

<b>Rondon v 25 Park Row Condominium</b>
2022 NY Slip Op 31023(U)
March 30, 2022
Supreme Court, New York County
Docket Number: Index No. 159862/2021
Judge: Barbara Jaffe
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**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. BARBARA JAFFE PART 12**

*Justice*

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PABLO RONDON,

Plaintiff,

- v -

INDEX NO. 159862/2021

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

25 PARK ROW CONDOMINIUM, PARK ROW 23  
OWNERS LLC, 23 PARK ROW ASSOCIATES, LLC,  
L&M DEVELOPMENT PARTNERS INC., RNC  
INDUSTRIES, LLC, URBAN ATELIER GROUP,  
LLC, ROCK GROUP NY CORP., DORIA, INC.,

Defendants.

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**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 20-41  
were read on this motion to dismiss.

Defendants, Park Row 23 Owners, LLC, 23 Park Row Associates, LLC, L&M  
Development Partners, Inc., RNC Industries, LLC, Urban Atelier Group, LLC, Rock Group NY  
Corp., and Doria, Inc. (movants) move pursuant to CPLR 3211(a)(5) for an order dismissing the  
verified complaint as against them. Plaintiff opposes and cross-moves for an order granting him  
costs and sanctions against movants for filing a frivolous motion. (NYSCEF 28).

I. PERTINENT BACKGROUND

On July 19, 2018, plaintiff was injured when he slipped and fell at a construction site in  
the course of his employment. Prior to discontinuing that action, he commenced the instant  
action on October 29, 2021.

By letter dated December 17, 2021, counsel for plaintiff asked movants to withdraw their  
motion in light of *Brash v Richards*, 195 AD3d 582 (2d Dept 2021), and that if they persevered

with their frivolous motion, she would seek sanctions pursuant to 22 NYCRR § 130.1-1. (NYSCEF 27).

## II. CONTENTIONS

### A. Movants (NYSCEF 21-24)

Movants allege that plaintiff's action is time-barred, as it was commenced on October 29, 2021, more than three years after plaintiff sustained the physical injuries underlying the action. They allege that on July 13, 2021, under index number 156591/2021, plaintiff commenced an action against 25 Park Place LLC and discontinued it by stipulation on November 17, 2021. Thus, they contend that as the earlier action was voluntarily discontinued, pursuant to CPLR 205, plaintiff did not timely commence this action. (NYSCEF 21).

### B. Plaintiff (NYSCEF 28-37)

In opposition, plaintiff argues that he does not rely on CPLR 205. Rather, he claims that his action is timely filed given the executive orders tolling statutes of limitation due to the COVID-19 pandemic. (NYSCEF 33). Thus, as of March 20, 2020, plaintiff alleges, he still had one year and 121 days to file his action within the three-year limitation period, and as one year and 121 days from November 4, 2020, is March 5, 2022, having filed his summons and complaint on October 29, 2021, he claims to have timely filed his action.

Plaintiff thus cross-moves for sanctions, as movants' motion is "completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" (22 NYCRR § 130-1.1[c][1]), and is frivolous within the meaning of the statute. He seeks costs in the form of reimbursement for actual expenses reasonably incurred, reasonable attorney fees, and financial sanctions resulting from frivolous conduct.

### C. Movants' reply (NYSCEF 40)

In reply, movants reject plaintiff's contention that the executive orders issued during the COVID-19 pandemic tolled the statute of limitations for filing an action based on an accident that occurred on July 19, 2018, claiming it is contrary to the purpose of which the orders were issued and constitutes an attempt to undermine the protections afforded to defendants under the statute of limitations. They offer arguments based on the wording of the executive orders, prior instances where executive orders were held to suspend, rather than toll statutes of limitation, and the statutory intent behind Executive Law § 29-a to limit executive power to suspend such statutes temporarily. While they acknowledge that the Court in *Brash v Richards*, 195 AD3d 582 (2d Dept 2021), held that the executive orders toll the statutes of limitation, movants suggest that it was not rightly decided, as "this exact issue has been contemplated countless times since the genesis of the current pandemic," and cite *Seawright v Board of Elections in City of New York*, 35 NY3d 227 (2020), *Echevarria v Board of Elections in City of New York*, 183 AD3d 857 (2d Dept 2020), and *People ex rel. Mury v Franchi*, 194 AD3d 993 (2d Dept 2021) as holding to the contrary. They abandon their argument based CPLR 205.

By letter dated March 11, 2022, movants seek leave to submit additional papers. As I issue no decision without conducting independent research, there is no need for additional papers.

### III. ANALYSIS

Professor Patrick M. Conners contrasts the executive orders issued due to the COVID-19 pandemic with those issued during Superstorm Sandy and the aftermath of 9/11, and observes that the former "did not simply extend statutes of limitations that would have expired during the disaster emergency, but rather tolled all statutes of limitations on claims that accrued on or

before March 20, 2020, and were not time-barred on that date.” (Siegel, NY Prac § 33 [6<sup>th</sup> ed] “Statute of Limitations, Generally,” Dec. 2021). He also addresses the impact of Executive Law § 29-a and concludes that *Brash* constitutes authority for finding that none of the executive orders violate it, and that to the extent that the first executive order does, as the subsequent orders are restricted in duration to 30 days, he apparently discerns no violation of law and acknowledges that many await a ruling by the Court of Appeals on the issue.

Until then, *Brash* binds me, absent any authority to the contrary in the First Department (McKinney’s Cons Laws of NY, Statutes § 72[b]). In any event, as *Brash* was decided after the Court of Appeals decided *Seawright*, there is no reason to believe that the Court in *Brash* overlooked or ignored it.

I decline to sanction movants.

Accordingly, it is hereby

ORDERED, that the motion of defendants Park Row 23 Owners, LLC, 23 Park Row Associates, LLC, L&M Development Partners, Inc., RNC Industries, LLC, Urban Atelier Group, LLC, Rock Group NY Corp., and Doria, Inc. to dismiss is denied; it is further

ORDERED, that plaintiff’s cross-motion for sanctions is denied.

  
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**BARBARA JAFFE, J.S.C.**

3/30/2022  
DATE

CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> DENIED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input type="checkbox"/> GRANTED		<input type="checkbox"/> GRANTED IN PART	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER		<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE