At an IAS Term, Part 83 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 19th day of FEBRUARY, 2025.

P R E S E N T: HON. INGRID JOSEPH, J.S.C.
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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LATEEMA QUICK,

Plaintiff,

-against-

141 AG, LLC, 141 EQUITIES, LLC, GOLDMONT REALTY CORP. and US REALTY CORP.,

Defendants.

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Index No.: 523725/2021

DECISION AND ORDER

Mot. Seq. No. 1

The following e-filed papers read herein:	NYSCEF Doc Nos.
Notice of Motion/Affirmation in Support/Exhibits/Statement of Material Facts/Memorandum of Law.....	23 – 35
Affirmation in Opposition/Memorandum of Law/Response to Statement of Material Facts/Exhibits.....	38 – 46
Reply Affirmation/Response to Counterstatement of Material Facts..	48 – 49

Plaintiff Lateema Quick ("Plaintiff") commenced this action seeking damages for personal injuries allegedly sustained on September 15, 2021, when she was struck by falling ceiling debris in the master bedroom of her apartment located at 141 St. Marks Place in Staten Island, New York (the "Premises"). The Premises is controlled, owned and managed by defendants 141 AG, LLC, 141 Equities, LLC, Goldmont Realty Corp., and US Realty Corp. (collectively, "Defendants").

Defendants move for an order, pursuant to CPLR 3212, granting them summary judgment and dismissing Plaintiff's complaint on the grounds that (1) Plaintiff was not located in the vicinity of the ceiling collapse and (2) they did not have notice of the water condition (Mot. Seq. No. 1). Plaintiff opposes the motion.

In their motion, Defendants argue that the portion of the bedroom ceiling that collapsed did not contact Plaintiff or her bed. In fact, Defendants contend that Plaintiff was in her living room

at the time of the ceiling collapse. At his deposition, the superintendent Bardhyl Uzuni testified that Plaintiff told him "Thank God we weren't in that room. We were all in the living room" (Uzuni tr at 93, lines 24-25; at 94, line 2). Defendants further aver that Plaintiff's argument that they were on constructive notice because of this previous water leak and an alleged bedroom ceiling stain in insufficient to impute notice. While Plaintiff claims there was a leak above her bed, Defendants assert that the leak occurred in the corner of her bedroom—away from her bed. According to Defendants, Plaintiff complained of this leak in June 2021, and it was remedied in July 2021. Since Plaintiff cannot state how long the ceiling stain existed, Defendants maintain that they did not have an opportunity to remedy the condition and had no notice. Moreover, Defendants assert that there is insufficient evidence to support Plaintiff's contention that they violated New York City Administrative Code § 28-301.1 and New York City Building Code § 102.3. With respect to the NYC Administrative Code § 28-301.1, Defendants argue that it does not impose a penalty or consequence for violation of that specific subsection. Turning to NYC Building Code § 102.3, which concerns plumbing, Defendants assert that Plaintiff has not alleged that plumbing was the cause of the leak in her bedroom or the cause of the partial ceiling collapse.

In her opposition, Plaintiff asserts that Defendants have ignored the fact that Plaintiff previously complained of the cracked ceiling in her bedroom, which eventually collapsed. At her deposition, Plaintiff testified that she informed the superintendent of the crack when he came to look at the leak and when he came to fix the leak. Thus, Plaintiff argues that Defendants had actual notice of the defective cracked ceiling, but never inspected it. In addition, Plaintiff asserts that res ipsa loquitur applies, which Defendants did not address in their motion. According to Plaintiff, the incident is not the type that would occur in the absence of Defendants' negligence, Defendants had exclusive control of the building's structure, and Plaintiff did not contribute to the accident. Plaintiff also points out that Defendants have not submitted their work maintenance records. Plaintiff submits an affidavit from Scott M. Silberman, an engineer, who opined that Defendants failed to maintain the bedroom ceiling in a reasonably safe condition, thus breaching their statutory duties. Lastly, Plaintiff requests that the Court search the record and grant Plaintiff summary judgment.

In their reply, Defendants assert that Plaintiff failed to disprove that (a) she was located away from the subject bedroom's ceiling at the time of the accident and (b) the source of the water or moisture accumulation came from an air conditioner and that this leakage was resolved. With

respect to the alleged crack, Defendants assert that no specific location of the crack was given and photographs are too close-up to indicate the location relative to the Plaintiff or her bed. Defendants further assert that Mr. Silberman's opinion is based solely on hearsay since he did not visit the Premises or conduct an investigation. Moreover, Defendants argue that res ipsa loquitur does not apply because the source of the water leak and resulting ceiling damage was an air conditioner, which Plaintiff has not proven they were solely in control of.

In a premises liability case, the defendant moving for summary judgment must establish that it "maintained the subject property in a reasonably safe condition and that it neither created the alleged dangerous condition nor had actual or constructive notice thereof" (*McGee v New York City Hous. Auth.*, 122 AD3d 695, 696 [2d Dept 2014] [internal citation omitted]).[1] Once the defendant has met its initial burden, summary judgment will only be granted if the plaintiff fails to establish the existence of questions of fact (*see Jacobsen v New York City Health & Hosps. Corp.*, 22 NY3d 824, 833 [2014] [internal citation omitted]). "[M]ere conclusions, expressions of hope or unsubstantiated allegations or assertions are insufficient" to defeat a motion for summary judgment (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]).

Upon review of the documents presented, the Court finds that Defendants have not established prima facie entitlement to summary judgment Defendants' submission included the transcript of Plaintiff's deposition, in which she testified that she previously complained of this crack in her bedroom ceiling twice (Pl tr at 74, lines 12-20, 24-25; at 75, lines 4-10). At her deposition, Plaintiff responded "Yes" when asked if the area where she saw the crack was the "portion of the ceiling that [she] believe[d] fell" on her (Pl tr at 77, lines 5-8). Thus, Defendants have failed to establish that they had no notice of the alleged condition (*see Correa v Matsias*, 153 AD3d 1312, 1314 [2d Dept 2017]). Though Mr. Uzuni denied that Plaintiff ever complained about cracks in the ceiling (Uzuni tr at 65, lines 5-11; at 150, lines 19-24), this merely raises a credibility issue (*see Correa*, 153 AD3d at 1314; *Best v 1482 Montgomery Estates, LLC*, 114 AD3d 555, 556 [1st Dept 2014]). Further, the conflicting deposition testimonies as to Plaintiff's location at the time the ceiling collapsed raise an additional credibility issue. Further, "[t]o the extent the record is ambiguous as to the cause of the ceiling collapse, issues of fact exist as to . . . the applicability of the doctrine of res ipsa loquitur" (*Lisbey v Pel Park Realty*, 99 AD3d 637, 638 [1st Dept 2012]).

[1] Constructive notice is established if the defect (1) is visible and apparent and (2) existed for a sufficient length of time before the accident to allow the defendant to discover and remedy it (*Gordon v Am. Museum of Nat. Hist.*, 67 NY2d 836, 837 [1986]).

Accordingly, it is hereby

ORDERED, that Defendants' motion (Mot. Seq. No. 1) for summary judgment is denied.

All other issues not addressed herein are without merit or moot.

This constitutes the decision and order of the Court.

HON. INGRID JOSEPH, J.S.C.

Hon. Ingrid Joseph
Supreme Court Justice