

Mitchell v Beaubrun

2025 NY Slip Op 35165(U)

December 31, 2025

Supreme Court, Kings County

Docket Number: Index No. 513795/2020

Judge: Anne J. Swern

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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 31st day of December 2025.

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

JANAE MITCHELL,

Plaintiff,

-against-

GUY BEAUBRUN and MARIE REINE BEAUBRUN,

Defendants.

GUY BEAUBRUN and MARIE REINE BEAUBRUN,

Third-Party Plaintiff,

-against-

COMUNILIFE, INC.,

Third-Party Defendant.

DECISION & ORDER

Index No.: 513795/2020

Return Date: 10/16/2025

Motion Seq.: 005 & 006

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

	NYSCEF Papers Numbered
005	Comunilife’s Notice of Motion & Supporting Documents 116-131
	Affirmation in Opposition.....158
	Reply Affirmation & Supporting Documents 161-163
006	Plaintiff’s Notice of Motion & Supporting Documents 133-154
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Upon the foregoing papers and after oral argument, the decision and order of the Court is as follows:

This is an action for personal injuries allegedly sustained on the premises located at 320 East 31st Street, Apartment 2F, Brooklyn, New York 11228 owned by defendants/third-party

plaintiffs, Guy and Marie Reine Beaubrun (collectively referred to as “Beaubrun”). It is alleged that plaintiff slipped and fell in the apartment due to accumulated water from a leaking radiator.

Beaubrun leased the apartment to third-party defendant, Comunilife, an organization that places individuals with mental or physical illness into housing. The organization assigns caseworkers to work with the individuals and provide support services. Comunilife placed non-party Cedric Steed in the apartment per a sublease. Mr. Steed, who allowed Plaintiff to reside in the apartment, was one of three individuals placed in the apartment. Plaintiff was not a subtenant of Comunilife.

Comunilife and plaintiff have each moved for summary judgment in their favor on the issue of liability.

Third-Party Defendant Comunilife’s motion.

Comunilife moves to dismiss the third-party complaint and plaintiff’s complaint, together with all crossclaims and counterclaims against it because it contends that Comunilife was not responsible to perform structural repairs, per the lease with Beaubrun. Comunilife asserts that Beaubrun’s own testimony that the latter hired non-party Jean Toussaint as an independent handyman to perform maintenance and repairs in and about the time of plaintiff’s accident supports its claim. However, Beaubrun points to Comunilife’s deposition testimony that it sent workers to the apartments to make repairs bolstered by the clause in the lease that Comunilife was responsible for “repairs, replacements and damages, whether or not caused by the act or neglect of the tenant.”

Plaintiff’s motion for summary

Plaintiff has moved this Court for an order granting summary judgment on the issue of notice against Beaubrun, the owners of the property. In support of the motion, plaintiff submits

the affirmation of Mr. Steed, the subtenant, and the deposition transcripts of plaintiff and Beaubrun.

Mr. Steed states that he complained to “Mr. Jean” concerning the radiator before the accident and contends that Mr. Jean attempted at least twice to repair the radiator, but the radiator continued to leak water. In opposition to the motion, Beaubrun argues that Mr. Steed’s affirmation should be disregarded because it directly contradicts plaintiff’s deposition testimony that Comunilife was placed on notice of the leak, not Beaubrun.

Legal Framework & Analysis

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. A failure to demonstrate a *prima facie* entitlement to a 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]).

To construe the terms of contract and determine what the parties intended at the time that it was executed, the Court considers evidence of the parties' actions during their performance of the contract (*see Federal Ins. Co. v Americas Ins. Co.*, 258 AD2d 39 [1st Dept 1999]). Their actions under the contract are considered the 1) most persuasive evidence of the agreed intention of the parties and 2) strongest evidence of the meaning of the contractual terms (*Federal Ins. Co. v Americas Ins. Co.*, 258 AD2d 44). Further, the parties' actions during performance are of greater influence for the practical interpretation of the contract's terms than extrinsic evidence of events leading up to its execution (*Coliseum Towers Associates v County of Nassau*, 2 AD3d 562, 564 [2d Dept 2003]). This is true even though "[e]xtrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous, which is an issue of law for the courts to decide" (*Greenfield v Philles Records, Inc.*, 98 NY2d 569). Their affirmative conduct or failure to act may also evince an intentional relinquishment of a known right or an intent not to claim a purported advantage under the contract (*Hadden v Consolidated Edison Co. of New York, Inc.*, 45 NY2d 466, 469 [1978]).

Both motions are denied.

a) **Comunilife's Motion for Summary Judgment (MS 005)**

The testimony of the witnesses on behalf of Comunilife and Beaubrun establish that the conduct of the parties creates an issue of fact whether they shared responsibility for repairs in the apartments (*Greenfield v Philles Records, Inc.*, 98 NY2d 569). The credibility of the defendants' respective witnesses is a question of fact for the jury (*Cameron v City of Long Beach*, 297 AD2d 774). Moreover, Comunilife has not come forward with evidence that the parties treated the repair of a leaky radiator as a structural repair. This issue was not adequately explored during the depositions. Therefore, without extrinsic evidence of the parties' intent to define structural repairs, the Court cannot decide as a matter of law that a leaky radiator is a structural repair under the contract (*Greenfield v Philles Records, Inc.*, 98 NY2d 569).

It is noted that Comunilife played a dual role at the property. It was the tenant of Beaubrun, but the landlord to Mr. Steed. Under the sublease, Comunilife had the right of access for repairs or replacements or to inspect the condition of the premises. As Mr. Steed's landlord, Comunilife owed a duty to Mr. Steed and plaintiff, a third-party, to repair the premises under §9e and §9g of the sublease. The fact that Mr. Steed allegedly allowed plaintiff to reside in the apartment in violation of the sublease did not relieve Comunilife of its duty to perform repairs in the apartment. The sole remedy for this violation was termination of the sublease (*see* §10). Further, under §10 of the master lease, Comunilife agreed to pay for all repairs, replacements and damages, whether or not caused by the act or neglect of the tenant. Mr. Jean Toussaint was an independent handyman. Therefore, it is a question of fact whether Comunilife as the tenant and sub-landlord (1) absorbed Beaubrun's entire duty to Mr. Steed and plaintiff and (2) whether the lease and sublease unequivocally placed the duty on Comunilife to perform the specific maintenance and repair work that is alleged to have caused plaintiff's damages (*Henry v*

Hamilton Equities, Inc., 34 NY3d 136, 141-142 [2019]; and see *Espinal v Melville Snow Contractors*, 98 NY2d 136, 138-139 [2002]). Comunilife's motion for summary judgment is denied.

b) Plaintiff's Motion for Summary Judgment (MS 006)

The testimony of plaintiff is contradicted by the affidavit of Mr. Steed as to whether Beaubrun or Comunilife were placed on notice of the leaky radiator before plaintiff's accident. Additionally, Beaubrun testified that neither he nor Jean received a call about a repair for the radiator or that it was leaking. Therefore, since plaintiff failed to establish as a matter of law that Beaubrun had actual notice of the leaky radiator; there are issues of credibility that must be determined by a jury (*Xiang Fu He v Troon Management, Inc.*, 34 NY3d 175; *Cameron v City of Long Beach*, 297 AD2d 774). Based on this failure to demonstrate a *prima facie* entitlement to a summary judgment motion, the motion must be denied regardless of the adequacy of Beaubrun's opposing papers (*Ayotte v Gervasio*, 81 NY2d 1063, citing *Alvarez v Prospect Hospital*, 68 NY2d 324).

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

Accordingly, it is hereby

ORDERED that third-party defendant's motion for an order per CPLR 3212 granting summary judgment dismissing the third-party complaint is DENIED (MS 005), and it is further

ORDERED that plaintiff's motion for an order per CPLR 3212 granting summary judgment on liability against defendants Guy and Marie Reine Beaubrun is DENIED (MS 006).

This constitutes the decision and order of the Court.

ENTER:



For Clerks use only:

MG _____

MD _____

Motion seq. # _____

Hon. Anne J. Swern, J.S.C.

Dated: 12/31/2025