

**Castle Vil. Owners Corp. v Girardi**

2025 NY Slip Op 32293(U)

June 24, 2025

Supreme Court, New York County

Docket Number: Index No. 654284/2023

Judge: Lyle E. Frank

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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**

<p><b>PRESENT:</b> <u>HON. LYLE E. FRANK</u></p> <p align="center"><i>Justice</i></p> <p>-----X</p> <p>CASTLE VILLAGE OWNERS CORP.,</p> <p align="center">Plaintiff,</p> <p align="center">- v -</p> <p>GUILLERMINA GIRARDI,</p> <p align="center">Defendant.</p> <p>-----X</p>	<p><b>PART</b> <span style="float: right;"><b>11M</b></span></p> <p><b>INDEX NO.</b> <u>654284/2023</u></p> <p><b>MOTION DATE</b> <u>03/20/2025, 03/28/2025</u></p> <p><b>MOTION SEQ. NO.</b> <u>009 010</u></p> <p align="center"><b>DECISION + ORDER ON MOTION</b></p>
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The following e-filed documents, listed by NYSCEF document number (Motion 009) 280, 281, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355

were read on this motion to/for JUDGMENT - SUMMARY.

The following e-filed documents, listed by NYSCEF document number (Motion 010) 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 383, 384, 385, 386

were read on this motion to/for JUDGMENT - SUMMARY.

Upon the foregoing documents, both motions are denied.<sup>1</sup>

**Background**

Plaintiff is a co-operative corporation that owns an apartment complex on Cabrini Boulevard. Defendant, appearing pro se, is a unit owner for unit 77. Plaintiff filed this underlying proceeding in September of 2023, seeking to gain access to Defendant’s apartment for two reasons: one involving the installation of a gas line, and the second involving an alleged leak in the apartment below Defendant. At this stage in the litigation, the remaining issue relevant for these motions is the alleged water leak. Plaintiff claims that Defendant’s shower pan is cracked, causing a leak and water damage in the downstairs apartment, unit 67. Defendant argues that

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<sup>1</sup> The Court would like to thank Stephen Wolf and Benjamin Shoyhet for their assistance in this matter.

there is no leak, and that Plaintiff is attempting to retaliate against Defendant for her opposition to the gas line installation and harass her by forcing her to pay for the replacement of the shower pan regardless of whether there is a crack in it.

In early 2023, Plaintiff informed Defendant that there appeared to be a leak into the bathroom ceiling of apartment 67 that was likely originating from the bathroom in apartment 77. Defendant allowed Plaintiff's agents to conduct several inspections of her bathroom in March and April of 2023. There were subsequent requests to inspect that were denied by Defendant in the lead-up to this proceeding, which was initiated by Plaintiff in September of 2023. In October of 2023, one of Plaintiff's handymen, Mr. Jorge Motta, conducting an inspection of the bathroom where he determined that the cause of the leak was a cracked shower pan. Mr. Motta is not now a licensed plumber, although he has been one in the past. Plaintiff engaged a contractor to conduct the repair, but Defendant refused to permit them to do the replacement.

### **Standard of Review**

Under CPLR § 3212, a party may move for summary judgment and the motion "shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party." CPLR § 3212(b). Once the movant makes a showing of a prima facie entitlement to judgment as a matter of law, the burden then shifts to the opponent to "produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." *Stonehill Capital Mgt. LLC v. Bank of the W.*, 28 N.Y.3d 439, 448 [2016]. The facts must be viewed in the light most favorable to the non-moving party, but conclusory statements are insufficient to defeat summary judgment. *Id.*

### **Discussion**

Defendant has moved for summary judgment in her favor on the claims and counterclaims, arguing that it has been proven that there is no actual leak, let alone a leak originating from her shower pan. Plaintiff has also moved for summary judgment, arguing that the evidence submitted by Defendant fails to adequately support her claim of harassment and lack of a leak. A party moving for summary judgment must present sufficient evidence “to demonstrate the absence of any material issues of fact” and failure to do so requires denial of the motion. *JMD Holding Corp. v. Cong. Fin. Corp.*, 4 N.Y.3d 373, 384 [2005]. Because there are unresolved issues of material fact in this matter, as addressed below, both motions for summary judgment are denied.

A threshold issue for these motions is whether the alleged leak in apartment 67 exists. In a previous order dated March 13, 2025, the Court found that there were factual issues surrounding the existence of a leak and ordered that Defendant permit Plaintiff to access the bathroom in question to inspect the shower pan. The order further noted that “Plaintiff is free to move again for a preliminary injunction with further evidence of such leak and its origins.” In response to this, Plaintiff submitted in this motion for summary judgment an affidavit from Mr. Motta regarding the inspections he conducted in 2023 that led him to believe that the shower pan in question was cracked. They also submitted an affidavit from one of the unit 67 occupants, Mrs. Ariane Zorgniotti, stating that she has observed water damage in their ceiling since early 2023. Attached to the affidavit are photographs of the investigatory plumbing work conducted by Plaintiff’s contractor in May of 2023, and the current condition of the ceiling, showing peeling and bubbling paint. Mrs. Zorgniotti further states that their insurance claim for water damage was denied.

In support of her arguments, Defendant has submitted reports from the New York City Department of Housing Preservation and Development (“HPD”). HPD has conducted several inspections of both apartments in 2024, at the instigation of both Defendant and Mrs. Zorgniotti. According to the records submitted, HPD did not find that there was a cracked shower pan in apartment 77, did not find that there was a leak in apartment 67, and issued a violation based on peeling plaster in apartment 67. Both Defendant and Mrs. Zorgniotti have submitted claims for the alleged leak to their respective insurance companies, both of which were denied. Defendant also claims that she has not been allowed to have a contractor of her choosing inspect apartment 67 to determine if there is water damage and a leak in the bathroom ceiling.

Ultimately, neither party has met their burden for summary judgment because there are remaining disputed issues of material fact, such as whether there is a leak in the first place. Determining this matter would involve making factual and credibility determinations, which would be inappropriate on a motion for summary judgment and more properly reserved for a trial.

Plaintiff argues that their decision about whether there is a leak necessitating repairs that pursuant to the proprietary lease Defendant must pay for is protected by the business judgment rule. A co-op’s decisions regarding the manner and extent of repairs and renovations generally fall under the business judgment rule, protecting board members from being held liable for repair decisions made within the scope of their authority. *See, e.g., Parker v. Marglin*, 56 A.D.3d 374, 374 [1st Dept. 2008]. But here, the disputed threshold issue is not about the manner or extent of repairs, but whether the need for repairs exists in the first place. Furthermore, the business judgment rule does not prevent review of decisions when a party makes a demonstration that an

individual has been deliberately singled out for harmful treatment. *Barbour v. Knecht*, 296 A.D.2d 218, 224 [1st Dept. 2002]. Accordingly, it is hereby

ADJUDGED that the defendant’s motion for summary judgment is denied; and it is further

ADJUDGED that the plaintiff’s motion for summary judgment is denied.

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6/24/2025  
DATE

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LYLE E. FRANK, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE