

Loor v New York City Hous. Auth.
2026 NY Slip Op 31549(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 155195/2022
Judge: Brendan T. Lantry
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BRENDAN T. LANTRY PART 46M

Justice

-----X

DAISY DIANNE QUIMI LOOR and JAIME PAREJA,

Plaintiffs,

- v -

NEW YORK CITY HOUSING AUTHORITY,

Defendant.

-----X

INDEX NO. 155195/2022

MOTION DATE 10/21/2024

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 1, 5, 19, 26, 40, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

were read on this motion to/for

JUDGMENT - SUMMARY

Background

This personal injury action arises from injuries allegedly sustained when Daisy Dianne Quimi Loor (“plaintiff Quimi”) slipped and fell near the stairs on the fifth floor of the residential building on 60 Amsterdam Avenue, New York, New York 10023 (“the Premises”) owned and operated by defendant New York City Housing Authority (“NYCHA” or “defendant”). Defendant concedes that it owned and operating the subject premises (*see* NY St Cts Elec Filing [NYSCEF] Doc No. 57, defendant’s verified answer at ¶ 3).

Plaintiff Quimi, commencing this action by Summons and Complaint dated June 6, 2022, asserts that, *inter alia*, her fall was due to defendant’s negligence (*see* NYSCEF Doc No. 1). On July 5, 2022, defendant filed their answer (*see* NYSCEF Doc No. 5). On September 28, 2022, plaintiff Quimi moved to amend her notice of claim to add her husband Jaime Pareja (“plaintiff Pareja” and together with “plaintiff Quimi,” “plaintiffs”) as a claimant *nunc pro tunc* (*see* NYSCEF Doc No. 19). That same day, plaintiffs commenced a concurrent action by Summons and Complaint on the same set of allegations, only adding an additional claim for relief for plaintiff Pareja for services, society, companionship and consortium of his said spouse. On October 24, 2022, the Honorable Richard Latin granted plaintiff Quimi’s motion and ordered this action consolidated pursuant to CPLR 602 with *Daisy Dianne Quimi Loor and Jaime Pareja v New York City Housing Authority*, Index No. 158301/2022 to proceed under the instant Index No. 155195/2022 (*see* NYSCEF Doc No. 26).

Plaintiffs claim on July 5, 2021, at approximately 4:00 p.m., she was walking in the hallway near the stairs in question when she slipped and fell due to an accumulation of liquid dripping from the ceiling (*id.*). Defendant contends that neither the accumulation nor leak existed because

plaintiff Quimi had walked by the scene of the accident approximately 5-10 minutes prior to the alleged incident and noticed no wetness or leak (*see* NYSCEF Doc No. 70 at 6-7).

Plaintiffs now move, by Notice of Motion dated October 21, 2024, for an order (1) pursuant to CPLR 3212 granting summary judgment on the issue of liability in favor of plaintiffs; (2) directing that the liability trial issues at trial will only address the issue of plaintiffs' comparative negligence (if any); and (3) for such other and further relief as the court deems just and proper (*see* NYSCEF Doc No. 52-67). In support of their motion, plaintiffs submitted the pleadings, an attorney affirmation, deposition transcripts, videos, photographs, NYCHA documents. Defendant opposes the motion. For the reasons set forth herein, plaintiffs' motion is denied.

Plaintiffs' Motion for Summary Judgment

In support of their motion, plaintiffs submitted; the pleadings for both the first and second action, defendant's answer, a copy of the court's consolidation order, the note of issue, an attorney affirmation, transcripts of plaintiff Quimi, plaintiff Pareja, and their neighbor's deposition testimonies, a transcript of NYCHA Assistant Superintendent Damone Thompson deposition, three videos of the accident, photos of the accident location, and the work order for the alleged leak titled 'NYCHA Work Order' ("the NYCHA Work Order") (*see* NYSCEF Doc Nos. 52-67).

Plaintiffs claim that a leak had caused water to drip from the ceiling beginning the day before the alleged fall (*see* NYSCEF Doc No. 53 at 2). Plaintiff claims that on July 4, 2021, at approximately 4:00 p.m. their neighbor, nonparty David Hoarau, reported a leak near the stairs on the fifth floor of the Premises to the official NYCHA Customer Contact Center (*see id.*). Mr. Hoarau's call resulted in the production of the NYCHA Work Order. The NYCHA Work Order indicates that on Sunday, July 4, 2021, at 4:04 pm, an individual named Catalina Lazansky¹ reported "debris or spill," "a leak from above on the 5th hallway" and "lots of water on floor" (*see* NYSCEF Doc No. 66). Plaintiff Quimi testified that she had not seen the alleged water or leak prior to slipping (*see* NYSCEF Doc No. 60 at 77 lines 2-6; at 80 lines 7-18).

Plaintiffs contend that they have made a prima facie showing of entitlement to summary judgment based on the showing that there are no triable issues of fact which would preclude this court from awarding summary judgment to plaintiffs on the element is liability. Plaintiffs further state that defendant has admitted it both owned and had a duty to maintain the subject premises (*see* NYSCEF Doc No. 53, affirmation in support at 2). Plaintiffs contend that "[i]t is clear and undisputed" that plaintiff Quimi was caused to slip and fall on water which had leaked from the ceiling (*id.*). Plaintiffs further contend that defendant had actual notice of the unreasonably dangerous condition based on Mr. Hoarau's reporting of the leak to NYCHA the day prior to the accident and the NYCHA Work Order (*see* NYSCEF Doc No. 53 at 3). Finally, plaintiffs contend that the absence of signage at the site of the accident demonstrates defendant's failure to warn.

¹ Plaintiffs contend that Catalina Lazansky is the mother of David Hoarau and the leaseholder for the neighboring apartment to plaintiffs (*see* NYSCEF Doc No. ¶ 4).

Defendant's Opposition to Plaintiff's Motion for Summary Judgment

Defendant opposes the motion, contending that the testimonies of plaintiff Quimi and plaintiff Pareja regarding their typical walking route raise issues of comparative negligence and credibility (*see* NYSCEF Doc No. 70). Defendant additionally argues that plaintiff's position relies on judgments of reasonableness to determine the danger of the alleged hazard, notice of the hazard, and time to remedy the hazard and therefore should be determined by a jury as triable issues of fact (*see id.* at 13-16). Defendant further argues that the video evidence submitted by plaintiff does not depict a hazardous condition as plaintiff contends and that Mr. Hoarau's testimony further contradicts the video footage (*see id.*). Defendants submit that the report made by an individual on July 4, 2021, is inconsistent with the testimony of Mr. Hoarau (*see id.*). Defendants further note that plaintiff Quimi testified that the responding paramedics noticed grease at the scene of the incident and that same could be an alternative cause of her injury (*see id.*). In support of their opposition, defendant submitted deposition transcripts of plaintiff Quimi and plaintiff Pareja (*see* NYSCEF Doc Nos. 71-73).

Plaintiff's Reply Affirmation in Response to Defendant's Opposition to Plaintiff's Motion for Summary Judgment

Plaintiff, in reply, submits that there is no evidence establishing that plaintiff Quimi was present at the location of the accident earlier that day (*see* NYSCEF Doc No. 74 at 2-5). Plaintiff further contends that, even assuming arguendo that she had been present, any failure to recognize the condition would bear on comparative negligence rather than liability (*see id.* at 5-10). Plaintiff also asserts that the photographic and video evidence demonstrates the existence of a wet floor and a leaking ceiling (*see id.* at 10-12). Additionally, plaintiff maintains that the identity of the individual who initiated the work order is immaterial, and that plaintiff Quimi did not testify that she slipped on grease (*see id.* at 12-14).

Discussion

A movant seeking summary judgment by motion "must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]). "Failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers" (*id.*). Once the movant has met this burden, the burden shifts to the opposing party "to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action" (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]). In considering a motion for summary judgment the "facts must be viewed in the light most favorable to the non-moving party" (*Vega v Restani Constr. Corp.*, 18 NY3d 499, 502 [2012] [internal quotation marks omitted]). Moreover, "the motion court should draw all reasonable inferences in favor of the nonmoving party and should not pass on issues of credibility" (*Assaf v. Ropog Cab Corp.*, 153 AD2d 520, 521 [1st Dept 1989]).

To establish a defendant's liability in a slip-and-fall case, a plaintiff must demonstrate that the injury was caused by a hazardous condition on the defendant's premises and that the defendant had either actual or constructive notice of it and failed to remedy it within a reasonable time (*see*

Gordon v American Museum of Natural History, 67 NY2d 836, 501 [1986]). Evidence that a principal advised an agent to remedy a dangerous condition is sufficient to demonstrate actual notice thereof (see *Navedo v 250 Willis Ave. Supermarket*, 290 AD2d 246, 247 [1st Dept 2002]). “A defendant demonstrates lack of constructive notice by producing evidence of its maintenance activities on the day of the accident, and specifically that the dangerous condition did not exist when the area was last inspected or cleaned before plaintiff fell” (see *Raghu v New York City Hous. Auth.*, 72 AD3d 480 [1st Dept 2010] [building janitor’s testimony that he swept a stairwell routinely as part of his duties was sufficient to shift the burden of summary judgment from defendant to plaintiff]; *Vilomar v 490 E. 181st St. Hous. Dev. Fund Corp.*, 50 AD3d 469 [1st Dept 2008]).

Plaintiff’s testimonial description, standing alone, of the water on the floor cannot be properly relied on to conclude as a matter of law the hazardousness of a wet floor (see *Grossman v TCR*, 142 AD3d 854, 856 [1st Dept 2016] [plaintiff’s description of the water on the floor as “beads” cannot be properly relied on to conclude as a matter of law that the condition was non-hazardous or a hazard]; see *Trincere v County of Suffolk*, *Trincere v Cnty. of Suffolk*, 232 AD2d 400 [2d Dept 1996], aff’d, 90 NY2d 976 [1997] [“Of course, in some instances, the trivial nature of the defect may loom larger than another element.”]). Determining whether a dangerous or defective condition exists on the property of another to create liability is generally a question of fact for the jury (see *id.*). In determining whether summary judgment is warranted, the court must examine the facts presented, which may include an analysis of “the width, depth, elevation, irregularity and appearance of the defect along with the ‘time, place and circumstance’ of the injury” (see *id.* quoting *Caldwell v Village of Is. Park*, 304 NY 268, 274 [1952]).

Here, in moving for summary judgment, plaintiff argues that the present matter is almost identical to *Graham v. New York City House. Auth.* (229 AD3d 605 [2d Dept 2024]). The court disagrees. In *Graham*, plaintiff established prima facie entitlement to judgment as a matter of law on the issue of liability by demonstrating that defendant had actual notice of a recurring leak (*id.* at 607-609). In making this determination, the Appellate Division, Second Department specifically noted its reliance on the testimony of the defendant’s supervisor caretaker (*id.* at 607). There, the supervisor caretaker testified that she had been aware of the recurring leak for “at least one year” prior to plaintiff’s accident, that “the only remedial measure taken by building employees in response was spot mopping,” and “conceded that the recurring leak caused a slip and fall hazard” (*id.* at 607-608 [internal quotation marks omitted]). By contrast, in the present case, this alleged leak may have existed for, at most, approximately 24 hours. Plaintiffs have not established that defendant was aware of the alleged leak’s recurrence, and thus, there is an issue of fact as to whether defendant even knew that the leak existed and whether same was the causation of plaintiff’s injury (see NYSCEF Doc No. 74 ¶¶ 16, 21-22, *contra* NYSCEF Doc No. 53 ¶ 83).

As noted, *supra*, the alleged leak—as well as the presence of water of traceable origin to said leak—at the incident location is *sine qua non* of the claim brought by plaintiff. The existence of the alleged leak is material to the issue of liability in plaintiff’s claim, and its importance cannot be overstated. Upon review of the evidence submitted by the parties, the court finds that there is an issue of fact regarding the condition of the premises at the time of the incident (*compare* NYSCEF Doc No. 74 ¶ 24, Doc No. 60 at lines 10-11, Doc No. 65 ¶ 6, *with* Submitted Videos²,

² Videos referenced by the parties taken at the time of the accident include:

and NYSCEF Doc No. 66, Thompson tr at 24 lines 11-25; at 40-46; at 124-25; at 130-32). The videos submitted do not appear to show water dripping nor a puddle present as described in plaintiff's brief (see NYSCEF Doc No. 74 ¶¶ 24, 30, 32). The video footage depicts a floor exhibiting dampness, dirty shoe marks, and a cracked ceiling that does not appear to leak water at any point during the more than five minutes of video plaintiff asserts were recorded immediately following the alleged slip. These videos raise substantial questions as to whether the asserted condition was, in fact, unreasonably dangerous, and underscore the inconclusive nature of the evidence on that point (see *Trincere*, 90 NY2d 976, 977; *Hutchinson v Sheridan Hill House Corp.*, 26 NY3d 66, 84 [2015] [summary judgment should not be granted in a case in which “the photographs and descriptions [are] inconclusive”]).

Plaintiff's videos, the testimony of Mr. Thompson and the NYCHA Work Order raise questions regarding the existence of a leak. Plaintiff argues that a 24-hour period is sufficient time to immediately begin remedying a leak based on the testimony of Mr. Thompson (see NYSCEF Doc No. 74 at 6). Mr. Thompson's testimony outlined the standard operating procedure for a reported leak, which is for the responding caretaker to assess the source of reported water (see NYSCEF Doc No. 67). If that source is determined to be a leak, the responding caretaker is to lay down warning signage, notify the Superintendent Caretaker of same and hold position until the Superintendent Caretaker arrived to assess the leak (see *id.*). The Superintendent Caretaker would then alert maintenance if there was a leak, who would then in turn arrive quickly to remedy the leak (*id.* at 41-46).

In the situation of a leak, Mr. Thompson testified that, as the alerted party, he would record the leak in his logbook and that the work order would reflect his subsequent contacting of the maintenance team (*id.* at 64, 88). Mr. Thompson also testified that in a situation where he personally responded to a work order, he would have followed a similar procedure in putting out a wet floor sign, determining if there was a leak, and if there was one coming from the ceiling, he would have called maintenance and recorded the leak in his logbook. Mr. Thompson testified that if there were merely a spill, such would not be recorded in his logbook (NYSCEF Doc No. 67 at 63, 86-88; NYSCEF Doc No. 40). Mr. Thompson further testified that, had a maintenance worker responded, they would have generated their own separate work order in the same work order system (NYSCEF Doc No. 67 at 65).

Neither party asserts that any wet floor signs or similar indicators were placed at or around the accident site (see generally NYSCEF Doc Nos. 53, 70, 74). The NYCHA Work Order presented to the court did not contain any notes from the janitor (also known as a 'caretaker') confirming they had observed a leak or reported any such leak to their supervisor (see NYSCEF Doc No. 66). The NYCHA work order further lacks a tick in the box for “Maintenance” (NYSCEF Doc No. 66). There is no separate work order before the court for review and consideration. Upon review of Mr. Thompon's logbook, the court notes that same does not contain an entry regarding

(1) *Daisy Quimi Loor - Video After Accident 1*, Youtube (May 21, 2024), <https://youtu.be/7lkq4y628Gs>; and
(2) *Daisy Quimi Loor - Video After Accident 2*, Youtube (May 21, 2024), <https://youtu.be/GsQM7augw9M>
(NYSCEF Doc No. 53, at 10).

(3) *Daisy Quimi Loor - Video after Accident from prior lawyer 2 184250*, Youtube (Oct. 8, 2024), <https://www.youtube.com/shorts/i7kDxgZDadA> (NYSCEF Doc No. 53, at 8).

the alleged leak and instead reflects only what appears to be a routine notation of Mr. Thompson's hours worked on July 4, 2021—"8:00 to (sic) 8:00 = 12 hrs." (see NYSCEF Doc No. 40 at 49).

Conflicting deposition testimony may evince a triable issue for a jury, as a "jury alone may weigh conflicting evidence and determine the credibility of witnesses..." (*Bledsoe v Ctr. for Hum. Reprod.*, 228 AD3d 96, 101 [1st Dept 2024] [finding an issue of fact precluding summary judgment exists because of the contradictory deposition testimony]; *Callahan v Guneratne*, 78 AD3d 753, 754 [2d Dept 2010] [summary judgment improper where defendant doctors' submitted expert opinions contradicted defendants' own deposition testimony]). Here, Mr. Thompson's testimony that a leak was not reported to him contradicts plaintiffs' testimony that the leak was in fact reported and thus, creates an issue of material fact. Plaintiff Quimi's testimony that she did not see the leak despite walking by the alleged accumulation of water and leak also seems to contradict the testimony of Mr. Hoarau that he "could see that the ceiling was actively dripping water" and plaintiff Quimi was laying on the "floor which was all wet" at the time of the accident (compare NYSCEF Doc No. 70 at 6-7 with NYSCEF Doc No. 65 ¶ 6).

Lastly, the court disagrees with plaintiff's assertion that plaintiff Quimi's use of the word "grease" in her deposition is entirely "irrelevant to the issue of what caused her to slip and fall" (see NYSCEF Doc No. 74 ¶ 29). The alleged leak at the incident location is a *sine qua non* of plaintiff's claim, and therefore the existence or nonexistence of "grease" is material to the element of liability.

Plaintiffs' counsel excuses the mention of "grease" in the 50-h hearing minutes as attributable to an error on the part of either the Spanish interpreter or the reporter in "mis-transcrib[ing] the response."

CPLR 3116[a], entitled Signing, outlines the process for challenging the text of a deposition transcript. The statute provides:

The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. **No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.** (emphasis added)

The 50-H hearing was held on May 11, 2022 (NYSCEF Doc. Nos. 71-72). The Plaintiffs raise the issue of a failed transcription or failed translation of the Plaintiff's deposition for the first time on December 27, 2024 – approximately 2 ½ years after the 50-H hearing transcript was sent to the Plaintiff for review on May 18, 2022. Plaintiff provides no excuse for the delay and the record is bereft of information sufficient to support Plaintiffs' claim of a failed transcription or failed translation (see *Marzan v. Persaud*, 29 AD3d 652, 653 [2d Dept 2006]).

Plaintiff Quimi’s use of the word “grease” in her 50-H transcript supports the Defendant’s position that summary judgment should be denied


Based upon the evidence presented, the court finds that there remains an issue of fact as to whether at the time of the incident, a leak did or did not exist and whether defendant was on notice of a recurring condition. Rather, these are facts for a jury to determine (see *Bledsoe*, 228 AD3d at 101). Therefore, the court finds that plaintiffs have failed to make a prima facie showing of entitlement to summary judgment on the issue of liability as a matter of law.

Accordingly, it is hereby

ORDERED, that plaintiffs’ motion for summary judgment on the element of liability is DENIED; and it is further

ORDERED that the Clerk is directed to enter judgment accordingly.

This constitutes the decision and order of the Court.

<u>4/10/2026</u> DATE		 BRENDAN T. LANTRY, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION
	<input type="checkbox"/> GRANTED	<input type="checkbox"/> GRANTED IN PART
	<input checked="" type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT
		<input type="checkbox"/> REFERENCE