SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. LYNN R. KOTLER** **PART** **08**

Justice

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NIDIA MENASSCHE,

Plaintiff,

- v -

NYU MEDICAL CENTER, NEW YORK UNIVERSITY

Defendant.

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INDEX NO. 150058/2022

MOTION DATE 05/28/2025

MOTION SEQ. NO. 004

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 004) 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114

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

Upon the foregoing documents, this motion is decided as follows. This is an action for personal injuries sustained by plaintiff NIDIA MENASSCHE ("Menassche"), who alleges that she suffered burns while washing her hands in a bathroom in the NYU College of Dentistry on March 25, 2019. Defendants NYU MEDICAL CENTER and NEW YORK UNIVERSITY (collectively, "NYU") move for an order pursuant to CPLR 3212 granting it summary judgment and dismissing all claims. Menassche opposes the motion.

In a letter dated October 7, 2025, plaintiff informed the Court that she withdraws all claims related to her right hand and wrist from the Verified Bill of Particulars dated April 6, 2022.

On a motion for summary judgment, the proponent bears the initial burden of setting forth evidentiary facts to prove a *prima facie* case that would entitle it to judgment in its favor, without the need for a trial (CPLR 3212; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Granting a motion for summary judgment is the functional equivalent of a trial, therefore it is a drastic remedy that

should not be granted where there is any doubt as to the existence of a triable issue (*Rotuba Extruders v Ceppos*, 46 NY2d 223 [1977]). The court's function on these motions is limited to "issue finding," not "issue determination" (*Sillman v Twentieth Century-Fox Film Corp.*, 3 NY2d 395 [1957]).

Evidence should be viewed in the light most favorable to the non-moving party, and the non-moving party should be given the benefit of all reasonable inferences that can be drawn from the evidence (*see Negri v Stop & Shop, Inc.*, 65 NY2d 625, 626 [1985]); *Ortiz v Varsity Holdings, LLC*, 18 NY3d 335, 339 [2011]). "When there is any doubt as to the existence of triable issues, summary judgment should not be granted" (*Udoh v Inwood Gardens, Inc.*, 70 AD3d 563, 565 [1st Dept 2010]; *see also Matter of New York City Asbestos Litig.*, 33 NY3d 20, 25 [2019]).

In order to prove a *prima facie* case, defendant must show they neither created the alleged defect or had actual or constructive notice of it (*Herrera v E. 103rd St. & Lexington Ave. Realty Corp.*, 95 AD3d 463 [1st Dept 2012]). Once movant has established their *prima facie* case, "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 Corp.*, 100 NY2d 72, 81 [2003] citing *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). Evidence on the issue of constructive notice may be based on circumstantial evidence and should be presented to a jury if "the evidence permits a reasonable inference that the condition existed long enough for a defendant to have remedied it" (*Harrison v New York City Tr. Auth.*, 113 AD3d 472, 474 [1st Dept 2014]).

NYU argues that they neither created nor did they have actual or constructive knowledge of the dangerous condition. NYU has provided the deposition transcript of Rey Ortiz ("Ortiz"),

the building operator engineer foremen for NYU at the time of the incident, who testified that as part of his duties he maintained the hot water temperature in the NYU College of Dentistry building that the water temperature would be checked in each sink three times per day and that he maintained the hot water temperature at 120 degrees, in line with the requirements of the Department of Health. Ortiz further testified that the bathroom where the incident occurred was located over the steam room and that heat transfer would heat up the water in the pipes, especially on days the bathroom was not used frequently. He received complaints about the water temperature in this bathroom "[m]any times", but later clarified that most complaints were that "there's no cold water" and that the water was "[n]ot scolding" and received only "periodic" complaints that the water was too hot.

Menassche testified that she told the NYU dental receptionist Stefania about the incident, and that Stefania responded "that sink is always burning us" and that she called the technicians so many times to fix it. Generally, "inadmissible hearsay statements may be considered in opposition to a motion for summary judgment where offered in conjunction with admissible evidence in support of the same argument" (*Garcia v 122-130 E. 23rd St. LLC*, 220 AD3d 463, 464 [1st Dept 2023]).

Here, Ortiz' statements that the water temperature in that bathroom would be heated by the steam room below coupled with receipt of "periodic" complaints that the water was too hot in conjunction with Stefania's statement that she had called the technicians multiple times after being burned in the same bathroom create a triable issue of fact as to whether NYU knew or should have known of the condition in the bathroom.

Next, NYU argues that, while not pleaded as a separate cause of action, Menassche uses the words "gross negligence" in her complaint, and that there is no evidence of gross negligence

in the case. Menassche does not oppose NYU's argument on this issue. Therefore, to the extent that any cause of action for gross negligence may exist, any claim for gross negligence is denied and dismissed.

Finally, NYU argues that NYU Langone Hospitals is improperly sued in this action as "NYU MEDICAL CENTER", that it "has no ownership, operational or other interest in NYU College of Dentistry" and therefore cannot be found liable and should be dismissed from the case. The court agrees with defendant NYU.

A defendant is entitled to summary judgment where they make a *prima facie* showing that they do not own the location where the injury occurred (*Girard v Port Auth. of N.Y. & N.J.*, 180 AD3d 441 [1st Dept 2020]). Here, NYU has provided an affidavit of Michael L. Liebowitz "(Liebowitz"), New York University's Senior Director of Insurance and Risk Management, averring that NYU Langone Hospitals is a wholly owned subsidiary of NYU, and that NYU Langone Hospitals has "no ownership interest in the NYU College of Dentistry and did not operate NYU College of Dentistry or any of its buildings". Moreover, NYU admits that the NYU College of Dentistry is owned by co-defendant New York University.

Based on the foregoing, defendant NYU Medical Center is dismissed.

Accordingly, it is hereby

ORDERED that defendants' motion for summary judgement is granted to the extent that the action is severed and dismissed against defendant NYU MEDICAL CENTER and the balance of the motion is denied.

Any requested relief not expressly addressed herein has nonetheless been considered and is hereby denied and this constitutes the decision and order of the court.

10/6/2025
DATE

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