

**Danzy v 660 Hegeman Assoc. LLC**

2025 NY Slip Op 33315(U)

August 26, 2025

Supreme Court, Kings County

Docket Number: Index No. 503117/2021

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

At an IAS Trial Term, Part 75 of the Supreme Court of the State of New York, Kings County, at the Courthouse located at 360 Adams Street, Brooklyn, New York on the 26<sup>th</sup> day of August 2025.

P R E S E N T: HON. ANNE J. SWERN, J.S.C.

VENITA DANZY,

*Plaintiff(s),*

*-against-*

660 HEGEMAN ASSOCIATES LLC, and  
POSTGRADUATE CENTER FOR MENTAL HEALTH,

*Defendant(s).*

**DECISION & ORDER**

Index No.: 503117/2021

Calendar No.: 9, 10 & 11

Motion Seq.: 2, 3 & 4

*Recitation of the following papers as required by CPLR 2219(a):*

	<b>Papers Numbered</b>
MS002 660 Hegeman’s Notice of Motion to Dismiss Plaintiff’s Complaint and Postgraduate Center’s Cross Claims with Supporting Documents (NYSCEF 62-72) .....	1, 2
Affirmations with Supporting Documents (NYSCEF 90-109).....	3
Reply Affirmation and Exhibit (NYSCEF 116-117).....	4
MS003 Postgraduate Center’s Notice of Cross-Motion to Dismiss, Plaintiff’s Complaint with Supporting Documents (NYSCEF 74-89) .....	5, 6
Affirmation and Exhibits in Opposition (NYSCEF 118-120) .....	7
Reply Affirmation and Exhibits (NYSCEF 121) .....	8
MS004 Postgraduate Center’s Notice of Cross-Motion, to Dismiss, 660 Hegeman’s Cross Claims, with Supporting Documents (NYSCEF 75-105) .....	9, 10
Affirmation and Exhibits in Opposition (NYSCEF 110-113) .....	11
Reply Affirmation and Exhibits (NYSCEF 121) .....	12

*Upon the foregoing papers, the decision and order of the Court is as follows:*

This is a personal injury action commenced by plaintiff arising out of a trip and fall in a hole in the living room floor in plaintiff’s apartment located at 660 Hegeman Avenue, Apartment 7A, Brooklyn, New York. The building is owned by defendant 660 Hegeman Associates LLC

(Hegeman), an out-of-possession landlord, and leased to Postgraduate Center for Mental Health (Postgraduate). Postgraduate subleased the apartment to plaintiff, a participant in Postgraduate's "Scattered Site Housing Program." Both defendants have moved for summary judgment dismissing the complaint (MS 002 and 004) based on the absence of actual or constructive notice of the hole in the living room floor. Hegeman and Postgraduate have not opposed the other's motion to dismiss plaintiff's complaint. Hegeman has only opposed Postgraduate's separate motion to dismiss all cross claims against it (MS 003).

Summary judgment may be granted only when no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). "A party moving for summary judgment must make a *prima facie* showing of entitlement to judgment as a matter of law, producing sufficient evidence to demonstrate the absence of any material issue of fact. However, a failure to demonstrate a *prima facie* entitlement to summary judgment motion, requires a denial of the motion regardless of the adequacy of the opposing papers" (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993], citing *Alvarez v Prospect Hospital*, 68 NY2d 324). "Once this showing has been made, the burden shifts to the nonmoving party to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact that require a trial for resolution" (*Giuffrida v Citibank*, 100 NY2d 72, 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324).

The Court's only role upon a motion for summary judgment is to identify the existence of triable issues, and not to determine the merits of any such issues (*Vega v Restani Construction Corp.*, 18 NY3d 499, 505 [2012]) or the credibility of the movant's version of events (see *Xiang Fu He v Troon Management, Inc.*, 34 NY3d 167, 175 [2019] [internal citations omitted]). The Court must view the evidence in the light most favorable to the nonmoving party, affording them the benefit of all reasonable inferences that can be drawn from the evidence (see *Negri v Shop &*

*Stop, Inc.*, 65 NY2d 625, 626 [1985]). The motion should be denied where the facts are in dispute, where different inferences may be drawn from the evidence, or where the credibility of the witnesses is in question (*see Cameron v City of Long Beach*, 297 AD2d 773, 774 [2d Dept. 2002]).

**Hegeman's Motion for Summary Judgment (MS 002) and Postgraduate's Motion For Summary Judgment as against Hegeman (MS 003)**

As an out-of-possession landlord, Hegeman has demonstrated as a matter of law that it did not have actual or constructive notice of the specific hole in plaintiff's living room floor (*Cotto v New York City Housing Authority*, 155 AD3d 937, 938 [2d Dept 2017]). This point is conceded by Postgraduate in that they argue lack of notice from plaintiff in support of their own motion to dismiss. Likewise, plaintiff failed to submit evidence in admissible form that she notified "Josh" Gill, Hegeman's Superintendent, of the specific hole in her living floor (*Giuffrida v Citibank*, 100 NY2d 81 [2003] and *Alvarez v. Prospect Hospital*, 68 NY2d 324). Plaintiff did not submit either an affidavit or a copy of her deposition testimony in opposition to the motion.

Therefore, both Postgraduate and plaintiff failed to rebut Hegeman's *prima facie* entitlement to summary judgment dismissing plaintiff's complaint and Postgraduate's cross claims (*Giuffrida v Citibank*, 100 NY2d 81 and *Alvarez v. Prospect Hospital*, 68 NY2d 324) by demonstrating a triable issue of fact concerning actual and constructive notice (MS 002).

Accordingly, Hegeman's motion to dismiss this action and all cross claims against it is granted (MS 002) and Postgraduate's motion for summary judgment dismissing Hegeman's cross claims is denied as moot (MS 003).

**Postgraduate's Motion for Summary Judgment against Plaintiff (MS 004)**

However, as between Postgraduate and plaintiff, an issue of fact exists as to whether plaintiff notified her Postgraduate caseworker of the specific hole in the living room floor. The

jury must weigh the parties' credibility to determine whether Postgraduate through its caseworker violated the sublease's provision that imposed an affirmative duty on it to request that the out-of-possession landlord perform repairs in the apartment. (*Cameron v City of Long Beach*, 297 AD2d 774). It is the Postgraduate's alleged violation of its duty to arrange for repairs with the out-of-possession landlord rather than any duty to perform the repairs itself, that the jury must determine is the proximate cause of plaintiff's injuries.

The Court has considered the parties' remaining arguments and finds same to be without merit.

Accordingly, it is hereby

ORDERED that 660 HEGEMAN ASSOCIATES LLC's motion for summary judgment dismissing plaintiff's complaint and POSTGRADUATE CENTER FOR MENTAL HEALTH's cross claims is GRANTED (MS 002), and it is further

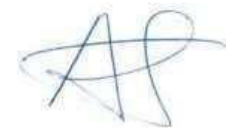
ORDERED that this action and all cross claims are dismissed in their entirety against 660 HEGEMAN ASSOCIATES LLC, and it is further

ORDERED that 660 HEGEMAN ASSOCIATES LLC shall submit a Clerk's judgment, and the Clerk of the Court shall enter judgment accordingly, and it is further

ORDERED that POSTGRADUATE CENTER FOR MENTAL HEALTH's motion to dismiss the cross claims of 660 HEGEMAN ASSOCIATES LLC (MS 003) and its motion to dismiss plaintiff's complaint (MS 004) are DENIED.

This constitutes the decision and order of the Court.

ENTER:



**Hon. Anne J. Swern, J.S.C.**  
**Dated: 8/26/2025**

For Clerks use only:
MG _____
MD _____
Motion seq. # _____