria.

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<sup>7</sup> Contrary to plaintiff's contention, this court sees no basis to award "fees on fees." (NYSCEF No. 283 at 23.)

Affiliated defendants argue that “[p]laintiff also cannot establish that Azus intentionally solicited such fees due to any individual self-interest,” but told Siegel about those fees because that is what the co-op told him.<sup>8</sup> (NYSCEF No. 239 at 16; *see* NYSCEF No. 234 at ¶ 35 [Azus affidavit].) Affiliated defendants further argue that they did not determine the final amounts individual shareholders would be entitled to, but that that was done by GNY. (NYSCEF No. 234 at ¶ 54.) They also argue that any misinterpretation of the lease was merely their adoption of GNY’s interpretation of the lease, and that Affiliated defendants had no agreement with plaintiff to provide her a complete adjustment for the damages to her apartment. (NYSCEF No. 239 at 16; NYSCEF No. 234 at ¶¶ 15, 55.) They provide Azus’s affidavit in support of these contentions. (*See Schuckman Realty, Inc. v Cosentino*, 294 AD2d 484, 485 [2d Dept 2002] [holding that defendant’s affidavit “which averred that [defendant] did not intentionally seek the procurement of a breach of contract” is sufficient to make out prima facie case for summary judgment dismissing tortious-interference-with-contract claim].)

In opposition, plaintiff provides no evidence raising an issue of fact about whether Affiliated defendants’ intent was to prevent the co-op from upholding its obligations under the lease. The Affiliated defendants were hired to investigate the scope of Siegel’s damages on behalf of co-op for purposes of seeking reimbursement from GNY. There is no basis for suggesting that Affiliated defendants intended to sabotage the estimate upon which the co-op would determine its obligations. Nor is there a basis to suggest that Azus asked for a fee for purposes of inducing Siegel to hire her own contractor at her own expense. (*See generally* NYSCEF No. 270 [Azus emails to plaintiff].)

Plaintiff points to no evidence suggesting the affiliated defendants acted with intent of inducing the co-op to breach the lease. The Affiliated defendants’ motion for summary judgment dismissing plaintiff’s tortious-interference-with-contract claim is granted. The court does not reach the parties’ remaining arguments on this motion.

Accordingly, it is

ORDERED that the branch of plaintiff’s motion for spoliation sanctions (mot seq 006) is granted to the extent that plaintiff is entitled to an adverse inference that plaintiff’s examination of the pipe and sprinkler head would have revealed facts that undermine defendants’ defenses, and is otherwise denied; and it is further

ORDERED that the branch of plaintiff’s motion to reargue is granted (mot seq 006), and on reargument this court concludes that Fidellow and LaMarche must turn over the Fidellow emails Bates-Numbered 000032-000035 and the LaMarche report to plaintiff; and it is further

ORDERED that the branch of plaintiff’s motion for summary judgment on his breach-of-warranty-of-habitability claim (mot seq 007) is denied; and the branch of the co-op defendants’ motion for summary judgment dismissing that claim (mot seq 008) is denied; and it is further

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<sup>8</sup> The co-op opted not to impose those fees. (*See* NYSCEF No. 234 at ¶ 56.)

ORDERED that the branch of plaintiff’s motion for summary judgment on his breach-of-proprietary-lease claim (mot seq 007) is granted on liability with respect to her build-back costs, except with respect to the portion of the claim seeking replacement costs for the PTAC unit, as to which the motion is denied; and the branch of the co-op defendants’ motion for summary judgment dismissing that claim (mot seq 008) is granted only with respect to the portion of the claim seeking replacement costs for the PTAC unit, and otherwise denied; and it is further

ORDERED that plaintiff’s damages on her claim for build-back costs shall be determined at the time of trial; and it is further

ORDERED that the branch of the co-op defendants’ motion for summary judgment dismissing plaintiff’s negligence claim (mot seq 008) is denied; and it is further

ORDERED that the branch of plaintiff’s motion to dismiss the co-op defendants’ affirmative defenses (mot seq 007) is granted as to the first, fifth, sixth, seventh, eighth, ninth, tenth, and portion of the third affirmative defense alleging lack of particularity; and is otherwise denied; and it is further

ORDERED that the branch of plaintiff’s motion to dismiss the Affiliated defendants’ affirmative defenses (mot seq 007) is denied; and it is further


ORDERED that plaintiff’s request for attorney fees (mot seq 007) is granted with the amount of those attorney fees to be determined at the conclusion of the case; and it is further

ORDERED that the co-op defendants’ request for attorney fees (mot seq 008) is denied; and it is further

ORDERED that Affiliated defendants’ motion for summary judgment dismissing the tortious-interference-with-contract claim against them (mot seq 009) is granted; and the action is dismissed against the Affiliated defendants; and it is further

ORDERED that the balance of claims in this action are severed; and it is further

ORDERED that plaintiff serve a copy of this order with notice of its entry on all defendants and on the office of the County Clerk (using the NYSCEF document type "Notice to the County Clerk - CPLR § 8019 (c)"), which shall enter judgment accordingly.

<u>1/7/2026</u> DATE	 <b>HON. GERALD LEBOVITS</b> J.S.C.			
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> GRANTED		<input checked="" type="checkbox"/> GRANTED IN PART	
CHECK IF APPROPRIATE:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE