

Khartchina v Cohen
2026 NY Slip Op 31550(U)
April 10, 2026
Supreme Court, New York County
Docket Number: Index No. 156325/2022
Judge: Brendan T. Lantry
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. BRENDAN T. LANTRY PART 46M

Justice

-----X

ALEXANDER KHARTCHINA

Plaintiff,

- v -

PETER J. COHEN,

Defendant.

-----X

INDEX NO. 156325/2022

MOTION DATE 06/13/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63

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

This is an action to recover damages for personal injuries allegedly sustained by Alexander Khartchina (“plaintiff”) sustained on July 2, 2021, when he fell from a ladder while performing work at unit 8F of 201 East 25th Street, New York, New York (“the Building”), a co-op.

In motion sequence number 002, defendant Peter J. Cohen (“defendant”) moves, pursuant to CPLR 3212, for summary judgment dismissing the complaint.

BACKGROUND

On the day of the accident, defendant was the owner of the shares of stock appurtenant to Unit 8F at the Building. Plaintiff was a handyman at the Building.

Plaintiff’s Deposition Testimony (NYSCEF Doc. No. 36)

Plaintiff testified that on the day of the accident, he was employed by non-party Douglas Ellman, as a handyman at the Building (plaintiff’s tr at 11). His supervisor was Kevin Joyce (“Joyce”) (*id.* at 16). On the day of the accident, Joyce directed plaintiff to go to Unit 7F at the

Building to address a leak in the kitchen ceiling (*id.* at 15). When plaintiff arrived at Unit 7F, he saw water “pouring from the ceiling, coming from the eighth floor” (*id.* at 16-17).

Plaintiff, along with a porter named “Evan” began mopping the water up, and Joyce directed them to lay down a plastic drop cloth (*id.* at 17). Joyce then directed plaintiff to use an electric saw to cut a hole in the ceiling to release the water and find the source of the leak (*id.* at 18). Plaintiff set a ladder up on top of the drop cloth (*id.* at 19). He successfully cut one hole but needed to cut another. He moved the ladder, climbed it, and began cutting a second hole. He then slipped from the ladder and fell to the ground (*id.* at 23). He believed that “the ladder slid underneath [him] because there was water and the slippery surface all over” (*id.* at 23). Plaintiff clarified that the slippery surface was the drop cloth itself (*id.* at 23). No one was holding the ladder for him (*id.* at 22).

Plaintiff testified that the maintenance team wanted to get into Unit 8F, but they were unable to do so (*id.* at 18). He never went to Unit 8F (*id.* at 26).

Defendant’s Deposition Testimony (NYSCEF Doc. No. 37)

Defendant testified that on the day of the accident, he was the owner of Unit 8F at the Building. He owned Unit 8F for approximately 40 years (defendant’s tr at 8). Defendant also owns a house in Sag Harbor, NY. He splits his time between the two homes (*id.* at 14). Aside from kitchen renovations in 2000, defendant has not remodeled his apartment (*id.* at 19).

On the day of the accident, defendant was at his Sag Harbor property. He learned of the leak from the Building’s doorman, who called him early in the morning (*id.* at 26). Defendant called his girlfriend’s mother, Mary Tolman (Tolman), who had a key for the apartment, and asked her to check on what was happening (*id.* at 29). When Tolman arrived, she reported to defendant that there was a leak coming from his bedroom HVAC unit, dripping onto the floor (*id.* at 29).

Defendant also testified that the Building had recently installed a new HVAC system in the Building (*id.* at 33-34). The Building was responsible for installing and maintaining the HVAC (*id.* at 34). The Building paid for all repair work in his apartment (*id.* at 38).

Defendant was not aware of any leak in Unit 7F. He only learned of it when he was served the complaint in this action (*id.* at 35). Defendant also testified that he believed the Building had maintained, since he took possession of the apartment, a set of his apartment keys to be used for emergencies (*id.* at 28, 53).

Defendant testified that after the leak, the HVAC pipes were removed and replaced by the Building co-op (*id.* at 43). He was informed that there was a blockage in a pipe that caused the leak (*id.* at 44).

Deposition of Kevin Joyce (Resident Manager) (NYSCEF Doc. No. 38)

Kevin Joyce testified that, on the day of the accident, he was the resident manager for the Building (Joyce tr at 28). He was familiar with the leak. The leak was caused by “a condensate clog in the fan coil unit,” which caused water to back up into the apartment (*id.* at 9, 10).

Specifically, he testified that after learning of a leak into 7F, he entered apartment 8F and “found that there was water all over the floor that led back to the condensation, the fan coil unit” (*id.* at 11). The leak was extensive enough that the Building had to replace defendant’s flooring (*id.* at 48).

Joyce testified that condensation leaks are not uncommon, occurring “five or six” times a year in the Building (*id.* at 15). They often clear with dissolving liquids, but when that does not work, the best practice is to “open up the wall, [] cut out all the piping . . . and [re-pipe] everything with a larger pipe” (*id.* at 23). That is what was done in defendant’s apartment. Joyce reiterated that any issues arising from the HVAC “are the responsibility of the building” (*id.* at 31).

As to apartment 7F, Joyce recalls that the ceiling was “dripping” in several spots in the kitchen and that he directed plaintiff to lay down a tarp (*id.* at 19-20). He also directed plaintiff to cut two holes in the ceiling to help the water drain quicker (*id.* at 20). He did not witness the accident and did not learn of it until the following day (*id.* at 20).

Deposition Testimony of Evan Cruz (Building Porter) (NYSCEF Doc. No. 39)

Evan Cruz testified that on the day of the accident, he was a porter at the Building. He was present in apartment 7F at the time of the accident. He recalled that there was a “small little puddle” on the kitchen floor that they had to clean up (Cruz tr at 25). Cruz explained that when plaintiff cut a hole in the ceiling, a lot of water came out, making everything wet and slippery (*id.* at 30). When plaintiff was climbing down the ladder, Cruz saw him fall from the ladder.

Cruz never went to defendant’s apartment (*id.* at 26). He testified that he later heard from Joyce that the leak was caused by “a line” (*id.* at 48). He then clarified that he understood the “line” to be a refrigerator line (*id.* at 48).

The Proprietary Lease (NYSCEF Doc. No. 57)

The proprietary lease (“the Lease”) for the Building includes language that a co-op unit owner’s responsibilities “shall not include gas, steam, water or other pipes or conduits within the walls, ceilings, or floor or air conditioning or heating equipment which is part of the standard building equipment” (Lease, attached to plaintiff’s opposition, exhibit 7, ¶ 18 [a]; NYSCEF Doc. No. 57).

DISCUSSION

“[T]he proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact. Failure to make such prima facie showing requires denial

of the motion, regardless of the sufficiency of the opposing papers” (*Smalls v AJI Indus., Inc.*, 10 NY3d 733, 735 [2008]; quoting *Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986] [emphasis omitted]). “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 Corp.*, 100 NY2d 72, 81 [2003]). “[I]t is insufficient to merely set forth averments of factual or legal conclusions” (*Schiraldi v U.S. Min. Prods.*, 194 AD2d 482, 483 [1st Dept 1993] [internal quotation marks and citation omitted]). “If there is any doubt as to the existence of a triable issue, the motion [for summary judgment] should be denied” (*Grossman v Amalgamated Hous. Corp.*, 298 AD2d 224, 226 [1st Dept 2002]; citing *Rotuba Extruders, Inc. v Ceppos*, 46 NY2d 223, 231 [1978]).

Procedural Issues

In his opposition, plaintiff raises several purported procedural defects and asks the court to deny defendant’s motion based thereon. None of the arguments raised by plaintiff necessitate dismissal of the motion.

First, while plaintiff objects to the specifics of defendant’s counsel’s attestation because it does not mirror that set out in CPLR 2106, such a violation may be timely cured pursuant to CPLR 2101(f). Pursuant to CPLR 2101(f),

A defect in the form of a paper, if a substantial right of a party is not prejudiced, shall be disregarded by the court, and leave to correct shall be freely given. The party on whom a paper is served shall be deemed to have waived objection to any defect in form unless, within fifteen days after the receipt thereof, the party on whom the paper is served returns the paper to the party serving it with a statement of particular objections.

Here, defense counsel filed the instant motion on June 13, 2025. Defense counsel certified that on that same day, she served the instant motion and the accompanying material onto plaintiff’s counsel via NYSCEF. Plaintiff raises the objection to the form of defendant’s papers in their

opposition dated September 12, 2025, approximately three months after the filing of the defendant's motion. There is no evidence to indicate that plaintiff raised their objection to the form of defendants' papers within the fifteen days after the receipt of the instant motion and, therefore, the objection is deemed waived (*see* CPLR 2101(f)). The court further notes that defendant's reply papers include the requisite language pursuant to CPLR 2106.

Second, plaintiff argues that the motion must be denied because the transcripts annexed to defendant's motion are unsigned. However, "CPLR 3116(a) allows a deposition transcript to be admitted as though it were signed, especially where [] the transcript was certified as accurate" (*Zabari v City of New York*, 242 AD2d 15 [1st Dept 1998] [internal citations omitted]). Here, the transcripts are so certified as accurate. Therefore, this portion of plaintiff's argument is unavailing.

Third, plaintiff argues that defendant's expert's opinion must be disregarded by the court because the expert was not disclosed prior to the filing of the motion. However, pursuant to CPLR 3212(b), "[w]here an expert affidavit is submitted in support of, or opposition to, a motion for summary judgment, the court shall not decline to consider the affidavit because an expert exchange pursuant to subparagraph (i) of paragraph (1) of subdivision (d) of section 3101 was not furnished prior to the submission of the affidavit." Accordingly, plaintiff's argument is unavailing as the plain text of CPLR 3212(b) demands the contrary.

The Negligence Claim

"In order to prevail on a negligence claim, a plaintiff must demonstrate (1) a duty owed by the defendant to the plaintiff, (2) a breach thereof, and (3) injury proximately resulting therefrom. In the absence of a duty, as a matter of law, there can be no liability. The definition and scope of an alleged tortfeasor's duty owed to a plaintiff is a question of law"

(*Pasternack v Laboratory Corp. of Am. Holdings*, 27 NY3d 817, 825 [2016] [internal citations and quotation marks omitted]).

Here, defendant's primary argument is that he had no duty of care towards plaintiff. Specifically, he argues that the accident was caused by a clogged pipe within the walls of the Building and that he had no duty to maintain the pipe, because the Lease delegates the duty to maintain "pipes or conduits within the walls" to the Building (*see* NYSCEF Doc. No. 57, ¶ 18). Based on this, defendant argues that he cannot be responsible for injuries arising from a defective condition within the walls.

In opposition, plaintiff argues that there is a question of fact as to whether the leak came from the pipe in the wall, or from plaintiff's refrigerator line, which is within the unit itself (and therefore defendant's responsibility). This argument is unavailing. The only evidence before the court that demonstrates that the accident was caused by the refrigerator line comes from Cruz's deposition testimony, where he stated that he heard from Joyce that the refrigerator caused the leak (Cruz tr at 39 and 48). Notably, Joyce himself testified that he directly witnessed the leak and traced it to its source – a clog in pipes housed inside the walls (Joyce tr 23). Joyce never referred to a refrigerator leak.

Of course, Cruz's testimony constitutes hearsay (*see e.g. Hochhauser v Electric Ins. Co.*, 46 AD3d 174, 178 [2d Dept 2007] ["[h]earsay is a statement made out of court . . . offered for the truth of the fact asserted in the statement"] [citation and internal quotation marks omitted]). "Hearsay alone is insufficient to defeat summary judgment" (*Aquino v Kuczinski, Vila & Assoc., P.C.*, 39 AD3d 216, 221 [1st Dept 2007]). Cruz's hearsay testimony is unsupported by any other evidence supporting such a theory of the accident. Accordingly, the defense has established that the incident occurred due to a clog in a pipe within the wall and that, pursuant to the express terms of the lease, defendant is not responsible for same. Contrary to plaintiff's assertion, Cruz's hearsay testimony does not raise a question of fact as to the source of the leak.

Next, plaintiff argues that defendant was responsible for monitoring the HVAC drain pan to make sure that it did not overflow. Plaintiff specifically argues that defendant failed to proffer the last time he checked the drain pan. This argument is also unavailing. As stated, *supra*, the leak was derived from clogged piping within the wall – not the drain pan. The drain pan was merely the emission point of the leak caused by the blocked pipe. In other words, the drain pan “merely furnished the condition or occasion for the occurrence of the event” and was not “one of its causes” (*Escalet ex rel. Quinonez v New York City Hous. Auth.*, 56 AD3d 257, 258 [1st Dept 2008]; quoting *Sheehan v City of New York*, 40 NY2d 496, 503 [1976]). “The law draws a ‘sharp distinction’ between such a facilitating condition and an act that is a proximate cause of an accident” (*id.* at 258; quoting *Lee v New York City Hous. Auth.*, 25 AD3d 214, 219 [1st Dept 2005]). Similarly, the Building’s inability to immediately gain access to defendant’s apartment is not a cause of the leak, nor was it a cause of plaintiff’s slip and fall.

Accordingly, defendant has established a prima facie showing that, pursuant to the express terms of the Lease, he owed no duty to plaintiff to maintain the alleged defective pipe within the wall, and therefore, he is entitled to judgment as a matter of law. The burden then shifts to the plaintiff, who has failed to raise a triable issue of fact. As the court determines the motion on these grounds, the court need not address the parties’ remaining contentions.

CONCLUSION AND ORDER

For the foregoing reasons, it is hereby

ORDERED that the motion of defendant Peter J. Cohen, pursuant to CPLR 3212, for summary judgment dismissing the complaint against him (motion sequence number 002) is granted, and the complaint is dismissed with costs and disbursements as taxed by the Clerk of the Court, and the Clerk of the Court is directed to enter judgment accordingly.

This constitutes the decision and order of the court.

4/10/2026

DATE


BRENDAN T. LANTRY, J.S.C.

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