

**Petronio v CBS Studios, Inc.**

2025 NY Slip Op 34160(U)

October 31, 2025

Supreme Court, New York County

Docket Number: Index No. 150199/2025

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*

-----X  
MARK PETRONIO, **INDEX NO.** 150199/2025  
Plaintiff, **MOTION DATE** 06/03/2025,  
**MOTION SEQ. NO.** 002 003  
-----X

CBS STUDIOS, INC., UNIVERSAL TELEVISION, LLC, and  
HADDAD'S OF NEW YORK, INC.  
Defendants.

**DECISION + ORDER ON  
MOTION**

-----X  
The following e-filed documents, listed by NYSCEF document number (Motion 002) 25, 26, 27, 28, 29, 30, 31, 32, 41, 43, 44, 45, 46, 48, 50, 54  
were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 33, 34, 35, 36, 37, 38, 39, 40, 42, 47, 49, 51, 52, 53  
were read on this motion to/for DISMISS.

Upon the foregoing documents, and after a final submission date of August 26, 2025, Defendant Universal Television, LLC’s (“Universal”) motion to dismiss Plaintiff Mark Petronio’s (“Plaintiff”) Amended Complaint (“Mot. Seq. 002) and Defendant Haddad’s of New York, Inc.’s (“Haddad’s) motion to dismiss Plaintiff’s Amended Complaint (“Mot. Seq. 003”) are consolidated for disposition and are denied.

**I. Background**

On April 12, 2024, Plaintiff was allegedly injured when he fell down stairs while working on a set for the show “Equalizer” at 47-40 Center Boulevard, Queens, New York (the “Set”). Non-party Entertainment Partners allegedly employed Plaintiff. Now, Plaintiff sues Defendants CBS Studios, Inc. (“CBS”), Universal, and Haddad’s for personal injuries. Universal and Haddad’s move to dismiss, pre-answer, pursuant to CPLR 3211(a)(1) and (a)(7), and Plaintiff opposes.

## II. Discussion

### A. Standard

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings and determines only whether the alleged facts fit within any cognizable legal theory (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). All factual allegations must be accepted as true (*Allianz Underwriters Ins. Co. v Landmark Ins. Co.*, 13 AD3d 172, 174 [1st Dept 2004]). A motion to dismiss based on documentary evidence 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]).

### B. Universal's Motion

Universal's motion to dismiss Plaintiff's Amended Complaint is denied. Universal argues documentary evidence establishes it is Plaintiff's employer and that Plaintiff's claims are barred by the Workers' Compensation Law. However, to the extent Universal relies on the affirmation of Vicki Aguilar to establish its Workers' Compensation based defense, employee affirmations do not constitute documentary evidence for purposes of a pre-answer CPLR 3211(a)(1) motion (*see Bou v Llamaza*, 173 AD3d 575, 575-76 [1st Dept 2019]).

The remainder of the documents relied on by Universal do not establish conclusively and irrefutably that it was Plaintiff's employer. First, the paystub relied on contains the insignia of Entertainment Partners, who Plaintiff alleges was his employer (*see* NYSCEF Doc. 30). The Deal

Memorandum relied on, besides being barebone and devoid of any detailed definitions of the roles of the signatories, states only Universal Television LLC was the “production entity” ((NYSCEF Doc. 29). But being labeled a “production entity” on a film set where there could conceivably be multiple different corporate entities operating as different staff’s employers does not establish definitively that Universal was Plaintiff’s employer.

Nor does the “Start Packet” definitively establish a Workers’ Compensation defense. The “Start Packet” frequently identifies “NBCUniversal” as the employer (NYSCEF Doc. 31). While there is a form I-9 signed by Plaintiff where Universal is listed as his employer, this form is dated December 8, 2023, four months prior to Plaintiff’s accident and it remains an issue of fact as to whether Plaintiff’s employer changed in the months leading up to his accident. This issue of fact is highlighted by the Workers’ Compensation Board’s documents which identify Plaintiff’s employer not as Universal, but NBCUniversal LLC (NYSCEF Doc. 44). While Universal explains in its motion papers that NBCUniversal is the parent company of Universal, the documents relied on do not establish this themselves, and the relationship between Universal, NBCUniversal LLC, and Entertainment Partners must be flushed out through discovery.

Simply, because this is a pre-answer motion to dismiss and there remain unresolved issues of fact left open by the various documents submitted, Universal’s motion to dismiss is denied. After an exchange of discovery and on a more fully developed record, Universal may renew its application on a motion for summary judgment (*see, e.g. Correa v Orient-Express Hotels, Inc.*, 84 AD3d 651 [1st Dept 2011]).

### **C. Haddad’s Motion**

Haddad’s motion to dismiss Plaintiff’s Amended Complaint is denied. Haddad’s allegedly supplied the trailer that caused Plaintiff’s accident, but Haddad’s claims documentary evidence

establishes it did not provide a defective trailer. The “documentary evidence” relied on in support of this argument is an affirmation from Scott Lawry, general manager of Haddad’s (NYSCEF Doc. 35). According to Mr. Lawry, he searched his records and found no complaints about the condition of the trailer. But as previously stated, employee affirmations do not constitute documentary evidence for purposes of a pre-answer CPLR 3211(a)(1) motion (*see Bou v Llamozza*, 173 AD3d 575, 575-76 [1st Dept 2019]). While Haddad’s submits maintenance and repair records, these are submitted for the first time on reply and cannot be considered (*see, e.g. Simon v FrancInvest, S.A.*, 192 AD3d 565, 569 [1st Dept 2021]). Like Universal’s motion, because the Court is faced with a pre-answer motion to dismiss, and Haddad’s is putting forth arguments more appropriate on a motion summary judgment, the Court is constrained to deny Haddad’s motion.

Accordingly, it is hereby,

ORDERED that Universal and Haddad’s motions to dismiss Plaintiff’s Amended Complaint are denied; and it is further

ORDERED that within twenty days of entry, counsel for Universal and Haddad’s shall file their Answers to Plaintiff’s Amended Complaint; and it is further

ORDERED that the parties shall meet and confer immediately and submit a proposed preliminary conference order via e-mail to [SFC-Part33-Clerk@nycourts.gov](mailto:SFC-Part33-Clerk@nycourts.gov), but in no event shall the proposed preliminary conference order be submitted any later than November 25, 2025. If the parties have a serious discovery dispute requiring a conference, they shall notify the Court via e-mail so a conference can be scheduled; and it is further

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ORDERED that within ten days of entry, counsel for Plaintiff 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.

10/31/2025  
DATE

Mary V Rosado JSC  
HON. MARY V. ROSADO, J.S.C.

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