

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 27

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Sean Martinez,

Petitioner,

Index No.: 809100/2022E

-against-

Hon. Naita A. Semaj,
Justice of the Supreme Court

1890 Realty LLC,

Respondent.

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The following papers numbered NYSCEF Doc. #42 to NYSCEF Doc. #51, 53-54, 56 were read on **Respondent's Motion** (Seq. No. 3) for an Order:


(i) pursuant to CPLR §3212, granting summary judgment in Respondent's favor and dismissing all claims by Petitioner against Respondent

were noticed and duly submitted on **December 11, 2025**.

Sequence No. 3	NYSCEF Doc. Nos.
Notice of Motion - Exhibits and Affidavits Annexed	42 – 51
Answering Affirmation/Affidavit and Exhibits	54
Replying Affirmation/Affidavit and Exhibits	56

See attached decision and order dated **January 23, 2026**.

Dated: 1/23/26

Hon. 
Naita A. Semaj, J.S.C.

- X
- 1. CHECK ONE..... CASE DISPOSED IN ITS ENTIRETY CASE STILL ACTIVE
 - 2. MOTION IS..... GRANTED DENIED GRANTED IN PART OTHER
 - 3. CHECK IF APPROPRIATE..... SETTLE ORDER SUBMIT ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: PART 27

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Sean Martinez,

Petitioner,

Index No.: 809100/2022E

Decision and Order

-against-

1890 Realty LLC,

Respondent.

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HON. NAITA A. SEMAJ

On June 16, 2022, Petitioner commenced this action seeking damages for injuries arising out of an alleged ceiling collapse in Petitioner’s apartment. Respondent interposed an answer on November 4, 2022. Discovery proceeded and included depositions of Petitioner, Respondent’s superintendent, and Petitioner’s mother. By Decision and Order dated November 17, 2025 (Motion Sequence 2), the Court addressed issues relating to the note of issue and outstanding discovery.

Now, Respondent moves for summary judgment. Petitioner filed opposition and Respondent replied. After review of all papers, the Court decides as follows:

A motion for summary judgment is a drastic remedy which should be used sparingly (*Wanger v Zeh*, 45 Misc2d 93, [Sup Ct, Albany County 1965]). The movant must come forward with evidentiary proof in admissible form sufficient to direct judgment in its favor as a matter of law. (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]). Thus, when the existence of an issue of fact is even arguable or debatable, summary judgment should be denied. (*Stone v Goodson*, 8 NY2d 8, [1960]); *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395).

The proponent of a motion for summary judgment carries the initial burden to produce evidence as well as the burden of persuasion. (*Alvarez v Prospect Hospital*, 68 NY2d 320 [1986]). Thus, the moving party must tender sufficient evidence to demonstrate as a matter of law the absence of a material issue of fact. Once that initial burden has been satisfied, the burden of production shifts to the opponent, who must now go forward and produce sufficient evidence in admissible form to establish the existence of a triable issue of fact. The burden of persuasion, however, always remains where it began, i.e., with the proponent of the issue. Thus, if evidence is equally balanced, the movant has failed to meet its burden. (*300 East 34th Street Co. v Habeeb*, 683 NYS2d175 [1st Dept. 1997]).

As cited by movant, a property owner moving for summary judgment in a premises liability action has the initial burden of demonstrating that it neither created the defective condition nor had actual or constructive notice of its existence for a sufficient length of

time to discover and remedy it. (*Garcia v City of New York*, 99 AD3d 491 [1st Dept 2012]).

Here, the Court finds that Respondent makes a prima facie showing of entitlement to summary judgment. The deposition testimony and exhibits submitted establish that no leak or water-related condition existed in the portion of the ceiling that allegedly collapsed. Petitioner testified that he observed no water, staining, or sagging prior to the incident, and Respondent's superintendent testified that there was no plumbing above the area in question and no prior complaints regarding the subject ceiling.

The record further establishes that Respondent did not perform work on the subject ceiling. In contrast, Petitioner acknowledged that his family had painted the ceiling prior to the incident. The testimony of Petitioner's mother regarding general cracks in the ceiling does not identify the specific defect that allegedly caused the collapse, nor does it establish that Respondent had actual or constructive notice of such defect.

Petitioner's opposition does not raise a triable issue of fact. The opposition does not identify the precise cause of the alleged ceiling collapse, does not establish notice of a specific defect, and relies largely on speculation and generalized assertions. As such, Petitioner does not meet his burden to defeat summary judgment.


The Court also finds that the doctrine of *res ipsa loquitur* does not apply in this case. The evidence demonstrates that Respondent lacked exclusive control over the ceiling, and that voluntary actions by Petitioner's family altered the condition of the ceiling prior to the incident, thus precluding application of the doctrine. Accordingly, it is hereby:

ORDERED, that Respondent's motion for summary judgment is GRANTED, and it is further:

ORDERED, that the complaint is DISMISSED, without prejudice.

This constitutes the Decision and Order of the Court.

Dated: 1/23/26

Hon. 
Naita A. Semaj, J.S.C.