

**Danzy v 660 Hegeman Assoc. LLC**

2026 NY Slip Op 31735(U)

April 21, 2026

Supreme Court, Kings County

Docket Number: Index No. 503117/2021

Judge: Anne J. Swern

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This opinion is uncorrected and not selected for official publication.

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 22<sup>nd</sup> day of April 2026.

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

VENITA DANZY,

*Plaintiff(s),*

*-against-*

660 HEGEMAN ASSOCIATES LLC, and  
POSTGRADUATE CENTER FOR MENTAL HEALTH,

*Defendant(s).*

**DECISION & ORDER**

Index No.: 503117/2021

Calendar No.: 12, 13

Motion Seq.: 5 & 6

Return Date: 2/26/2026

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

**NYSCEF  
Papers  
Numbered**

MS005	Plaintiff’s Notice of Motion with Supporting Documents.....	129-152
	Affirmation in Opposition with Supporting Documents .....	168-177
	Reply Affirmation .....	195
MS006	Postgraduate Center’s Notice of Motion with Supporting Documents.....	153-167
	Affirmation and Exhibits in Opposition .....	178-187
	Reply Affirmation .....	190

*Upon the foregoing papers, plaintiff’s motion to reargue this Court’s Order dated 8/26/2026 is granted in its entirety (MS 005) and defendant Postgraduate Center for Mental’s Health’s motion to reargue the same order is granted, and upon reargument, the Court adheres to its initial determination (MS 006) as follows:*

This is a personal injury action commenced by plaintiff arising out of a trip and fall in a hole in the living room floor in plaintiff’s apartment located at 660 Hegeman Avenue, Apartment 7A, Brooklyn, New York. The building is owned by defendant 660 Hegeman Associates LLC (Hegeman), an out-of-possession landlord, and leased to Postgraduate Center for Mental Health

(Postgraduate). Postgraduate subleased the apartment to plaintiff, a participant in Postgraduate's "Scattered Site Housing Program." Both defendants previously moved for summary judgment dismissing the complaint (MS 002 and 004) based on the alleged absence of actual or constructive notice of the hole in plaintiff's living room floor. Hegeman and Postgraduate did not oppose the other's motion for summary judgment. Hegeman did oppose Postgraduate's separate motion to dismiss all cross claims against it (MS 003).

By an order dated 8/26/2025, the Court granted Hegeman's motion for summary judgment dismissing plaintiff's complaint and Postgraduate's crossclaims holding that, plaintiff failed to rebut Hegeman's prima facie entitlement to summary judgment with either her deposition transcript or an affidavit (MS 002). Plaintiff has now moved to reargue this decision on the basis that the Court overlooked facts and misapplied the law relating to actual and constructive notice. In the order, the Court also denied Postgraduate's motions (MS 003 and 004) holding that, a jury must determine whether its caseworker violated the provision of the sublease that imposed an affirmative duty on Postgraduate to request that the out-of-possession landlord perform repairs in the apartment. Postgraduate has also moved to reargue this decision.

It is well established a motion for leave to reargue is addressed to the sound discretion of the court and affords the moving party an opportunity to show that the court overlooked or misapprehended matters of fact or the law, or for some reason mistakenly arrived at its earlier decision (see CPLR § 2221 [d] [2]; *JPMorgan Chase Bank, N.A. v Novis*, 157 AD3d 776, 778 [2d Dept. 2018]; *Cioffi v S.M. Foods, Inc.*, 129 AD3d 888, 891 [2d Dept. 2015]). Such a motion "shall not include any matters of fact not offered on the prior motion" (*Williams v Abiomed, Inc.*, 173 AD3d 1115, 1116 [2d Dept. 2019] [internal citations omitted]; CPLR § 2221 [d] [2]). Such a

motion is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided (*Williams v Abiomed, Inc.*, 173 AD3d 1116).

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]).

Plaintiff's motion to reargue the granting of summary judgment to Hegeman is granted, and upon reargument, the motion for summary judgment is denied; the complaint and Postgraduate's crossclaims are reinstated (*JPMorgan Chase Bank, N.A. v Novis*, 157 AD3d 778).

In opposition to the underlying motion, plaintiff failed to point to page 34 of her deposition transcript where she testified that she notified Hegeman's superintendent, Josh Gill, of the specific hole in the living floor (NYSCEF 131). This is now brought to the Court's attention that it overlooked this portion of the plaintiff's testimony. Further, as to Postgraduate, Mr. Gill told her that the caseworker had put in a work order (*id.*, pp.35-36). This testimony creates an issue of credibility to be resolved by a jury (*Cameron v City of Long Beach*, 297 AD2d 774). If the jury finds that plaintiff notified Mr. Gill, the jury must then determine if he was negligent by not notifying the appropriate person at Hegeman to create a work order.

Based on plaintiff's testimony, the Court adheres to its initial determination denying Postgraduate's motions. An issue of fact exists as to whether plaintiff notified her Postgraduate caseworker of the specific hole in the living room floor. Plaintiff testified that the agency told her that they would have somebody come out and fix the floor, but that she did not know for sure if the agency put in a work order. However, she received confirmation from Mr. Gill that the landlord was notified of the hole (NYSCEF 131, pp.35-36). The jury must weigh the parties' credibility to determine whether Postgraduate through its caseworker violated the sublease's provision that imposed an affirmative duty on it to request that the out-of-possession landlord perform repairs in the apartment. (*Cameron v City of Long Beach*, 297 AD2d 774). It is the Postgraduate's alleged violation of its duty to arrange for repairs with the out-of-possession landlord rather than any duty to perform the repairs itself, that the jury must determine is the

proximate cause of plaintiff's injuries. Postgraduate owed this duty to both plaintiff/subtenant and the landlord.

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

Accordingly, it is hereby

ORDERED that plaintiff's motion to reargue this Court's order dated 8/26/2025 is granted and upon reargument, defendant 660 HEGEMAN ASSOCIATES LLC's motion for summary judgment is denied in its entirety (MS 005), and it is further

ORDERED that plaintiff's complaint and co-defendant POSTGRADUATE CENTER FOR MENTAL HEALTH's crossclaims are reinstated as to defendant 660 HEGEMAN ASSOCIATES LLC, and it is further

ORDERED that POSTGRADUATE CENTER FOR MENTAL HEALTH's motion to reargue this Court's order dated 8/26/2025 is granted and upon reargument, the Court adheres to its initial determination (MS 006).

This constitutes the decision and order of the Court.

E N T E R:



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**Hon. Anne J. Swern, J.S.C.**  
**Dated: 4/21/2026**