

Martinez v 561 W. 144 Realty LLC

2025 NY Slip Op 34635(U)

December 1, 2025

Supreme Court, New York County

Docket Number: Index No. 159113/2021

Judge: Leslie A. Stroth

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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**

PRESENT: HON. LESLIE A. STROTH PART 12M

Justice

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INDEX NO. 159113/2021

LUIS MARTINEZ

MOTION DATE 07/29/2024

Plaintiff,

MOTION SEQ. NO. 002

- v -

561 W. 144 REALTY LLC,

**DECISION + ORDER ON
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 002) 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58

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

FACTUAL BACKGROUND

This personal-injury action arises from an incident on May 3, 2021, when Plaintiff Luis Martinez alleges that a portion of the bathroom ceiling in his apartment at 561 West 144th Street, Apartment 42, collapsed while he was showering, causing him injury.

Plaintiff alleges that Defendant owned, managed, operated, maintained, and controlled the premises and had a duty to keep it in good repair.

Plaintiff testified at his deposition that a prior ceiling leak occurred approximately five or six years before the date of the deposition. That leak was repaired, and no further leaks, bubbling paint, or other visible indications of water damage appeared prior to the accident.

Plaintiff also testified that two to three months before the incident, during an inspection for unrelated repairs, the building manager observed what appeared to be mold and had it painted over the same day. Plaintiff admitted he was unsure whether it was mold or simply dirt from shower moisture.

Plaintiff further testified that he did not know the cause of the ceiling collapse.

The building superintendent, Rubin Robles, testified that he was unaware of any complaints, leaks, or ceiling defects in Plaintiff's bathroom prior to the accident and observed that the sheetrock debris was not wet when he inspected the apartment immediately after the collapse.

In opposition, Plaintiff contends that Defendant's discovery of the mold condition approximately two to three months before the accident should have triggered further inspection to determine whether moisture or leaks existed, and that merely painting over the condition without investigation raises an issue of negligent inspection and constructive notice.

Plaintiff points to photographs and alleged inconsistencies in the superintendent's testimony regarding prior repairs and the condition of the debris to argue that issues of fact exist requiring trial.

LEGAL STANDARD

The proponent of a motion for summary judgment must tender sufficient evidence to show the absence of any material issue of fact and the right to entitlement to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 323 [1986]). Once a party has submitted competent proof demonstrating that there is no substance to its opponent's claims and no disputed issues of fact, the opponent, in turn, is required to "lay bare [its] proof and come forward with some admissible proof that would require a trial of the material questions of fact on which [its] claims rest" (*Ferber v Sterndent Corp.*, 51 NY2d 782, 783 [1980]). The party opposing a motion for summary judgment is entitled to all favorable inferences that can be drawn from the evidence submitted (*See Dauman Displays, Inc. v Masturzo*, 168 AD2d 204, [1st Dept 1990]).

DISCUSSION

Defendant argues that it lacked actual or constructive notice of any defective condition in Plaintiff's bathroom ceiling and relies upon deposition testimony indicating that there had been no leaks, complaints, or visible deterioration in the years preceding the accident. It further contends that Plaintiff demonstrated no knowledge of the cause of the collapse and that the mold-like condition observed shortly before the incident was painted over and did not return.

While Defendant has submitted evidence addressing the absence of prior complaints or ongoing leaks, Plaintiff's deposition and the opposition papers assert that Defendant's agents observed mold two to three months before the accident and immediately painted over it without investigating the source of potential moisture.

Plaintiff contends that this condition created a duty to inspect and that the failure to do so raises questions of negligent inspection and constructive notice. See *Blake v City of Albany*, 48 NY2d 875, 877 (1979) (a negligent failure to discover a condition that should have been discovered may constitute a breach of due care). The papers also reference alleged inconsistencies in the superintendent's testimony regarding prior repairs to the ceiling and whether the debris was wet or dry, further raising credibility issues inappropriate for resolution on summary judgment.

Therefore, issues of fact remain as to, *inter alia*, (1) whether the observation of a possible mold condition placed Defendant on constructive notice of a potentially deteriorating ceiling; (2) whether Defendant's response related to the painting over the area without opening or inspecting the ceiling was sufficient to discharge its duty of care; and (3) whether the condition depicted in the photographs exchanged by Plaintiff supports an inference of moisture or ceiling deterioration

developing over time. These factual disputes implicate issues of notice, inspection, and causation that are properly resolved by a trier of fact, not on summary judgment.

Accordingly, summary judgment is not appropriate at this juncture and Defendant's motion is denied. The Court has considered the remaining arguments of the parties and finds such unavailing.


Accordingly, it is hereby

ORDERED, that the motion by Defendant 561 W. 144 REALTY LLC for summary judgment is denied in its entirety; and it is further

ORDERED, that the parties shall appear for a status conference on a date to be set by the Court.

The foregoing constitutes the decision and order of the Court.

12/1/2025
DATE



LESLIE A. STROTH, J.S.C.

CHECK ONE: CASE DISPOSED DENIED NON-FINAL DISPOSITION

APPLICATION: GRANTED SETTLE ORDER SUBMIT ORDER OTHER

CHECK IF APPROPRIATE: INCLUDES TRANSFER/REASSIGN FIDUCIARY APPOINTMENT REFERENCE