

<b>Durandisse v Rizaro 18th Ave. LLC</b>
2026 NY Slip Op 31738(U)
April 22, 2026
Supreme Court, Kings County
Docket Number: Index No. 515897/2024
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 22<sup>nd</sup> day of April 2026.

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

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MICHELINE DURANDISSE,

*Plaintiff,*

*-against-*

RIZARO 18TH AVENUE LLC and RIZARO MANAGEMENT LLC,

*Defendants.*

**DECISION & ORDER**

Index No.: 515897/2024

Calendar No.: 9

Return Date: 3/12/2026

Motion Seq. No.: 3

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

**NYSCEF  
Papers Numbered**

Notice of Motion, Affirmation in Support, Memorandum of law in Support of Defendants’ Motion for Summary Judgment, Supporting Exhibits, Affirmation in Opposition, and Reply Affirmation.....36-45, 49-52

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

This is a motion by defendants RIZARO 18<sup>th</sup> AVENUE LLC and RIZARO MANAGEMENT LLC (“defendants”) for an Order pursuant to CPLR § 3212 granting summary judgment to defendants and dismissing the complaint of plaintiff MICHELINE DURANDISSE (“plaintiff”).

**Facts**

This action was commenced by plaintiff to recover for personal injuries sustained on or about December 28, 2023. Plaintiff alleges that she was scalded inside her bathroom shower at 3821 18<sup>th</sup> Avenue, Unit 1F, Brooklyn, New York 11230 because of an unexpected increase in the

hot water temperature. Plaintiff submits that she sustained burns to her right breast, back, neck, and right shoulder that were treated at Northwell Hospital's Burn Unit on Staten Island.

She describes the three handles in her shower: one for hot water, one for cold water, and one for the shower/bath. Plaintiff testified that she replaced the shower head but not the handles that kept "falling," and that she did not call Agron Damzi, the building superintendent ("super" and "Mr. Damzi") regarding the handles because she did not have time since she was working. When the shower handles fell, plaintiff said she would put them back on herself. Plaintiff further testified that she takes two showers daily, one in the morning and one at night; and that she never had any problems with the hot water after turning it on before her accident. Plaintiff testified in her deposition that the shower water was frequently cold, and that she did bring this to the super's attention, by phone and in-person. Specifically, plaintiff was asked "In the years that you lived in the building, do you have any idea if it was more than once that you complained, that your shower turned cold, to the super?" She replied in the affirmative, repeating that it was more than five times. She also said that when she had an issue with the cold water, it would require her to get out of the shower.

Mr. Damzi testified that when there are any problems in the building concerning the hot water system and boiler, he is the one who contacts the plumber.<sup>1</sup> Moreover, he said he never performed any work on the hot water system, the plumbing system, or the boiler because his duties include cleaning, completing any necessary painting jobs, and being aware of any complaints raised by the residents. Mr. Damzi testified that none of the residents complained about the hot water temperature inside their apartments before December 28, 2023. He further

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<sup>1</sup> He also noted that building management is not required to conduct daily inspections of boilers. Rather, under the New York City Administrative Code (Title 28, Chapter 3), boilers are subject to periodic inspection requirements, including annual inspections depending on the type of boiler.

testified that plaintiff did not allow anyone to enter her apartment for one year when there was a leak affecting the apartment underneath hers, and that a court order was needed to compel plaintiff to allow the plumber to access her apartment to finally address the water leak. However, when asked whether, prior to the date of the accident, he was aware of anyone complaining about the water suddenly turning hot, he testified in response, that he remembers there being issues during the summer with the water pressure, specifically with the *cold* water, but not with the hot water. He further testified that he remembers building residents calling during the summertime complaining that they needed more water pressure for the cold water in their sinks. Although Mr. Damzi said it is not his duty to inspect and fix the water pressure issues, he said he would routinely call the office, and they would remedy the problem.

Pursuant to CPLR § 3212 (b), a motion for summary judgment “shall be granted if, upon all papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party” (CPLR § 3212 [b]). On the other hand, to defeat a motion for summary judgment, the opposing party must “show facts sufficient to require a trial of any issue of fact” (*id.*). Normally, if the opponent is to succeed in defeating a summary judgment motion, the opponent must make their showing by producing evidentiary proof in admissible form” (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). When the movant has established a prima facie case, it is the opposing party’s burden to “produce evidentiary proof in admissible form sufficient to require a trial of material questions of fact . . . or [to] demonstrate [an] acceptable excuse for [their] failure to meet [this] requirement” (*City of New York v Grosfeld Realty Corp.*, 173 AD2d 436, 570 [2d Dept 1991]).

“[T]o impose liability upon [a] landowner for injuries resulting from [an] allegedly defective condition, plaintiff must establish that [the] landowner either created or had actual or constructive notice of [the] defective condition” (*Blaszczyk v Riccio*, 266 AD2d 491 [2d Dept 1999]). “To constitute constructive notice, a defect must be visible and apparent, and it must exist for a sufficient length of time prior to the accident to permit the defendant to discover and remedy it” (*id.*). In *Moshe K. v Nu Kol Tuv., Inc.*, 98 AD3d 652, 652 [2d Dept 2012], summary judgment was denied where the plaintiff established prior complaints of surges of very hot water and the defendant failed to establish the water heater’s temperature setting on the date of the accident. Moreover, in *Moshe K.*, “No evidence was submitted regarding the temperature at which the water heater was set at the time of the accident,” and “Since the landlord failed to meet its initial burden, the sufficiency of the plaintiffs’ opposition papers need not be considered” (*Moshe K.*, 98 AD3d at 652). As stated in *McIntyre v Bradford White Corp.*, 222 AD3d 1077, 1079 [3d Dept 2023], “To prevail on their motion for summary judgment in this context, defendants were required to ‘demonstrate that they maintained the property in question in a reasonably safe condition and neither created the allegedly dangerous condition existing thereon nor had actual or constructive notice thereof.’” In *McIntyre*, “defendants’ expert explained that a visual inspection of the mixing valve did not reveal any scale buildup—an opinion that plaintiff’s experts did not refute and confirmed by a photograph of the mixing valve included in the record” (*id.* at 1080).

A question of fact exists here as to whether the cold-water pressure dropped, which may have impacted an increase of the hot water temperature. Defendants were on notice of this issue, as Mr. Damzi was aware of the cold-water pressure issue from other residents in the building, including plaintiff. Moreover, defendants did not provide the exact temperature of the water on

the date of the accident, whether hot or cold. There was no expert to opine as to the hot and cold-water issues, thus creating triable issues of fact that are suited to be better decided by a jury than on a motion for summary judgment. Additionally, the deposition testimony demonstrates that Mr. Damzi was on notice regarding water leaks, which may have impacted the hot water in the building.

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

Accordingly, it is hereby

ORDERED that defendants' motion for an Order pursuant to CPLR § 3212 granting summary judgment to defendants and dismissing the complaint of plaintiff is DENIED.

ORDERED that the Clerk shall enter judgment accordingly.

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:** 4/22/2026