| **Barna v 184 Kent Owner, LLC** |
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| 2026 NY Slip Op 31822(U) |
| April 8, 2026 |
| Supreme Court, Kings County |
| Docket Number: Index No. 514422/2018 |
| Judge: Steven Z. Mostofsky |
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At an IAS Term, Part 9 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 8th day of April, 2026.

PRESENT:

HON. STEVEN Z. MOSTOFSKY,
Justice.

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ERIC BARNA, PAOLA LUCIANO, JANE COXWELL, SABINE SEYMOUR, NANDITA RAY, JENS MEBES, SABINE ANTON, MICHAEL CINQUINO, REBECCA LEE, JEFF WERNER, CHRIS REMUS, BARTH BAZYLUK, ROSA BAZYLUK, YUICHIRO NISHIZAWA, MARIE KOUADIO AMOUZAME, ARNAUD HIREL, ALISA LEONARD, LOTTIE MESSNER, STEVEN MILLER, NICOLE COSTELLO, DEE ZAHAV KASHI, DANIELLE SPORKIN, JASEN KELLEY, BRANDON KOMODA, ROSE KOMODA, DANIEL GODDEMEYER, ANDREA SEGATTO, IVAN OLIVEROS, JASON MINYO, DYANIS DEJESUS COLON, JABEZ DEWY, FRANK BIRCHFIELD, VANESSA GOMES, CATHYRN BENNETT, JAMES V. DERCOLE, MUOI GU TRAN, JARED SCHARFF, WILL HENSLEY, BONNIE MAYO, AND DIMITRY UMYN,

Plaintiffs,

-against-

Index No.: 514422/2018
Motion Sequence: 11 and 12

184 KENT OWNER, LLC, D/B/A AUSTIN NICHOLS HOUSE AND THE AUSTIN NICHOLS HOUSE CONDOMINIUM, WESTMINSTER MANAGEMENT, LLC, 184 KENT MT LLC,

Defendants.

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184 KENT OWNERS, LLC, WESTMINSTER MANAGEMENT, LLC, 184 KENT MT LLC

Third-Party Plaintiffs,

-against-

YORK RESTORATION CORP. AND DSA BUILDERS, INC.,

Third-Party Defendants.

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| The following e-filed papers read herein: | NYSCEF Doc Nos. |
|---|---|
| Notice of Motion, Cross- Motions, and Affirmations | 321-359, 360-373 |
| Affirmations in Opposition | 375-435, 436-442 |
| Affirmations in Reply | 447-448, 444 |

Upon the foregoing papers, defendants 184 Kent Owner, LLC, Westminster Management, LLC and 184 Kent MT, LLC move for an order, pursuant to CPLR 3212, granting summary judgment dismissing the complaint together with costs (motion sequence 11). Third-party defendant York Restoration Corp. ("York") moves for an order granting summary judgment dismissing the third-party complaint and any and all cross-claims as asserted against it under CPLR 3212 (motion sequence 12).

**Factual Background**

In this action for property damage, breach of the warranty of habitability and punitive damages, plaintiffs[1], current or former tenants of 184 Kent Avenue in Brooklyn, allege that the defendants, as owners, operators and/or managing agents of the premises, through their agents, contractors, and/or employees, authorized and permitted reckless demolition and gut renovation of the common areas and apartments within a rent stabilized building while converting the apartments into condominiums. With respect to this project, defendants retained DSA Builders, Inc. and York to provide renovation and construction services. More specifically, York agreed to perform exterior work consisting of restoring the facade of the building.

[1] Plaintiffs Eric Barna, Paolo Luciano, Steven Miller, Dee Zahav Kashi, Frank Birchfield and Vanessa Gomes have since voluntarily discontinued their claims.

Defendants subsequently brought a third-party action for, among other things, indemnity and contribution against third-party defendants DSA Builders, Inc. and York[2].

In connection with their action, plaintiffs allege that, during the construction and renovation period, they were subjected to pervasive and hazardous conditions within their apartments, including dust infiltration, water intrusion, mold growth, and rodent infestations. Plaintiffs further contend that fires occurred within the building, that there were ongoing security deficiencies, and that excessive construction-related noise substantially interfered with their ability to sleep. Plaintiffs also assert that essential services were intermittently unavailable, including periods during which they lacked access to hot water, running water, and air conditioning. In addition, plaintiffs allege that the premises were maintained in an unsafe and deficient condition, including the presence of broken windows, a frequently inoperable elevator, and exposed wiring in common areas, rendering those areas unusable.

**Defendants' Motion**

After discovery in the instant matter was completed, defendants moved for summary judgment claiming that the complaint should be dismissed because certain plaintiffs have failed to submit lease documents necessary to ascertain damages, that the terms of the parties' leases expressly preclude a recovery in this matter, and that a claim for punitive damages is not warranted under the circumstances of this action.

[2] The third-party action was discontinued against third-party defendant DSA Builders, Inc. by stipulation dated February 28, 2023.

A summary judgment motion pursuant to CPLR 3212 is warranted only where the movant can demonstrate the absence of any relevant material issue of fact and therefore is entitled to judgment as a matter of law (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851 [1985]; *Vega v Restani Const. Corp.*, 18 NY3d 499, 503 [2012]). The court must view the evidence in a light most favorable to the party opposing the motion and must give that party the benefit of every favorable inference (*see Negri v Stop & Shop*, 65 NY2d 625, 626 [1985]).

Landlords are required to maintain properties in a habitable condition and in accord with the uses reasonably intended by the parties (*see* Real Property Law § 235-b; *Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316 [1979]). "Pursuant to Real Property Law § 235–b, every residential lease contains an implied warranty of habitability which is limited by its terms to three covenants: (1) that the premises are 'fit for human habitation,' (2) that the premises are fit for 'the uses reasonably intended by the parties,' and (3) that the occupants will not be subjected to conditions that are 'dangerous, hazardous or detrimental to their life, health or safety'" (*Grammer v Turits*, 271 AD2d 644, 646 [2d Dept 2000]).

The implied warranty of habitability also applies to month-to-month tenancies (*see Witherbee Ct. Assoc. v Greene*, 7 AD3d 699, 701 [2d Dept 2004]). Tenants who are not subject to rent regulation, lack a formal lease, and pay rent on a monthly basis are considered "month-to-month" tenants (*see* Real Property Law [RPL] § 232-c). Additionally, if a tenant remains in the unit after their lease has expired and the landlord continues to accept rent, the arrangement is treated as a month-to-month tenancy (*see id.*).

To prevail on a claim based on a breach of the warranty of habitability, a tenant must offer proof as to the dates, severity and duration of the conditions complained of, and show that notice of the conditions was given to the landlord (*see Sinclair v Ramnarace*, 36 Misc 3d 150(A) [App Term 2012]; *Anoula Realty Corp. v Weiss*, 16 Misc 3d 133(A) [App Term 2007]; *New Franconia Assoc. v Popper*, 2003 NY Slip Op 51116(U) [App Term 2003]). Notice of the existence of the conditions in need of repair may be actual or constructive (*see 1050 Tenants Corp. v. Lapidus*, 16 Misc 3d 70, 72 [App Term, 1st Dept 2007]). Additionally, the tenant must show that the landlord was provided with access and an opportunity to repair the conditions yet failed to do (*see Litwack v Plaza Realty Inv'rs, Inc.*, 11 NY3d 820, 821 [2008]).

The damages for a warranty of habitability claim is an abatement of rent (see *Bartley v Walentas*, 78 AD2d 310 [1st Dept 1980]; *Matter of Nostrand Gardens Co-Op v Howard*, 221 AD2d 637 [2d Dept 1995]). The proper measure of the abatement is "the difference between the fair market value of the premises if they had been as warranted, as measured by the rent reserved under the lease, and the value of the premises during the period of the breach" (*Park W. Mgt. Corp. v Mitchell*, 47 NY2d 316, 329 [1979]). The court should consider "the severity of the violation and duration of the conditions giving rise to the breach as well as the effectiveness of steps taken by the landlord to abate those conditions" (*id.*) Any agreement waiving or modifying a lessee's or tenant's right to the warranty of habitability is deemed void as a matter of public policy (*see* RPL 235-b). If the court finds a lease or any lease clause to have been unconscionable at the time it was made, the court may refuse to enforce the lease or the clause in question (*see* RPL 235-c).

**Document Deficiencies**

With respect to their claim of document deficiencies, defendants contend that certain plaintiffs were unable to produce complete copies of their lease agreements, that others produced lease renewal documents for only a portion of their tenancy, and that some plaintiffs were able to provide only unsigned copies of their leases and renewal agreements. Defendants argue that, in the absence of complete lease and renewal documentation, it is not possible to accurately calculate plaintiffs' alleged damages, as recovery on a warranty of habitability claim is measured by an abatement of rent. Defendants do not, however, dispute that these plaintiffs are, or were, tenants at the subject building, nor do they contend that any of the plaintiffs' tenancies were ever terminated.

Defendants' argument pertaining to alleged document deficiencies is unavailing. Landlords are statutorily obligated to maintain accurate records, including lease documents and rent ledgers, and the very deficiencies that defendants reference concern materials that should be in within their own possession and control (*see* RPL 235-e; 9 NYCRR § 2503.7). Moreover, defendants do not dispute that plaintiffs are, or were, tenants during the time periods identified in the amended complaint. The majority of plaintiffs are rent-stabilized tenants who would be entitled to renewal leases (*see* 9 NYCRR § 2503.5). Even assuming, arguendo, that certain plaintiffs were not rent-stabilized tenants or did not execute renewal leases, their tenancies would convert to month-to-month upon lease expiration. Under such circumstances, the material terms of the expired lease continue to govern on a month-to-month basis absent any showing that defendants refused rent or properly terminated the tenancy as required by RPL 235-b. As month-to-month tenants remain protected by the

warranty of habitability, and in light of defendants' independent obligation to maintain relevant tenancy records, defendants cannot claim that plaintiffs' purported document deficiencies render the calculation of damages impossible.

**Lease Provisions**

Defendants next argue that plaintiffs entered into their tenancies at the subject premises with full knowledge of the ongoing construction and, as a result, are barred from seeking damages and other relief resulting from attendant annoyances or inconveniences. In this regard, defendants specifically refer to paragraph 32 labeled "CONSTRUCTION", paragraph 61 titled "SERVICES." and paragraph 66 labeled "NOISES, ODORS OR SCENTS". The relevant paragraphs read as follows:

> 32.CONSTRUCTION. The apartment is located in a newly constructed multiple dwelling. Tenant acknowledges that the Building including but not limited to the lobby, common areas, public hallways, public plaza, health club/amenity area, storage area, garage, roof deck and laundry facilities will require construction work to be completed. Therefore, annoyances and inconveniences during the initial year of the lease term will exist due to construction. It is understood and agreed that in addition to other ongoing construction items, (i) plywood and/or other materials may line the elevator cabs and walls in the lobby and (ii) carpeting and wall covering may not be placed in the hallway until the Building is fully occupied. Tenant further acknowledges that there is on-going construction and that all facilities such as, but not limited to, the public plaza, health club, storage area, roof deck and garage may not be available upon initial occupancy. Tenant agrees that his/her reasonable expectation of the Apartment and the Building is that there will be construction work and workers in or about the premises which will result in excessive noise, duct, annoyances, inconveniences and other problems associated with the construction. Tenant acknowledges these conditions and agrees that the rental has been set taking these conditions into account. The acknowledgment of these conditions is a material inducement for Owner to enter into this Lease. Tenant agrees that it shall not make any claim against Owner as the rental provided herein reflects such annoyance, inconvenience and other problems that will or may occur.
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> 61. SERVICES. Owner is not required to provide any services or level of staffing other than those which are specifically set forth in this Lease. No portion of the rent

herein is being paid for any such service and any discontinuance or failure to perform such service shall not constitute a decrease in services hereunder. It is further understood that if Owner elects to provide any additional service which were not in effect as of the date of this Lease, such additional service shall not be deemed a service for which Tenant is paying rent and if Owner shall, during the term of this Lease, elect to withdraw such additional service from the Building, Owner shall not be subject to any liability nor shall Tenant be entitled to any compensation or diminution or abatement of rent nor shall such revocation or diminution be deemed a constructive or actual eviction. Tenant acknowledges that Owner makes no representation and assumes no responsibility whatsoever with respect to the functioning or operation of human or mechanical security systems, if any, which Owner does or may provide. Tenant agrees that Owner shall not be responsible or liable for any bodily harm or property loss or damage of any kind or nature which Tenant or any members of his family, employees or guests may suffer or incur by reason of any claim that Owner, his agents or employees or any mechanical or electronic system in the Building has been negligent or has not functioned properly or that some other or additional security measure or system could have prevented the bodily harm or property loss or damage.

66. NOISES, ODORS, OR SCENTS. Tenant acknowledges that Owner has not made any representations or promises with respect to noises or odors however arising and whether occurring inside or outside the Building, and Tenant waives and releases any claim, cause of action or set off of rent by reason of or arising out of any noise, inconvenience, aromas, scents, odors, however arising, and whether occurring inside or outside of the Building. Tenant shall not rescind this Lease or be entitled to any compensation or diminution or abatement or rent, no[r] shall it fail to honor any other obligations under this Lease by virtue of any of the above mentioned items. Tenant understands that all public areas in the Building are designated as "NO SMOKING" areas.

Turning to defendants' argument regarding waiver and the cited lease provisions, it is clear that the warranty of habitability cannot be waived as a matter of public policy (*see* RPL 235-b). Thus, any lease language purporting to limit or disclaim liability for conditions affecting habitability are unenforceable. While plaintiffs may have been aware that construction was ongoing at the time they entered into their tenancies, such awareness does not relieve defendants of their independent statutory obligations to maintain the premises, including the public and common areas, in a safe and habitable condition (*see*

*NYC Admin Code 27-201; see also Mutiple Dwelling Law §§ 78 and 80; Multiple Residency Law § 174*). Furthermore, the construction related clause upon which defendants rely expressly contemplates only "annoyances and inconveniences during the initial year of the lease term will exist due to construction," a time-period much shorter than the time-periods alleged in the amended complaint. At a minimum, triable issues of fact exist as to whether defendants' and /or their agents performed the renovation work in a way that breached the warranty of habitability. Accordingly, defendants' argument that plaintiffs waived their claims by virtue of the lease provisions as a matter of law is without merit.

**Punitive Damages**

Plaintiffs seek punitive damages alleging that such damages are warranted under the circumstances of this case by virtue of the unreasonably prolonged period of construction while failing to mitigate hazardous conditions. In support of that branch of their motion seeking summary dismissal of the punitive damages request, defendants contend that such an award of damages is unwarranted as defendants' actions were not gross, wanton, or willful. In this regard, defendants assert that they merely engaged in a renovation project at the premises and reasonably mitigated tenant complaints throughout the course of the construction. However, plaintiffs allege that hazardous conditions were permitted to remain unabated including, but not limited to, the failure to contain toxic dust, persistent water intrusions resulting in mold, excessive and disruptive noise, rodent infestations, and the loss of water and other essential services. Additionally, plaintiffs assert that part of the construction activity consisted of dangerous drilling and blasting without proper safeguards. Moreover, plaintiffs assert that to expedite the application process defendants

submitted false permit applications to the Department of Buildings representing that the building was vacant. These allegations, if proven true, could be considered evidence of defendants' wanton and willful conduct warranting punitive damages (*see Minjak Co. v Randolph*, 140 AD2d 245, 250 [1st Dept 1988]). While defendants argue that a Department of Health lead inspection of the construction dust in the building in 2017 resulted in negative results, plaintiffs' annex a report by Edward Olmstead, CIH, CSP that indicates the contrary. Thus, at the very least, questions of fact exist as whether defendants' conduct was willful, negligent or proper. Accordingly, defendants' motion is denied in its entirety.

**York's Summary Judgment Motion**

Third-party defendant York moves, in motion sequence 12, granting summary judgment dismissing the third-party complaint and any and all cross-claims as asserted against it. In support of its motion, York alleges that none of the plaintiff-tenants' damages was related to its work as such work was limited to the exterior of the building and involved the renovation of the building's façade. In this regard, York asserts that it was only on the project for a year, that it never received any complaints regarding any damage caused by its work, and that the defendants paid it in full for its services.

While plaintiffs notably did not oppose York's motion, defendants assert issues of fact by referencing plaintiffs' depositions, calling into question whether there were actual complaints regarding York's work, despite York's assertion to the contrary. Specifically, defendants refer to plaintiff Jeff Warner's testimony that construction workers urinated off a scaffolding, plaintiff Brandon Komoda's testimony that he complained about dust entering his apartment due to work being performed on the scaffolding, and plaintiff Rose

Komoda's testimony that a gas cannister was left on a scaffolding. While it is unclear which workers were involved in each of these incidents, York, as previously noted, was employed to do façade work on the exterior of the subject building. Thus, questions of fact exist to warrant denial of York's motion for summary judgment pertaining to indemnity and/or contribution. However, that branch of York's motion seeking dismissal of third-party plaintiffs' breach of contract claim for failure to procure insurance is granted as York procured the required commercial general liability policy from American Empire Surplus Lines Insurance Company and third-party plaintiffs do not oppose this branch of the motion.

**Conclusion**

Accordingly, it is

**ORDERED,** that defendants' motion (mot. seq. 11), seeking summary judgment pursuant to CPLR 3212 is denied in its entirety, and it is further

**ORDERED,** that third-party defendant York's motion (mot. seq. 12) seeking summary judgment, pursuant to CPLR 3212, is granted only to the extent that the third-party claim for breach of contract for failure to procure insurance is dismissed and denied in all other respects. In light of the voluntary discontinuance against defendants by certain plaintiffs and the dismissal of the third-party complaint as against DSA Builders, Inc., the caption of this action is amended accordingly.

The court, having further considered the parties' remaining contentions, if any, finds them unavailing. All relief not expressly granted herein has been considered and is denied.

This constitutes the decision and order of the Court.

ENTER

JSC

Hon. Steven Z. Mostofsky
Justice, Supreme Court