

Dawod v Madison Realty Capital, LP

2025 NY Slip Op 32448(U)

July 10, 2025

Supreme Court, New York County

Docket Number: Index No. 153600/2024

Judge: Paul A. Goetz

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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. PAUL A. GOETZ PART 47

Justice

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MOHAMED HASSAN ALI DAWOD,

Plaintiff,

- v -

MADISON REALTY CAPITAL, LP, BRIAN SHATZ, JOSHUA
ZEGEN, ADAM TANTLEFF, L&M DEVELOPMENT
PARTNERS, INC, NEW YORK HOUSING AUTHORITY,
ABC, LLC 1-20, ABC, INC. 1-20, 644 EAST 14TH STREET
OWNER LLC,,

Defendants.

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INDEX NO. 153600/2024

MOTION DATE 02/28/2025,
02/28/2025

MOTION SEQ. NO. 001 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 25, 26, 27, 28, 29, 30, 31, 38, 40, 41, 42, 46

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 002) 32, 33, 34, 35, 36, 37, 39, 43, 44, 45, 47

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

ORDERED that defendants, Madison Realty Capital, LP (“Madison”) and Adam Tantleff’s motion to dismiss (MS #1) is granted because “[a]s a general rule, liability for a dangerous or defective condition on real property must be predicated upon ownership, occupancy, control, or special use of that property” (*Forbes v Aaron*, 81 AD3d 876, 877 [2d Dept 2011]) and here the deed for the property where plaintiff alleges negligent construction thereby damaging the building he occupies, indicates that neither Madison nor Tantleff were the owners of the property (NYSCEF Doc No 29) and to the extent that plaintiff is attempting to

“pierce the corporate veil” to attach liability to either Madison or Tantleff¹ “[b]roadly speaking, the courts will disregard the corporate form ... to prevent fraud or to achieve equity” (*Cortlandt St. Recovery Corp. v Bonderman*, 31 NY3d 30, 47 [2018]), and here, plaintiff fails to “adequately allege the existence of a corporate obligation and that [Madison and Tantleff] exercised complete domination and control over the corporation and abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice” (*id.* at 47-48); and it is further

ORDERED that the portion of defendants’, 644 East 14th Street Owner LLC (“644 Owner”), Brian Shatz, and Joshua Zegen, motion (MS #2) seeking to dismiss the complaint as against Shatz and Zegen is granted for the same reasons as above; and it is further

ORDERED that the portion of 644 Owner’s motion (MS #2) seeking dismissal of the third cause of action for negligent hiring as asserted against it is granted as plaintiff’s amended complaint asserts “[o]ne or more of Defendants’ employees, contractors or agents was unfit or incompetent to perform the work for which he or she was hired” and “Defendants knew or should have known that these employees, contractors, or agents were unfit or incompetent and that this unfitness or incompetence created a particular risk of harm to others, including Plaintiff” (NYSCEF Doc No 15 at ¶¶ 50 – 51), and these conclusory allegations are insufficient to plead a cause of action for negligent hiring absent an identification of the allegedly unfit employees, and the allegedly negligent acts they performed (*Mason v Ben Roy Das, Inc.*, 34 AD3d 768 [2d Dept 2006]); and it is further

ORDERED that the portion of 644 Owner’s motion (MS #2) seeking dismissal of the fourth cause of action for public nuisance is granted to the extent that plaintiff has failed to plead

¹ Plaintiff argues in his moving papers, although not in his complaint, that Madison and Tantleff, a “high-ranking principal” of Madison are “inextricably linked” to the property.

a cause of action for *public* nuisance by failing to plead a “substantial and unreasonable interference with [a] public right” (*DeStefano v Emergency Hous. Group, Inc.*, 281 AD2d 449, 451 [2d Dept 2001]), since in plaintiff’s memorandum of law opposing this motion, he incorrectly recites the elements of private nuisance,² a cause of action which is supported by the facts alleged in the amended complaint, therefore, plaintiff will be permitted to amend his amended complaint, only to plead a cause of action for private nuisance; and it is further

ORDERED that the portion of 644 Owner’s motion (MS #2) seeking dismissal of the sixth cause of action for Negligent Infliction of Emotional Distress (“NIED”) is granted as “[a] cause of action to recover damages for negligent infliction of emotional distress generally requires a plaintiff to show a breach of a duty owed to him which unreasonably endangered his physical safety, or caused him to fear for his own safety” (*Sacino v Warwick Val. Cent. School Dist.*, 138 AD3d 717, 719 [2nd Dept 2016]), and here while plaintiff alleges that the negligent construction created damage to the building he lived in, he fails to allege that he was exposed to an unreasonable risk of bodily injury or death as required for the claim (*Ben-Zvi v Kronish Lieb Weiner & Hellman LLP*, 278 AD2d 167 [1st Dept 2000]); and it is further

ORDERED that the portion of 644 Owner’s motion (MS #2) which seeks to dismiss the seventh causes of action for Intentional Inflection of Emotional Distress (“IIED”) is granted as “a cause of action for [IIED] must allege conduct that is so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community” (*164 Mulberry St. Corp. v Columbia Univ.*, 4 AD3d 49, 56 [1st Dept 2004]), and the allegations here are insufficient to support this claim since the

² “The elements of a private nuisance cause of action are an interference (1) substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failure to act” (*Aristides v Foster*, 73 AD3d 1105, 1106 [2d Dept 2010])

allegations are duplicative of those that are encompassed by a traditional tort claim (*Brown v Riverside Church in City of New York*, 231 AD3d 104, 110 [1st Dept 2024]); and it is further

ORDERED that plaintiff may file a second amended complaint only to the extent that he asserts a cause of action for private nuisance, by July 25, 2025; and it is further

ORDERED that remaining defendants will have 21 days to file an answer to the second amended complaint once served, or if plaintiff elects not to amend his answer defendant 644 Owner shall file an answer to the complaint within 21 days of plaintiff’s deadline to file an answer; and it is further

ORDERED that the amended complaint is dismissed in its entirety as against defendants, Madison, Tantleff, Shatz, and Zegen and the clerk is directed to enter judgment accordingly with costs and disbursements to said defendants; and it is further

ORDERED that the remaining causes of action are severed and continued as asserted against remaining defendants; and it is further

ORDERED that the parties are directed to attend a preliminary conference on October 2, 2025 at 9:30 AM.


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<u>7/10/2025</u> DATE					<u>PAUL A. GOETZ, J.S.C.</u>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED			<input checked="" type="checkbox"/>	GRANTED IN PART
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			<input type="checkbox"/>	OTHER
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN			<input type="checkbox"/>	REFERENCE
	<input type="checkbox"/>				<input type="checkbox"/>	