

**Siragusa v 69 Murray Hous. Corp.**

2025 NY Slip Op 32541(U)

June 23, 2025

Supreme Court, New York County

Docket Number: Index No. 659590/2024

Judge: Mary V. Rosado

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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. MARY V. ROSADO**

**PART 33M**

*Justice*

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**INDEX NO. 659590/2024**

CHRISTOPHER SIRAGUSA, and WYNNE LO

**MOTION DATE 02/14/2025**

Plaintiffs,

**MOTION SEQ. NO. 001**

- v -

69 MURRAY HOUSING CORP.,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22

were read on this motion to/for DISMISS.

Upon the foregoing documents, and after a final submission date of April 30, 2025, Defendant 69 Murray Housing Corp.’s (“Defendant”) motion to dismiss Plaintiffs Christopher Siragusa and Wynne Lo (“Plaintiffs”) Complaint pursuant to CPLR 3211(a)(7) and (a)(1) is granted.

**I. Background**

Plaintiffs jointly own shares in Defendant, a cooperative corporation that owns 69 Murray Street, New York, New York (the “Building”). Plaintiffs live in the Building’s penthouse pursuant to a proprietary lease (the “Lease”). The Lease contains a roof rider agreement (the “Roof Rider”) which delegates responsibility for maintenance of the roof and access rights to the roof. In December 2023, Defendant notified Plaintiffs that it needed access to the roof for façade repair required by New York City’s Façade Inspection and Safety Program (“Local Law 11”). Plaintiffs allegedly attempted to enter a licensing agreement with Defendant for use of the roof, but negotiations faltered. Plaintiff then initiated this action seeking declaratory relief that Defendant cannot use the roof for the façade repair project pursuant to the Roof Rider and seeking injunctive

relief. Defendant moves to dismiss under CPLR 3211(a)(1) and (a)(7). Defendant's motion is granted.

## II. Discussion

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must accept the factual allegations as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). However, conclusory allegations or claims consisting of bare legal conclusions with no factual specificity are insufficient to survive a motion to dismiss (*Godfrey v Spano*, 13 NY3d 358, 373 [2009]; *Barnes v Hodge*, 118 AD3d 633, 633-634 [1st Dept 2014]). A motion to dismiss for failure to state a claim will be granted if the factual allegations do not allow for an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]). A motion to dismiss based on documentary evidence pursuant to CPLR § 3211(a)(1) is appropriately granted only when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). The documentary evidence must be unambiguous, of undisputed authenticity, and its contents must be essentially undeniable (*VXI Lux Holdco S.A.R.L. v SIC Holdings, LLC*, 171 AD3d 189, 193 [1st Dept 2019]).

The parties agree that the Lease and Rider are to be read harmoniously and not selectively (*see Teliman Holding Corp. v VCW Associates*, 211 AD3d 499, 500 [1st Dept 2022]). The Lease requires Defendant to "keep in good repair all of the building including all of the units" unless there are repairs delegated specifically to an individual lessee (NYSCEF Doc. 3 at ¶ 2). The Lease also provides that Defendant and its agents, including "workmen" "shall be permitted to visit...or enter the unit and the roof...at any reasonable hour of the day upon notice...to make or facilitate repairs in any part of the building..." (NYSCEF Doc. 3 at ¶ 25). The Rider also permits Defendant

to, at its own expense “conduct reasonable additional inspections of the roof, at reasonable times and on reasonable notice.” (NYSCEF Doc. 2 at ¶ 9). Moreover, and contrary to Plaintiffs’ contention, they are not exclusively responsible for maintaining the Roof - the Rider delegates to Defendant the responsibility for maintenance and repair of the stairwell, skylights, and bulkheads above the one-foot flashing level on the roof (NYSCEF Doc. 2 at ¶ 8).

Defendant, legally obligated by the New York City’s Façade Inspection and Safety Program, requires roof access to address water infiltration issues, including repairing the bulkhead on the roof, and to install equipment to ensure workers inspecting and repairing the Building’s façade are safe. A tenant protection plan submitted by Defendant and Dooling & Company Architects, a registered architectural firm, has been accepted by the New York City Department of Buildings. It ensures safe egress and access for all tenants to and from their units (NYSCEF Doc. 16). Plaintiffs explicitly agreed that they will “observe all applicable Building Rules or governmental requirements with respect to the roof and the use thereof” (NYSCEF Doc. 2 at ¶ 12).

Based on the foregoing, there is nothing in the Lease or the Rider requiring Defendant to obtain a license from Plaintiffs to access the roof to make necessary repairs and inspections required by Local Law 11. The Court cannot rewrite the terms of the agreement under the guise of interpretation (*Ruttenberg v Davidge Data Systems Corp.*, 215 AD2d 191, 197 [1st Dept 1995]). The provisions in the Lease and the Rider are clear and unambiguous and definitively contradict Plaintiffs’ position. Nor is there any opposition denying that the New York City Department of Buildings approved the Tenant Protection Plan, which requires a safe access and egress for all tenants. Nor is there any denial that it is architecturally infeasible for Defendant to comply with Local Law 11 without access to the roof. Thus, the documentary evidence has established that

Plaintiffs' request for declaratory relief is without merit and definitively contradicted by the Lease and Roof Rider. Therefore, the first cause of action for declaratory relief is dismissed.<sup>1</sup>

Because the declaratory judgment cause of action is dismissed, so too is the cause of action seeking injunctive relief. There is no independent cause of action for an injunction (*Men Women N.Y. Model Management, Inc. v Elite Model Management-New York LLC*, 183 AD3d 501, 502 [1st Dept 2020] citing *Talking Capital LLC v Omanoff*, 169 AD3d 423, 424 [1st Dept 2020]). Although Defendant asks this Court to issue a declaration in its favor, it did not formally move for this relief, nor did it file any pleading requesting declaratory relief. Therefore, the Court declines to entertain this request (*Onofre v 243 Riverside Drive Corporation*, 232 AD3d 443, 444 [1st Dept 2023]).

Accordingly, it is hereby,

ORDERED that Defendant 69 Murray Housing Corp.'s motion to dismiss Plaintiffs Christopher Siragusa and Wynne Lo Complaint pursuant to CPLR 3211(a)(7) and (a)(1) is granted, and Plaintiffs' Complaint is hereby dismissed; and it is further

ORDERED that within ten days of entry, counsel for Defendant shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

6/23/2025  
DATE

*Mary V Rosado Jsc*  
HON. MARY V. ROSADO, J.S.C.

CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	NON-FINAL DISPOSITION
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/> DENIED	<input 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"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	REFERENCE

<sup>1</sup> Plaintiffs also request in their first cause of action a declaration that the Rider is "a valid and enforceable agreement" but this is not disputed and is therefore not a justiciable controversy ripe for declaratory judgment.