

Farah v 307 Cosmic Realty LLC

2026 NY Slip Op 30144(U)

January 14, 2026

Supreme Court, New York County

Docket Number: Index No. 151883/2022

Judge: David B. Cohen

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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. DAVID B. COHEN PART 58

Justice

-----X

AUDIE AGRECIO LOMAS FARAH,
Plaintiff,

INDEX NO. 151883/2022

MOTION DATE 07/02/2025

MOTION SEQ. NO. 003

- v -

307 COSMIC REALTY LLC, TANGELO LLC, G & B
CONSTRUCTION NY CORP., FSI ARCHITECTURE, P.C.

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 109, 110, 111, 112, 115, 116, 117, 118

were read on this motion to/for DISMISSAL.

Defendant Tangelo LLC (Tangelo) moves, pursuant to CPLR 3211(a)(7), to dismiss the complaint as asserted against it for failure to state a cause of action. Plaintiff opposes the motion, and defendant FSI Architecture, P.C. (FSI) submits opposition papers in support of plaintiff's position.

I. BACKGROUND

This action arises out of an alleged construction accident that occurred on February 12, 2022, while plaintiff was working at a jobsite located at 307 7th Avenue, New York, New York (the premises). Plaintiff alleges that he sustained injuries when he fell from a ladder while performing work within the scope of his employment.

Prior to plaintiff's alleged accident, defendant 307 Cosmic Realty LLC (Cosmic), as landlord, and defendant FSI, as tenant, entered into a Sixth Amendment to Lease dated October 1, 2021, which was in effect on the date of the incident (NYSCEF 99). The October 2021 amendment relates to an underlying lease agreement between Cosmic and FSI dated May 21,

1999 (NYSCEF 100). Between 1999 and 2021, the parties entered into five separate amendments to the lease (NYSCEF 100-105).

The lease documents submitted on this motion identify Cosmic as the landlord of the premises and FSI as the tenant. Tangelo LLC is not identified as a party to the underlying lease or any of the subsequent amendments. The submissions further reflect that FSI retained defendant G&B Construction NY Corp. in connection with work performed at the premises.

FSI submits a bargain and sale deed dated October 17, 2019, pursuant to which Comet Realty Corp. (Comet) conveyed interests in the premises to Tangelo and Cosmic as tenants in common (NYSCEF 117). The deed reflects that Tangelo acquired an undivided 13.72998% interest in the premises and Cosmic acquired an undivided 86.27002% interest (*id.*).

II. DISCUSSION

Party Contentions

Tangelo moves to dismiss the complaint as against it for failure to state a cause of action, contending that it was neither an owner of the premises nor a contractor or statutory agent at the time of plaintiff's alleged accident. It submits documentary evidence, including the underlying lease and subsequent amendments in effect on the date of loss, demonstrating that Cosmic was the landlord and that FSI was the tenant. Tangelo maintains that it was not a party to the lease or any amendment thereto, did not contract for the work being performed, and did not supervise, direct, or control the work at the premises.

Plaintiff opposes the motion, contending that the complaint sufficiently alleges that Tangelo was an owner of the premises and that, on a motion to dismiss, the court must accept those allegations as true and afford plaintiff the benefit of every favorable inference. Plaintiff maintains that ownership alone is sufficient to impose liability under Labor Law §§ 240(1) and

241(6), regardless of supervision or control of the work. Plaintiff further contends that dismissal is premature because discovery is incomplete and necessary to explore Tangelo's ownership interest and relationship to the premises.

In reply, Tangelo contends that plaintiff's opposition is untimely and should not be considered. In the alternative, Tangelo maintains that plaintiff has failed to submit any evidence contradicting the lease documents establishing Tangelo's lack of ownership and contends that the motion is not premature because the dispositive issue is purely legal and resolved by documentary evidence.

FSI contends that the deed conclusively establishes Tangelo's ownership interest in the premises as of the date of plaintiff's alleged accident, and that Tangelo therefore qualifies as an owner within the meaning of the Labor Law.

Applicable Law and Analysis

Under CPLR 3211(a)(7), a party may move for dismissal on the ground that the pleading fails to state a cause of action. On such a motion, the court must afford the pleading a liberal construction, accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]; *Holder v Jacob*, 231 AD3d 78, 86 [1st Dept 2024]).

The court's role at this stage is limited to assessing the legal sufficiency of the pleading; it does not weigh evidence or assess credibility (*Leon v Martinez*, 84 NY2d at 88). Dismissal is warranted where the plaintiff fails to allege facts in support of a material element of the claim, or where the factual allegations and reasonable inferences to be drawn from them do not allow for

an enforceable right of recovery (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017]).

Where documentary evidence is submitted in support of a CPLR 3211(a)(7) motion, dismissal is appropriate if that evidence conclusively establishes that the plaintiff has no cause of action as a matter of law (*Leon v Martinez*, 84 NY2d at 88; *Nonnon v City of New York*, 9 NY3d 825, 827 [2007]). Allegations consisting of bare legal conclusions, or those that are flatly contradicted by documentary evidence, are not entitled to the presumption of truth (*Rovello v Orofino Realty Co.*, 40 NY2d 633, 636 [1976]).

As a threshold matter, Labor Law §§ 240(1) and 241(6) impose nondelegable duties upon owners to provide proper protection to workers, and liability under those provisions is strict in nature. An “owner” within the meaning of the Labor Law is construed broadly and includes any party with a legal interest in the property, regardless of whether that party supervised or controlled the work, contracted for the work, or benefited from it (*see Gordon v Eastern Ry. Supply*, 82 NY2d 555, 560 [1993]; *Coleman v City of New York*, 91 NY2d 821, 823 [1997]).

Here, the bargain and sale deed dated October 17, 2019 establishes that Tangelo holds an undivided tenant-in-common ownership interest in the premises. Accepting the allegations of the complaint as true and affording plaintiff the benefit of every favorable inference, plaintiff has sufficiently alleged that Tangelo qualifies as an owner within the meaning of Labor Law §§ 240(1) and 241(6). Accordingly, Tangelo is not entitled to dismissal of those claims at the pleading stage, notwithstanding its contention that it did not supervise, control, or contract for the work being performed (*see Morton v State of New York*, 15 NY3d 50, 56–57 [2010]; *Sanatass v Consolidated Inv. Co.*, 10 NY3d 333, 340–342 [2008]).

However, plaintiff's Labor Law § 200 and common-law negligence claims are governed by different principles. Labor Law § 200 codifies the common-law duty of an owner or contractor to provide workers with a safe place to work, and liability under that statute depends on the manner in which the injury arose. Where, as here, the alleged injury arises from the manner and means of the work, liability attaches only if the defendant exercised supervisory control over the work being performed (*see Cappabianca v Skanska USA Bldg. Inc.*, 99 AD3d 139, 144 [1st Dept 2012]). Where the claim arises from a dangerous premises condition, liability requires a showing that the defendant created the condition or had actual or constructive notice of it (*see Rosa v 47 E. 34th St. (NY), L.P.*, 208 AD3d 1075, 1077 [1st Dept 2022]).

Here, the lease documents in effect on the date of the incident identify Cosmic as the landlord and FSI as the tenant in possession, and vest possession and control of the premises in FSI. Tangelo is not identified as a party to the lease or any amendment thereto, and the complaint contains no factual allegations that Tangelo supervised, directed, or controlled the work being performed, or that it created or had notice of any allegedly dangerous condition at the premises. Accordingly, the complaint fails to state a cause of action against Tangelo under Labor Law § 200 or the common law.

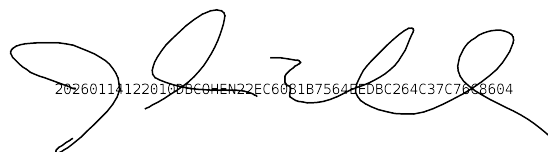
III. CONCLUSION

Accordingly, defendant Tangelo LLC is not entitled to dismissal of plaintiff's claims under Labor Law §§ 240(1) and 241(6) at the pleading stage, as the complaint sufficiently alleges that Tangelo qualifies as an owner within the meaning of the Labor Law. However, Tangelo has demonstrated entitlement to dismissal of plaintiff's Labor Law § 200 and common-law negligence claims, as the complaint fails to allege facts establishing that Tangelo exercised supervision or control over the work or had notice of a dangerous premises condition.

Accordingly, it is hereby

ORDERED that defendant Tangelo LLC’s motion, pursuant to CPLR 3211(a)(7), is denied as to plaintiff’s claims under Labor Law §§ 240(1) and 241(6), and granted as to severing and dismissing plaintiff’s claims against it pursuant to Labor Law § 200 and common-law negligence; and it is further

ORDERED that the parties shall appear for the previously scheduled compliance conference on January 27, 2026, at 71 Thomas Street, Room 305, New York, New York, at 9:30 a.m.



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1/14/2026
DATE

DAVID B. COHEN, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE