

**OTF Studios, LLC v Corso, LLC**

2025 NY Slip Op 31155(U)

March 27, 2025

Supreme Court, New York County

Docket Number: Index No. 653414/2024

Judge: Lyle E. Frank

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. LYLE E. FRANK PART 11M**

*Justice*

-----X

OTF STUDIOS, LLC

Plaintiff,

- v -

CORSO, LLC,

Defendant.

-----X

INDEX NO. 653414/2024

MOTION DATE 09/18/2024

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 48

were read on this motion to/for DISMISS.

Upon the foregoing documents, defendant’s motion is granted.

**Background**

In late December 2017, OTFS Studios, LLC (“Plaintiff”) entered into a lease with Corso, LLC (“Defendant”) in which Defendant sub-leased a space on Crosby Street to Plaintiff for the purpose of operating an Orangetheory Fitness studio. Under the terms of the Lease, Defendant is not able to assign the lease “without the prior written consent of [Plaintiff], which consent shall not be unreasonably withheld or delayed.” Section 46(a) goes on to state that “[n]otwithstanding anything to the contrary contained herein, [Defendant] shall have the right to assign this Lease pursuant to the terms in this Article 46 to a substitute Orange Theory fitness franchisee” provided certain conditions are met. In April of 2021, Defendant gave Plaintiff notice of a proposed assignment of the lease to a substitute Orangetheory franchise. Plaintiff declined to accept the proposed assignment.

*The Prior Action*

In a previous action first before Justice Saunders, Plaintiff had moved by order to show cause to amend an asserted counterclaim against Defendant for allegedly breaching the lease's assignment provision. In an order dated September 30, 2021 (the "Saunders Order"), Justice Saunders stated that "examination of the underlying merits of the proposed amendment is mandated" and held that the motion to amend was procedurally defective. The Saunders Order continued to state that Plaintiff had failed to meet their burden of showing that the proposed amended counterclaim was not without merit. Plaintiff then brought another motion seeking to bring the assignment counterclaim. The motion was not decided for several years, and eventually the matter was then transferred to this Court. In an order dated January 12, 2024, (the "January Order") this Court held that the Saunders Order had decided the assignment counterclaim on the merits, and not just for procedural reasons. Under the law of the case doctrine, the January Order declined to permit the assertion of an assignment counterclaim for the 2021 assignment denial by Plaintiff. Neither Order was appealed.

### *The Present Proceeding*

Between filing the second motion for an assignment counterclaim and the January Order, Plaintiff continued to negotiate regarding the proposed assignment but was unsuccessful. As a result, the proposed assignee walked away from the deal in 2023. In July of 2024, Plaintiff brought the underlying proceeding here, seeking monetary damages related to the failed proposed assignment. In response, Defendant brings the present motion to dismiss.

### **Standard of Review**

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, "the pleading is to be liberally construed, accepting all the facts alleged in the pleading to be true and according the plaintiff the benefit of every possible inference." *Avgush v. Town of Yorktown*,

303 A.D.2d 340 (2d Dept. 2003). Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc*, 29 N.Y.3d 137, 142 (2017).

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 (1994).

CPLR § 3211(a)(5) allows for a complaint to be dismissed because of a valid release. While a valid release generally “constitutes a complete bar”, for a signed release the burden shifts to the plaintiff to “show that there has been fraud, duress, or some other fact which will be sufficient to void the release.” *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 (2011).

### **Discussion**

Defendant moves to dismiss on three grounds: 1) Plaintiff is collaterally estopped from contesting the validity of Defendant’s denial of the April 2021 assignment request, because of the previous orders; 2) the prior action is substantially the same to this action and therefore this Court could dismiss this action; and 3) that there is a provision in the lease that precludes money damages and limits Plaintiff’s remedies to declaratory relief. For the reasons that follow, the motion to dismiss the complaint in its entirety is granted as the claims in the complaint are barred by collateral estoppel.

#### ***Plaintiff is Estopped from Bringing This Claim***

CPLR § 3211(a)(5) permits dismissal of a cause of action on the grounds of collateral estoppel. This doctrine “is based upon the general notion that a party, or one in privity with a party, should not be permitted to relitigate an issue decided against it.” *D’Arata v. New York Cent. Mut. Fire Ins. Co.*, 76 N.Y.2d 659, 664 (1990). There are two requirements for collateral estoppel to apply, 1) that the “identical issue was necessarily decided in the prior action and is decisive in the present action”; and 2) that the party to be precluded “must have had a full and fair opportunity to contest that prior determination.” *Id.* Plaintiff’s argument in the motions that led to the Saunders Order and the January Order was that they did not need to get Defendant’s permission for the assignment, and, alternatively, that Defendant’s permission was unreasonably withheld in violation of the lease. Here, Defendant argues that the two prior orders bar Plaintiff from bringing a claim based on the denial of the 2021 attempted assignment.


Plaintiff states that they are here attempting to recover damages that occurred after the Saunders Order, and which resulted after Defendant’s “failure to allow the as-of-right assignment over a period of several years, from April 2021 until the proposed assignee walked away from the deal.” They argue that the resulting damages constitutes changed circumstances and therefore the claims and issue are not identical. But there is simply no way to decide Plaintiff’s claim in this proceeding without making a determination on the validity of Defendant’s 2021 refusal to permit the proposed assignment. Plaintiff attempts, in essence, to reargue the January Order and the Saunders Order in their papers. They posit that “[r]egardless of how such a finding was labeled by Justice Frank, the prior decision by Justice Saunders [...] was necessarily procedural.” But this argument ignores the language of both orders. The Saunders Order stated several times that Plaintiff had failed to address the issue raised by Defendant that the claim was without merit. The January Order states clearly that “[t]his Court

finds that the motion to amend, although deemed to be procedurally defective, was also denied on the merits.” Under clear law of the case, Plaintiff is collaterally estopped from challenging the validity of Defendant’s refusal to grant the proposed 2021 assignment.

Plaintiff argues that because they are seeking damages that occurred after the Saunders Order, and as a result of Defendant’s continued refusal to approve the April 2021 purported assignment, the issues have changed and therefore they are not estopped. But as stated before, to decide this claim would by necessity require a decision on the reasonableness of the 2021 refusal, an issue already litigated and decided when their counterclaim was denied. That as a result of this refusal Plaintiff suffered damages after the Saunders Order does not change the validity of that refusal. That the causes of action are different is likewise not enough to overcome collateral estoppel. See *Choi v. State*, 74 N.Y.2d 933, 936 (1989); see also *Smith v. Russell Sage College*, 54 N.Y.2d 185, 192 (1981). Defendant has met their burden of showing that the claim for improper refusal of the 2021 assignment is barred by collateral estoppel. Because all three causes of action in the complaint arise out the claim that the 2021 assignment refusal was improper, Defendant has met their burden on the motion to dismiss. Accordingly, it is hereby

ADJUDGED that defendant’s motion to dismiss is granted; and it is further

ORDERED that the complaint is dismissed in its entirety, and the Clerk of the Court shall enter judgment accordingly.

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LYLE E. FRANK, J.S.C.

3/27/2025  
DATE

CHECK ONE:

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<input checked="" type="checkbox"/>	GRANTED		
<input type="checkbox"/>	SETTLE ORDER		
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		

<input type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	GRANTED IN PART		
<input type="checkbox"/>	SUBMIT ORDER		
<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: