

**Board of Mgrs. of 252 Condominium v World-Wide Holdings Corp.**

2025 NY Slip Op 33201(U)

July 16, 2025

Supreme Court, New York County

Docket Number: Index No. 652387/2022

Judge: Anar Rathod Patel

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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THE BOARD OF MANAGERS OF 252  
CONDOMINIUM, ON BEHALF OF THE UNIT  
OWNERS,

Plaintiff,

- v -

WORLD-WIDE HOLDINGS CORP., SNOWPLOW  
LH 2 LLC, JAMES STANTON, DAVID  
LOWENFELD, ADAM R. ROSE, SNOWPLOW LH  
LLC, ROSE ASSOCIATES, INC., BENSON  
INDUSTRIES, INC., TECNOGLASS INC.,

Defendants.

**INDEX NO.** 652387/2022

**MOTION  
DATE** 09/04/2024

**MOTION SEQ.  
NO.** 011

**DECISION + ORDER ON  
MOTION**

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SNOWPLOW LH 2 LLC, SNOWPLOW LH LLC

Plaintiffs,

-against-

LENDLEASE (US) CONSTRUCTION LMB INC.,  
SLCE ARCHITECTS, LLP, SKIDMORE, OWINGS &  
MERRILL LLP, DESIMONE CONSULTING  
ENGINEERS PLLC, WSP USA BUILDINGS INC.  
F/K/A WSP FLACK & KURTZ, INC. STRUCTURAL  
ENGINEERS, GMS, LLP F/K/A GILSANZ MURRAY  
STEFICEK LLP

Defendants.

Third-Party  
Index No. 595920/2022

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LENDLEASE (US) CONSTRUCTION LMB INC.

Plaintiff,

-against-

ASM MECHANICAL SYSTEMS, BENSON  
INDUSTRIES, LLC, EPIC MECHANICAL

Second Third-Party  
Index No. 595359/2024

CONTRACTORS, LLC, FD SPRINKLERS, INC.,  
ISLAND ACOUSTICS, LLC, JANTILE INC., L&L  
PAINTING CO., INC., L.I.F. INDUSTRIES, INC.,  
LYNBROOK GLASS & ARCHITECTURAL METALS  
CORP., MARTIN ASSOCIATES, INC., MENT BROS  
IRON WORKS CO., INC., NAVILLUS TILE, INC.,  
PARKVIEW PLUMBING AND HEATING CORP., SJ  
ELECTRIC, INC., WOLKOW BRAKER ROOFING  
CORP., WOODWORKS CONSTRUCTION COMPANY  
INC., JOHN DOES

Defendants.

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**HON. ANAR RATHOD PATEL:**

The following e-filed documents, listed by NYSCEF document number (Motion 011) 584–605, 632, 640–645, 649, 843, 1035, 1058 were read on this motion to/for DISMISS.

**Factual and Procedural History**

The Court incorporates, by reference, the factual and procedural summaries from the Decisions and Orders on Motion Sequence Numbers 003, 004, 006, 012, and 019. NYSCEF Doc. Nos. 533–535, 1054–1055.

Defendant Tecnoglass Inc. (“Tecnoglass”) is a Cayman Islands corporation with its principal place of business in New York. NYSCEF Doc. No. 981 at ¶ 28 (“TAC”). Tecnoglass entered into a contract to manufacture, deliver and warranty flat glass panels to be installed at construction project located at 252 East 57<sup>th</sup> Street (“the Building”). *Id.* Tecnoglass warranted the glass units it furnished against “defective materials or workmanship which could result in materials [*sic*] obstruction of vision caused by dust collection or film formation on internal glass surface due to failure of the insulated glass seal.” *Id.* at ¶ 246. The warranty was for “a period of ten (10) years from the date of manufacture....” NYSCEF Doc. No. 601 (“Tecnoglass Warranty”).

Upon learning of defects in the glass delivered, Plaintiff provided Tecnoglass with notice of warranty claims on June 5, 2023, January 22, 2024, March 6, 2024, and February 25, 2025. TAC at ¶¶ 246–49. “To date, neither Benson, Tecnoglass, nor anyone else have remedied numerous outstanding curtainwall and glass defects. . . .” *Id.* at ¶ 250. Due to Tecnoglass’ refusal to remedy the problems, Plaintiff alleges that Tecnoglass breached its contractual warranty. *Id.* at ¶¶ 263–68.

In Plaintiff’s Second Amended Complaint, Plaintiff asserted a cause of action sounding in “Breach of Contract Warranty” against Tecnoglass. NYSCEF Doc. No. 542 at ¶¶ 229–35 (“SAC”). On September 4, 2024, Tecnoglass filed its motion to dismiss the Second Amended Complaint. NYSCEF Doc. Nos. 584–605 (Mot. Seq. No. 011). Plaintiff filed its opposition on October 9, 2024. NYSCEF Doc. Nos. 640–645. Subsequently, Tecnoglass filed its reply on October 14, 2024. NYSCEF Doc. No. 649.

On May 9, 2025, Plaintiff filed its motion seeking leave to amend the Second Amended Complaint. NYSCEF Doc. Nos. 979–987 (Mot. Seq. No. 019). Tecnoglass did not oppose Plaintiff’s motion seeking leave to amend. On July 8, 2025, the Court granted Plaintiff’s motion and deemed the Third Amended Complaint to have been served on the parties “upon service of a copy of this order with notice of entry thereof.” NYSCEF Doc. Nos. 1054–1055 at 10 (“July 8 Decision and Order”). Notice of entry was filed on July 10, 2025. NYSCEF Doc. Nos. 1056–1057. The Court further ordered that Tecnoglass “file a letter on NYSCEF on or before July 16, 2025, stating its intention to either maintain or withdraw Defendant Tecnoglass Inc.’s presently pending Motion to Dismiss (Mot. Seq. No. 011).” July 8 Decision and Order at 10. Tecnoglass filed a letter on July 11, 2025, stating its intent to maintain Mot. Seq. No. 011 as against the Third Amended Complaint and reiterating their argument that the Tecnoglass Warranty was not assignable. NYSCEF Doc. No. 1058.

### Legal Analysis

On a motion to dismiss brought pursuant to CPLR § 3211(a)(7), “pleadings are to be afforded a liberal construction, allegations are taken as true, the plaintiff is afforded every possible inference, and a determination is made only as to whether the facts as alleged fit within any cognizable legal theory.” *CSC Holdings, LLC v. Samsung Elecs. Am., Inc.*, 146 N.Y.S.3d 17, 18 (2021) (internal citations omitted). Nevertheless, “[d]ismissal of the complaint is warranted if the [movant] fails to assert facts in support of an element of the claim, or if the factual allegations and inferences drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 75 N.E.3d 1159, 1162 (N.Y. 2017) (internal citations omitted). The test is “whether the proponent of the pleading has a cause of action, not whether he has stated one.” *Leon v. Martinez*, 84 N.Y.2d 83, 87–88 (1994) (quoting *Guggenheimer v. Ginzburg*, 43 N.Y.2d 268, 275 (1977)). Courts will grant a motion to dismiss where the plaintiff states a cognizable cause of action but fails to assert a material fact necessary to meet an element of the claim. *See, e.g., Arnon Ltd v. Beierwaltes*, 3 N.Y.S.3d 31, 33 (1st Dept. 2015).

Tecnoglass raises the same argument in its motion to dismiss as that raised by Defendant/Second Third-Party Defendant Benson Industries, LLC (“Benson”) in Motion Sequence Numbers 012 and 019. Specifically, Tecnoglass argues that the Third Amended Complaint should be dismissed as against Tecnoglass because Plaintiff fails to plead that the parties were in privity of contract. NYSCEF Doc. No. 843 at 8–10. Plaintiff does not dispute that it was neither a signatory to the contract between Tecnoglass and Benson nor an intended third-party beneficiary. Rather, similar to Plaintiff’s argument in Motion Sequence Numbers 012 and 019, Plaintiff alleges that the Tecnoglass Warranty was assigned to Plaintiff, allowing Plaintiff to enforce it. NYSCEF Doc. No. 645 at 12–15. As such, the Court incorporates by reference the legal analysis found at Section I.A. of the July 8 Decision and Order. NYSCEF Doc. Nos. 1054–1055 at 5–7. To reiterate, Plaintiff alleges that, as part of the Offering Plan, “all ‘warranties or guarantees provided to Sponsor by contractors, manufacturers or suppliers’ were allegedly assigned to Plaintiff.” NYSCEF Doc. No. 981 at ¶ 242. Defendants World-Wide Holdings Corp., Snowplow LH LLC, Snowplow LH 2 LLC, James Stanton, and David Lowenfield (collectively “Sponsor”) admit to assigning all warranties and guarantees to Plaintiff. NYSCEF Doc. No. 582 at 49 ¶¶ 19–20 (“Sponsors’ Answer to SAC”). Accordingly, if assignment was permissible, Plaintiff has sufficiently alleged that the Tecnoglass Warranty was assigned to Plaintiff.

Unique from Motion Sequence Numbers 012 and 019, Tecnoglass argues that, pursuant to the explicit terms of the contract between Tecnoglass and Benson, the warranty was not assignable. NYSCEF Doc. No. 843 at 10. “[A]n assignment is permissible in the absence of an express prohibition.” *Ellington v. Sony/ATV Music Publg. LLC*, 925 N.Y.S.2d 20, 21 (1st Dept. 2011). “The plainest words should have been chosen so that he who runs could read, in order to limit the freedom of alienation of rights and prohibit the assignment.” *Allhusen v. Caristo Const. Corporation*, 303 N.Y. 446, 451 (1952). Here, Tecnoglass argues that the contract between Tecnoglass and Benson bars assignment by stating, “Under no circumstances shall TECNOGLASS be liable to or agree to indemnify [Benson] or any third party for any loss, costs, damage or expense (including attorney’s fees) resulting from Buyer’s or any third party’s actions or conduct.” NYSCEF Doc. No. 600 at 3. Furthermore, Tecnoglass argues that the warranties offered to Benson forbid assignment through a provision which states, in relevant part, that “Tecnoglass makes no other warranty either expressed or implied, regarding the product, merchantability, or fitness for a particular purpose.” NYSCEF Doc. Nos. 601–604. However, Tecnoglass’ argument is inapposite to the prevailing case law. Even if the parties intended to make the warranty unassignable, the language of the contract is not sufficiently explicit because it is not “the plainest of words.” *Allhusen*, 303 N.Y. at 451. Rather, the language cited by Tecnoglass indicates contractual waiver of third-party indemnification. Therefore, due to the absence of explicit language, Tecnoglass’ argument is unconvincing at the motion to dismiss stage and the Third Amended Complaint sufficiently alleges that the warranty is assignable. Tecnoglass does not otherwise dispute that Tecnoglass offered a warranty to Benson and that Benson may have assigned the same to Lendlease and, eventually, Plaintiff.

Hence, Plaintiff sufficiently alleges that the Tecnoglass Warranty was assigned to Plaintiff and that Plaintiff has standing to enforce it. *See* NYSCEF Doc. Nos. 1054–1055 at § I.A. Accordingly, it is hereby,

**ORDERED** that Defendant Tecnoglass Inc.’s Motion to Dismiss (Mot. Seq. No. 011) is DENIED in its entirety; and it is further

**ORDERED** that Defendant Tecnoglass Inc. shall serve an answer to the Third Amended Complaint or otherwise respond thereto within twenty (20) days from the date of this Decision and Order.

The foregoing constitutes the Decision and Order of the Court.

July 16, 2025

DATE

CHECK ONE:

APPLICATION:

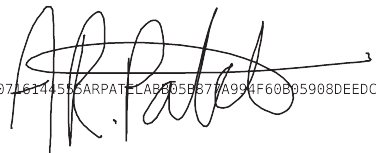
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CASE DISPOSED  
GRANTED  DENIED  
SETTLE ORDER  
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NON-FINAL DISPOSITION  
GRANTED IN PART  
SUBMIT ORDER  
FIDUCIARY APPOINTMENT

OTHER

REFERENCE

  
20250716144555ARPATLAB055B77A994F60B05908DEEDC38338  
ANAR RATHOD PATEL, A.J.S.C.