

**Coladonato v 111 W. 16th St. Owners, Inc.**

2026 NY Slip Op 31759(U)

April 14, 2026

Supreme Court, New York County

Docket Number: Index No. 155482/2022

Judge: Verna L. Saunders

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

PRESENT: HON. VERNA L. SAUNDERS, JSC PART 36

*Justice*

-----X INDEX NO. 155482/2022  
ENZO COLADONATO, MOTION SEQ. NO. 002  
Plaintiff,

- v -

111 WEST 16TH ST. OWNERS, INC., and BRG  
MANAGEMENT LLC.,

Defendants.

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 002) 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 41, 42

were read on this motion to/for

SUMMARY JUDGMENT

In this action, plaintiff seeks damages for a burn injury that was allegedly caused on March 28, 2022, by hot steam when a radiator valve knob came off in the apartment where he lived, located at 111 West 16<sup>th</sup> Street (the, “Building”), Unit 6M (the, “Apartment”). The Apartment was owned by non-party Chelsea Realty, LLC, the sponsor who converted defendant 111 WEST 16<sup>TH</sup> STREET OWNERS, INC. (“111 West 16<sup>th</sup> Street”) to cooperative ownership, who leased the apartment to plaintiff. 111 West 16<sup>th</sup> Street is the cooperative corporation that owns title to the Building and defendant BRG MANAGEMENT LLC (“BRG”) is the managing agent for the Building.

In this motion, defendants move, pursuant to CPLR 3212, for summary judgment dismissing the complaint (Mot. Seq. 002).

According to plaintiff’s complaint, the accident occurred in the bedroom of the Apartment from a broken, detached bedroom radiator, a condition that had been created over a period of several months. During his deposition, plaintiff testified that he had been renting, and living in, the Apartment for at least twenty (20) years. He testified that the accident took place at 9:30 PM on March 28, 2022. Specifically, he stated: “I went in the bedroom after dinner to put the heater on to get ready for bed, and when I turned the knob to put the heater on, it blew out with the pressure of the steam” (NYSCEF Doc. No. 25 p. 29, *plaintiff’s deposition transcript*). About a year or year and a half before the subject incident, there was a larger leak that made two feet of carpet wet around the radiator, prompting a call to the building superintendent (“super”) of that time (*plaintiff’s deposition transcript*, pp. 35-36). Plaintiff believes this leak was at the radiator’s valve (*plaintiff’s deposition transcript*, p. 36). The super successfully responded with a repair (*plaintiff’s deposition transcript*, p. 36) and plaintiff’s testimony indicates that there was nothing unusual concerning the radiator after that — i.e., just the typical little leaking, and banging/hissing sounds — until the subject incident occurred (*plaintiff’s deposition transcript*, pp. 38-39).

Plaintiff testified that from the time he moved into the Apartment, the radiator always leaked a “small amount of water near the valve” onto the carpet around the radiator (*plaintiff's deposition transcript*, p. 40). In his affidavit, he stated that since he moved into the apartment, the bedroom would get too hot if the radiator was left on all day so he would “turn the knob down on the valve to turn off the steam” and at night, he would “turn the knob in the other direction to release the steam and heat the bedroom” (NYSCEF Doc. No. 40 ¶ 2, *plaintiff's affidavit*). Plaintiff states that the “superintendent was told that I did this when I complained about leaking from the valve about 10 years ago...I was never told not to turn the valve on the radiator by anyone” (*plaintiff's affidavit*, ¶ 3).

Plaintiff stated that he contacted the super on two occasions to complain about problems with the radiator. The first time he contacted the super concerning the radiator was approximately ten (10) years prior to the subject accident because either too much water was coming out of the radiator or it was banging (*plaintiff's deposition transcript*, p. 39). The second time was approximately one and a half years prior to the subject accident when water leaked from the radiator onto the carpet (*plaintiff's deposition transcript*, p. 36, 40-41).

Plaintiff further testified of this second occasion:

“Q: When you had this incident when it flooded the carpet about a year before you had your accident, you called the super, and he was able to fix it?

A: Yes”

...

Q: “Did you ever make any written complaints to anyone about the radiator?”

A. No.

Q. So, there were two occasions when the super had to come and fix the radiator prior to your accident?

A. Yes”

(*plaintiff's deposition transcript*, pp. 36,).

Plaintiff testified that on the night of his accident, the super turned off the steam in the building that night and replaced the valve on the radiator in plaintiff's apartment, not with a new valve, but with another old valve (*plaintiff's deposition transcript*, p. 43).

Ramiz Basic (“Basic”) was the super at the time of plaintiff's accident. During his deposition, Basic acknowledged that radiators in the building had valve knobs capable of being turned by tenants (NYSCEF Doc. No. 27, p. 24, *Basic deposition transcript*). To his understanding, a tenant was not supposed to be turning such a knob as a regular practice (*Basic deposition transcript*, p. 24-25). Steam heat at a radiator would come from the boiler room of the building to all the apartments through radiators in each individual apartment (*Basic deposition transcript*, p. 26). Basic testified that he did not know his employer's name and testified that his salary was paid via direct deposit (*Basic deposition transcript*, p.12-13).

In support of the motion, the defendants also offer the affirmation of the managing agent who was employed by BRC, Pasang Sherpa (“Sherpa”), who affirmed:

“There is not any lease, management agreement or other document that required BRG Management LLC or 111 West 16th St. Owners, Inc. to inspect, maintain or repair this particular radiator, including its radiator valve. On March 28, 2022 and before then, a proprietary lease was in effect relative to Unit 6M; the parties are 111 West 16th St. Owners, Inc. as lessor, and Chelsea Realty, LLC as lessee. Under that document, at paragraph 18(a), lessee was responsible to keep the interior of the apartment in good repair, including heating fixtures and exposed steam and water pipes attached to fixtures - and so lessee had such responsibility as to the involved radiator and its valve”

(NYSCEF Doc. No. 28, ¶ 7, *Sherpa affidavit*).

Paragraph 18 (a) of the proprietary lease states, in relevant part:

“the Lessee shall keep the interior of the apartment (including walls, floors and ceilings, but excluding windows, window panes, window frames, sashes, sills, entrance and terrace doors, frames and saddles) in good repair ...and shall be solely responsible for the maintenance, repair and replacement of plumbing, gas and heating fixtures and equipment”

(NYSCEF Doc. No. 30, ¶ 18(a), *proprietary lease*).

The proprietary lease further states, in paragraph 19, that when work is requested by a building “occupant” with the understanding that the work is being done on behalf of the Lessee (the owner of the apartment shares) or occupant, any liability arising from the repairs does not fall on the Lessor (the building owner):

“if the Lessee or any person dwelling in the apartment shall request the Lessor, its agents or servants to perform any act not hereby required to be performed by the Lessor, the Lessor may make such repairs, or arrange for others to do the same, or remove such objectionable condition or equipment, or perform such act, without liability on the Lessor; provided that, if the condition requires prompt action, notice of less than 30 days may be given or, in case of emergency, no notice need be given.”

(*proprietary lease*, ¶ 19).

In opposition to defendants’ motion, plaintiff submits an expert report from John A. Cataneo (“Cataneo”), a licensed master plumber, who reviewed related documents and visited the apartment to inspect the radiator, and concludes that:

“the landlord and management company herein knew about the oversized radiator in the plaintiff’s apartment and that plaintiff was using the radiator valve to

regulate the temperature...They further knew or should have known that this caused a significant risk of a mechanical failure occurring due to the loosening of the valve bonnet, and they knew or should have known that this risk could have been mitigated or eliminated by installing a thermostat which is common and not at all cost prohibitive”

(NYSCEF Doc. No. 41, p. 4, *Cataneo report*).

Cataneo further concludes that because the valve that was installed after the accident was a used valve “even after the subject steam burst incident occurred, implies a strong likelihood that a used and worn valve was installed a year before this accident as well...[which] deviates from the generally accepted standard of care and acceptable mechanical industry standards” (*Cataneo report*, p. 4).

Accordingly, plaintiff opposes defendants’ motion on the ground that there are questions of fact concerning whether defendants were out of possession and whether the superintendent was employed by defendants. It is plaintiff’s contention that the accident occurred because “defendants installed an oversized radiator that would overheat the apartment, knew it had a chronic leak, and failed to install a cheap thermostat to prevent plaintiff and other tenants from adjusting the heat by opening and closing the valve” (NYSCEF Doc. No. 38, ¶ 5, *Weissman affidavit*).

Defendants argue that there is not any lease, management agreement or other document that required defendants 111 West 16th Street or BRG to inspect, maintain or repair the subject radiator, including its radiator valve. Defendants rely on the language in the proprietary lease in effect and relative to the Apartment on the date of the accident and before, to establish that the Lessee, Chelsea Realty, LLC, and not the Lessor, 111 West 16<sup>th</sup> Street, was solely responsible for the repairs to the radiator and its parts inside in the apartment.

Specifically, defendants argue that under that document, at paragraph 18(a), the Lessee was exclusively responsible for keeping the interior of the apartment in good repair, including the “interior heating fixtures – the subject radiator, i.e. its valve and knob” (NYSCEF Doc. No., ¶ 17, *Corsair affidavit*) and so Lessee had full responsibility as to the involved radiator and its valve. Further, defendants rely upon paragraph 19 of the proprietary lease and relevant case law to establish that plaintiff’s use of the super to make repairs to the radiator, inside the Apartment, does not create any liability for defendants, as set forth above. In opposition, plaintiff argues that because under the language in paragraph 18 (a), the defendant 111 West 16<sup>th</sup> Street retained the duty to maintain the windows and window frames in the Apartment, 111 West 16<sup>th</sup> Street likewise retained “partial control of the maintenance of the interior” of the Apartment (*Weissman affidavit*, ¶ 8). Further, plaintiff argues that because there is a question of fact as to who employed the super, Basic, there are questions concerning defendants’ liability in the repair and maintenance of the radiator.

“To establish a claim for negligence, a plaintiff must show that the defendant owed the plaintiff a duty and breached that duty, and that the breach proximately caused the plaintiff harm.” (*Katz v United Synagogue of Conservative Judaism*, 135 AD3d 458, 459[1st Dept 2016]). “A plaintiff alleging injury caused by a dangerous condition must show that the defendant either created the condition, or failed to remedy it, despite actual or constructive notice thereof” (*Haseley v Abels*, 84 AD3d 480, 482 [1st Dept 2011]).

Moreover, as to the constructive notice element, the purported defect must be “visible” and “apparent.” (*Gordon v American Museum of Natural History*, 67 NY2d 836, 837 [1986]). “A mere ‘general awareness’ that some dangerous condition may be present is legally insufficient to constitute notice of a particular condition.” (*Chaney v Abyssinian Baptist Church*, 246 AD2d 372, 372[1st Dept 1998]).

Additionally, where there is a contractual agreement placing the maintenance of the heating system, or any other fixture or issue, on the unit owner, meaning the unit’s shareholder or the condominium unit owner, New York courts will not find liability on the part of building owners or managing agents for defects found inside apartments (*Davis v Prestige Mgt. Inc.*, 98 AD3d 909, 910 [1st Dept 2010]; *Moore v 158<sup>th</sup> St. Riverside Dr. Hous. Co., Inc.*, 59 AD3d 245 [1st Dept 2009]).

Here, there are no such questions of fact concerning whether the shareholder was responsible for maintenance and repair of any defect within the subject apartment. Paragraph 18(a) of the proprietary lease states that the Lessee “shall be solely responsible for the maintenance, repair and replacement of plumbing, gas and heating fixtures and equipment” (compare *Merkin v Hildes*, 34 AD3d 255, 256 [1st Dept 2006]). There are no questions as to whether the cause of the defect with the radiator arose inside the apartment. Plaintiff testified during his deposition that all of the problems and concerns were inside the apartment: there were issues with the size of the radiator itself, and with the radiator cap. Cataneo likewise opines that there were problems with the size of the radiator, the “valve bonnet”, and the absence of a thermostat on the radiator inside the apartment that all led to the defect that caused plaintiff’s injuries. These problems, which exist inside the four walls of plaintiff’s apartment, are the sole responsibility of the Lessee, Chelsea Realty, LLC, under the proprietary lease. Furthermore, the court finds that under the language of paragraph 19 of the proprietary lease, the plaintiff’s use of the super to repair the radiator on three occasions set forth in the motion papers does not create liability for the owner. The defendants’ motion for summary judgment is, therefore, granted.

Based upon the finding above, the court need not address the remaining issue in the defendants’ motion. Accordingly, it is hereby

**ORDERED** that defendants 111 West 16<sup>th</sup> St. Owners, Inc. and BRG Management’s, motion for summary judgment (Mot. Seq. 002) is granted and the action is hereby dismissed as against said defendants, and it is further

**ORDERED** that within twenty (20) days from the entry of this Order, defendants shall serve a copy of this Order with notice of entry upon the Clerk of the General Clerk’s Office 60 Centre Street, Room 119; and it is further

**ORDERED** that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address [nycourts.gov/suptctmanh](http://nycourts.gov/suptctmanh)); and it is further

This constitutes the decision and order of this court.

April 14, 2026

  
HON. VERNA L. SAUNDERS, JSC

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