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| Jordan v BPP MFNY Empl. LLC |
| 2026 NY Slip Op 31296(U) |
| March 30, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 512471/2024 |
| 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 30th day of March 2026.

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

ALLANTE JORDAN,

Plaintiff(s),

-against-

BPP MFNY EMPLOYER LLC d/b/a BEAM LIVING,
BPP PARKER TOWER PROPERTY OWNER, LLC,
THE BLACKSTONE GROUP, INC., and "JOHN DOE",
said name being fictitious and not yet known,

Defendant(s).

DECISION & ORDER

Index No.: 512471/2024

Calendar No.: 23

Motion Seq.: 001

Return Date: 1/15/2026

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

**NYSCEF
Papers Numbered**

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| Notice of Motion and Supporting Documents | 17-29 |
| Affirmation in Opposition and Supporting Documents | 51-52 |
| Reply Affirmation and Supporting Documents | 54 |

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

This is an action for personal injuries sustained by plaintiff when her apartment ceiling in the living room collapsed on 6/24/2023. Plaintiff has now moved for summary judgment on the issue of liability and dismissing defendants' first and second affirmative defenses.

Plaintiff testified that she first observed a slow leak, bubbling paint and discoloration in the ceiling in and about 12/2022. For the next six months before the accident, plaintiff made continual oral complaints to the building's superintendent, Joe Marzan, and the resident manager, Antonio Rosario. Despite these complaints, the ceiling was not remediated in the months leading to its collapse. During discovery, it was learned that Mr. Marzan passed away and Mr. Rosario is no longer employed by defendants.

It is argued by plaintiff that since Mr. Marzan passed away and Mr. Rosario is no longer employed by defendants, they cannot rebut plaintiff's deposition testimony. Therefore, she is entitled to summary judgment. In opposition, defendant submits the affidavit of Robert Vazquez, the Regional Assistant General Manager for defendants BPP MFNY Employer LLC d/b/a Beam Living and BPP Parker Tower Property Owner, LLC. He states that he searched all Work Orders in defendants' electronic system, and there were no results for plaintiff's apartment. Additionally, plaintiff's tenant file did not reveal any complaints.

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]).

The motion is denied. Mr. Vasquez' affidavit calls into question plaintiff's credibility of when and how many times she made oral complaints to defendants. Although he has no personal knowledge of the complaints, he performed the record search submitted in opposition to the motion. Therefore, the jury must assess the credibility of plaintiff and Mr. Vasquez. *Cameron v City of Long Beach*, 297 AD2d 774).

Further, the doctrine of *res ipsa loquitur* is not available because plaintiff's testimony creates issues of fact concerning whether she contributed to the accident. A jury must determine whether plaintiff exercised caution when entering the room since plaintiff was admittedly aware of a growing condition in the ceiling as she would place buckets under the leaks. (*Baily v 2732 Bainbridge Assoc., LLC*, 243 AD3d 434, 435-436 [1st Dept 2025] [internal citations omitted]; *see also Valdez v Upper Creston, LLC*, 201 AD3d 560, 561 [1st Dept 2022], *citing Dermatossian v New York City Tr. Auth.*, 67 NY2d 219, 226 [1986] [There are three elements of *res ipsa loquitur*, *i.e.*, the event is of the kind that ordinarily does not occur in the absence of someone's negligence; the event was caused by an agency or instrumentality within the exclusive control of the defendant; and the accident was not due to any voluntary action or contribution on the part of the plaintiff.]).

The Court has considered plaintiff's remaining contentions and finds same to be without merit.

Accordingly, it is hereby

ORDERED that plaintiff's motion for summary judgment is DENIED in its entirety, and
it is further

ORDERED that the parties shall appear in the Jury Coordinating Part on 5/8/2026.

This constitutes the decision and order of the Court.

ENTER:

A handwritten signature in blue ink, appearing to be 'AS', written over a faint grid background.

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

Dated: 3/30/2026