Delille v Renaissance Equity Holdings LLC F.
2026 NY Slip Op 30181(U)
January 12, 2026
Supreme Court, Kings County
Docket Number: Index No. 500584/25
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 12th day of January, 2026.

P R E S E N T:

HON. WAVNY TOUSSAINT,
Justice.

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MARIE DELILLE, as proposed Administrator of the Estate of BLADIMY MATHURIN, deceased, and as proposed Administrator of the Estate of MODE CHINWAI, deceased, and MARIE DELILLE, individually,

Plaintiffs,

-against-

RENAISSANCE EQUITY HOLDINGS LLC F., CLIPPER REALTY INC., and JOHN-JANE DOE #1-10, all in the official capacity and individual capacities,

Defendants.

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Index No.: 500584/25
MS # 1 & 2
DECISION AND ORDER

The following e-filed papers read herein:	NYSCEF Doc Nos.:
Notice of Motion/Order to Show Cause/ Petition/Cross Motion and Affidavits (Affirmations) Annexed	9-15; 23-25
Opposing Affidavits (Affirmations)	20-22
Affidavits/Affirmations in Reply	28

Upon the foregoing papers, in this action by plaintiff Marie Delille (plaintiff), as the proposed administrator of the estates of Bladimy Mathurin (Mathurin) and Mode Chinwai (Chinwai), who are both deceased, and plaintiff, individually, against defendants

Renaissance Equity Holdings LLC F. (Renaissance) and Clipper Realty Inc. (Clipper) (collectively, defendants), and John-Jane Doe #1-10[1], defendants move (Seq. 01) for an order, pursuant to CPLR §§ 3211 [a] [1] and [7], dismissing plaintiff's complaint based upon defenses founded upon documentary evidence and failure to state a cause of action. Plaintiff opposes the motion.

Plaintiff also cross-moves (Seq. 02) for an order, pursuant to CPLR § 3025 [b], amending the caption and all papers, pleadings, and proceedings in this action to add a new defendant. Defendants support the motion.

Facts and Procedural Background

Plaintiff, Mathurin, and Chinwai were each tenants of 1418 Brooklyn Avenue, Apartment 4E, which is located in a residential development consisting of over 2,500 apartments and 59 residential apartment buildings known as Flatbush Gardens in the East Flatbush section of Brooklyn, New York. Plaintiff was the spouse of Mathurin and the mother of Chinwai.

Jason Pass (Pass) was allegedly a neighbor and fellow tenant of plaintiff, Mathurin, and Chinwai, and lived one floor directly below them in Apartment 3E. As depicted by building operated surveillance footage and set forth by defendants, on October 29, 2023 at approximately 10:30 p.m., Pass ascended the staircase leading from the third floor to the fourth floor, proceeded to kick the door of Apartment 4E and began arguing with Mathurin and plaintiff at the door. Mathurin then went back into Apartment 4E while plaintiff

[1] Plaintiff alleges that John-Jane Doe #1-10 are the agents, servants, and/or employees of Renaissance and Clipper. Plaintiff contends that Renaissance and Clipper negligently hired and supervised John-Jane Doe #1-10, and that Renaissance and Clipper are vicariously liable for John-Jane Doe #1-10's acts, omissions, and commissions.

stepped into the hallway and argued with Pass. Mathurin returned to the hallway, this time with his son, Chinwai, standing nearby, and confronted Pass while holding up scissors to his face. Plaintiff pulled Mathurin away by his shirt, but Mathurin attempted to turn back to Pass with the scissors. Pass then pulled out a handgun from his waistband and shot Mathurin in the back twice. Chinwai then ran towards Pass and Pass shot Chinwai five times before shooting him an additional two times in the head as he lay on the ground. Pass then went over to Mathurin and shot him twice in the head before leaving the scene. Mathurin and Chinwai both died from their gunshot wounds. On November 1, 2023, three days later, Pass charged NYPD officers with a knife and was shot and killed. At the time of the shooting of Mathurin and Chinwai, Renaissance owned the premises, and Clipper was a managing member of the property.

On January 7, 2025, plaintiff filed the instant action, alleging causes of action for negligence, negligent hiring and supervision, wrongful death, negligent infliction of emotional distress, and loss of consortium (NYSCEF Doc No. 1). On April 29, 2025, following a stipulation to extend defendants' time to answer the complaint or otherwise appear in this action, defendants filed their instant motion to dismiss (NYSCEF Doc No. 9). On August 13, 2025, plaintiff filed her cross-motion to amend the complaint (NYSCEF Doc No. 23).

Discussion

Standard for Dismissal

"To succeed on a motion to dismiss pursuant to CPLR 3211 (a) (1), the documentary evidence that forms the basis of the defense must be such that it resolves all factual issues

as a matter of law, and conclusively disposes of the plaintiff's claim" (*Teitler v Pollack & Sons*, 288 AD2d 302 [2d Dept 2001]). "In order to be documentary, the evidence must be unambiguous, authentic, and undeniable; thus, affidavits are not considered documentary evidence" (*Treeline 1 OCR, LLC v Nassau County Indus. Dev. Agency*, 82 AD3d 748, 752 [2d Dept 2011]; *see also Summer v Severance*, 85 AD3d 1011, 1012 [2d Dept 2011]; *Granada Condominium III Assn. v Palomino*, 78 AD3d 996, 996-997 [2d Dept 2010]).

In reviewing a motion to dismiss pursuant to CPLR § 3211 [a] [7], "the court will accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Matter of Walton v New York State Dept. of Correctional Servs.*, 13 NY3d 475, 484 [2009] [internal quotation marks omitted]). "[T]he sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law a motion for dismissal will fail" (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977]). "In opposition to such a motion, a plaintiff may submit affidavits to remedy defects in the complaint and preserve inartfully pleaded, but potentially meritorious claims" (*Cron v Hargro Fabrics,* 91 NY2d 362, 366 [1998] [internal quotation marks omitted]).

Defendants' Motion to Dismiss

"Landlords have a 'common-law duty to take minimal precautions to protect tenants from foreseeable harm,' including a third party's foreseeable criminal conduct" (*Burgos v Aqueduct Realty Corp.*, 92 NY2d 544, 548 [1998], quoting *Jacqueline S. v City of New York,* 81 NY2d 288, 293-294 [1993], *rearg denied* 82 NY2d 749 [1993]). A tenant may

recover damages, however, only on a showing that the landlord's negligent conduct was a proximate cause of the injury (*Burgos*, 92 NY2d at 548).

In support of their motion, defendants contend that they provided adequate security at the premises. Defendants submitted the affidavit of Tennyson Martin (Martin), a superintendent of the property, who was employed by Renaissance at the time of the incident (NYSCEF Doc No. 14), and the affidavit of Arnice Steward (Steward), who was a managing agent of the property employed by Renaissance (NYSCEF Doc No. 15). Martin and Steward attest that in October 2023, the entire property was under 24-hour video surveillance, that there were video cameras at all access points and in common areas including the hallways, that all access points at the premises were equipped with locking mechanisms, that access points were only able to be unlocked with the use of key fobs issued to tenants and building personnel, and that each access point had an intercom system in which tenants could buzz up permitted visitors. They further attest that a non-party security company was stationed at the premises and included 24-hour weekend security.

Defendants assert that the incident took place on Sunday, October 29, 2023 at approximately 10:30 p.m., at which time, security workers were at the premises monitoring the 24-hour live surveillance. While defendants claim that security workers witnessed the incident and called 911, there is no showing that security workers did so. Plaintiff disputes that security workers called 911 and states, in her affidavit, that she was the one who called 911 (NYSCEF Doc No. 21). There is no showing as to what security workers did during the few minutes before the shooting took place and whether they ever called 911.

The affidavits of Martin and Steward do not disclose who was watching the live-security video feed of this incident and what he or she did as Pass walked from his apartment on the third floor up to the fourth floor to an apartment where it was allegedly known to the building that he had issues. Furthermore, the affidavits provide no information about the security company, or what was known by the security personnel about Pass or what actions were or were not taken by security personnel.

Both Martin and Steward attest that they never received any complaints from the residents of Apartment 4E, including from plaintiff, Mathurin, or Chinwai, that Pass had a history of erratic, violent, and criminal behavior, that they never advised any residents that Pass had a history of erratic, violent, and criminal behavior, and that they never received any complaints from plaintiff, Mathurin, or Chinwai that Pass had made threats of physical violence against anyone from their apartment or any other individual living at the premises. Martin and Steward further attest that they never advised plaintiff, Mathurin, or Chinwai to stay away from Pass because he was dangerous, and were never advised that plaintiff, Mathurin, or Chinwai, or any other residents of their apartment were scared for their well-being and did not feel safe when Pass was at the premises. They also attest that they were never advised by any resident that they were scared for their well-being and did not feel safe when Pass was at the premises.

As noted above, however, an affidavit does not constitute documentary evidence to support a motion to dismiss pursuant to CPLR § 3211 [a] [1] (*see Summer*, 85 AD3d at 1012; *Treeline 1 OCR, LLC*, 82 AD3d at 752). Moreover, neither Martin nor Steward was working on the date of incident, October 29, 2023. As such, Martin and Steward were not

present for, and did not witness the incident first-hand. Both Martin and Steward admit that they first became aware of the incident only after it had already happened. In addition, defendants' papers do not provide any attendance records or time sheets as proof that the employees supposed to be working on the date of the incident were, in fact, at work that day.

Defendants have not submitted an affidavit from anyone who had first-hand knowledge of the incident. Furthermore, discovery is needed to determine if any other employees of Renaissance or any employees of Clipper received any complaints that Pass had a history of erratic, violent, and criminal behavior or had made threats of physical violence. Martin and Steward's affidavits do not resolve all factual issues as a matter of law, and do not conclusively dispose of plaintiff's claim.

Plaintiff's complaint alleges that over the period leading up to the assault, she filed numerous complaints with defendants' servants, agents, and employees regarding the lack of adequate security in the premises, including, but not limited to, lack of security cameras and lack of security personnel, and that defendant failed to respond to previous complaints made about Pass. Defendants state that plaintiff's claim of a lack of security cameras is false since a video exists depicting the incident on which plaintiff's complaint is based. Defendants further state that plaintiff's claim of a lack of security personnel is also false since the building employed 24-hour weekend security, and this incident took place on a Sunday evening.

In response, plaintiff admits that defendants had security cameras and security personnel in the building, and states that she did not mean by her statement in her complaint

that there were no security cameras or security personnel in the building (NYSCEF Doc No. 20 at paragraph 27). Plaintiff argues that she merely meant that there was an insufficient number of working cameras at the building, not that there were none. Plaintiff contends that the murders were both foreseeable and avoidable.

Plaintiff has submitted her own affidavit, in which she states that during the time that she, Mathurin, and Chinwai resided at 1418 Brooklyn Avenue, there was never a doorman or security guard stationed at the front entrance or any other access point, and she did not see security guards regularly patrolling the building. Plaintiff further states that in the months prior to the murders, she and Mathurin complained repeatedly to the building workers about Pass, specifically telling them that he was unreasonably angry towards her and her family regarding his complaints of noise coming from her apartment that they did not feel were objectionable. Plaintiff also states that in the summer of 2023, a security guard once came to her apartment to tell her that Pass had complained about noise from her apartment. Plaintiff sets forth that this security guard told her to be careful with Pass because he was crazy and when she asked him why, he responded that Pass used to be in the Army or something and that he was "not right."

Plaintiff additionally states that in the summer of 2023, she went to Renaissance's building management office, where she spoke to someone to report Pass and his concerning behavior, that she also went to the building's security company's office at least five times to complain about Pass' behavior towards her and her family, and that she also called the building security company's telephone number and spoke with an individual to whom she expressed her concern about Pass and his behavior towards her family. Thus, plaintiff has

raised factual issues, which cannot be resolved on this motion to dismiss, prior to any discovery being taken in this action. Plaintiff has a right to discovery to understand what reasonable steps the building management employees could have taken relevant to this incident.

In addition, it is noted that plaintiff asserts that while defendants claim that Pass was the lawful resident of Apartment 3E of the building, they fail to provide a lease, license, rent roll, or affidavit from an alleged tenant of Apartment 3E verifying this claim. Plaintiff states that although defendants have submitted the affidavits of Martin and Steward, which reference Pass' alleged presence in the building, they provide no basis to confirm Pass' legal status as a resident of this apartment building. Specifically, plaintiff argues that these affidavits fail to include any documentation of tenancy or lease agreements showing that Pass was, in fact, a lawful resident at Apartment 3E. Thus, while plaintiff does not assert that Pass was an intruder on the property who gained access through a broken door, defendants have not established the circumstances under which Pass was residing at Apartment 3E and whether he was, at least, an invitee (*see Astupina v West Farms Sq. Hous. Dev. Fund Corp.*, 195 AD3d 461, 463 [1st Dept 2021]; *Hierro v New York City Hous. Auth.*, 123 AD3d 508, 508-509 [1st Dept 2014]).

Significantly, the cases relied upon by defendants in support of their motion involved motions for summary judgment or a motion to set aside the verdict on liability after trial, not motions to dismiss (*see e.g. Wong v Riverbay Corp.*, 139 AD3d 440 [1st Dept 2016]; *Gentile v Town & Vil. of Harrison, N.Y.*, 137 AD3d 971, 972 [2d Dept 2016]; *Beato v Cosmopolitan Assoc., LLC*, 69 AD3d 774, 776-777 [2d Dept 2010], *lv denied* 15

NY3d 708 [2010]; *Venetal v City of New York*, 21 AD3d 1087, 1091 [2d Dept 2005]; *Britt v New York City Hous. Auth.*, 3 AD3d 514, 515 [2d Dept 2004], *lv denied* 2 NY3d 705 [2004]; *Blatt v New York City Hous. Auth.*, 123 AD2d 591, 593 [2d Dept 1986], *lv denied* 69 NY2d 603 [1987]). Moreover, while defendants rely upon *Estate of Murphy v New York City Hous. Auth.* (193 AD3d 503, 509 [1st Dept 2021]), in which the Appellate Division, First Department, held that a targeted (as opposed to a random) attack may be a superseding cause cutting off the landlord's liability, that decision was reversed on appeal since issues of fact preclude summary judgment where inadequate security was a concurrent contributing cause (39 NY3d 443 [2023]).

Plaintiff's Causes of Action

Given the fact that no discovery has taken place herein, an opportunity must be afforded to plaintiff to develop with discovery what actually happened in this matter. Thus, dismissal of plaintiff's first cause of action for negligence must be denied at this juncture, without prejudice to renewal, upon the completion of discovery.

Plaintiff's second cause of action for negligent hiring and supervision alleges that defendants are vicariously liable for the acts, omissions, and commissions of John-Jane Doe #1-10, who are their agents, servants, and/or employees. Defendants claim that Pass' overt and spontaneous superseding acts severed any causal nexus between them and any purported negligence of their employees. In view of the need for discovery to ascertain what transpired, dismissal of this claim must likewise be denied.

Plaintiff's third cause of action alleges a claim for wrongful death. Plaintiff asserts that defendants failed to take any protective actions, ignored complaints, and allowed

unsafe conditions to persist, which resulted in the wrongful death of Mathurin and Chinwai. Based on the need for discovery, dismissal of this claim must be denied.

Plaintiff's fourth cause of action for negligent infliction of emotional distress alleges that each defendant was negligent in committing conduct that inflicted emotional distress upon her, including but not limited to, defendants' release of the full building surveillance video (which showed the murders immediately after they occurred) from their custody and control and without notice to her. Plaintiff asserts that the negligent infliction of emotional distress by defendants was unnecessary and unwarranted in the performance of their duties.

"A cause of action to recover damages for negligent infliction of emotional distress does not require a showing of physical injury but 'must generally be premised upon a breach of a duty owed directly to the plaintiff which either unreasonably endangers a plaintiff's physical safety or causes the plaintiff to fear for his or her own safety'" (*Daluise v Sottile*, 40 AD3d 801, 803 [2d Dept 2007], *quoting E.B. v Liberation Publs.*, 7 AD3d 566, 567 [2d Dept 2004]; *see also Santana v Leith*, 117 AD3d 711, 712 [2d Dept 2014]). A plaintiff may recover for emotional suffering absent physical injury where, among other things, "a defendant's breach of a duty of care unreasonably places the plaintiff in fear of physical harm, resulting in emotional harm with 'physical manifestations'" or where the plaintiff suffers "emotional injury upon witnessing a physical injury to an immediate family member while the plaintiff is in the 'zone of danger' created by the defendant's negligent conduct" (*SanMiguel v Grimaldi*, __ NY3d __, 2025 NY Slip Op 05780, *2 [Oct. 21, 2025]). Here, at this juncture, plaintiff claims that she has suffered emotional injury upon witnessing the murders of her husband and son while in the zone of danger created

by defendants' allegedly negligent conduct. In view of the need for discovery on this issue, defendants' motion as to this claim must be denied.

Plaintiff's fifth cause of action asserts a claim to recover damages by her for loss of consortium as Mathurin's spouse. Inasmuch as plaintiff's fifth cause of action for loss of consortium is derivative in nature and the dismissal of plaintiff's primary four causes of action has been denied, dismissal of her loss of consortium claim must likewise be denied (*see Buzeska v Crystal Run Healthcare Physicians, LLP*, 234 AD3d 656, 659 [2d Dept 2025]; *Many v Lossef*, 190 AD3d 721, 724 [2d Dept 2021]).

Plaintiff's Cross-Motion to Amend the Complaint

Plaintiff, in her cross-motion, seeks leave to amend her complaint to add MRNY Consulting Solutions LLC, which operates under the assumed name of National Security (National Security), as a defendant, and to amend the caption to reflect this amendment. Plaintiff alleges that National Security provided the security guard services at the premises during the relevant period, and was hired, retained, and supervised by defendants. Plaintiff has submitted a copy of her proposed amended complaint (NYSCEF Doc No. 25).

"'In the absence of prejudice or surprise to the opposing party, leave to amend a pleading should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit'" (*Gimenez v Pepsi-Cola Bottling Co. of New York, Inc.*, 234 AD3d 943, 944-945 [2d Dept 2025], *quoting Bleakley Platt & Schmidt, LLP v Barbera*, 136 AD3d 725, 726 [2d Dept 2016] [internal quotation marks omitted]; *see also* CPLR § 3025 [b]; *Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983]; *Parkoff v Rieger & Fried, LLP*, 241 AD3d 1357, 1359 [2d Dept 2025]).

Plaintiff sets forth that she learned that National Security had provided security services at the property only after counsel for defendants disclosed its identity in response to a request made by her counsel, following the initial reference to a third-party security company in defendants' motion papers. There has been no discovery to date, and these facts were exclusively within defendants' knowledge and control. Plaintiff acted promptly in seeking the amendment once the identity of this security company was disclosed. Moreover, the claims in the proposed amended complaint fall well within the applicable statute of limitations for negligence, negligent hiring and supervision, wrongful death, and negligent infliction of emotional distress.

The addition of National Security will not prejudice any party. Defendants admit that they engaged National Security to provide on-site security at the premises where the decedents were murdered, and it was directly involved in managing the conditions that gave rise to this incident. Defendants' motion papers described how someone working for this security company watched the event of these murders take place on a live security video feed. Plaintiff claims that National Security should have sent a security guard to her apartment as Pass approached it or called 911, as its personnel watched the situation occur and escalate.

Plaintiff alleges that the individuals working for National Security failed to implement adequate and reasonable security measures despite actual and/or constructive notice of the dangerous conditions and prior complaints concerning Pass' behavior. This involvement places them squarely within the scope of potential liability in this action. Significantly, defendants have acknowledged the existence of this security company in

their papers and have attempted to shift responsibility to them. Under these circumstances, there is no basis for defendants to claim any prejudice or surprise. Indeed, defendants state that they do not oppose and actually support plaintiff's cross-motion to amend her complaint to add National Security as a defendant (NYSCEF Doc No. 28, paragraph 2).

Furthermore, the proposed amended complaint asserts viable negligence claims against National Security. Plaintiff alleges, in detail, that the failure to provide appropriate security and to respond to known threats was a proximate cause of the decedents' wrongful deaths. These allegations are not palpably insufficient or patently devoid of merit. To the extent that defendants wish to challenge the factual basis of these claims, such arguments are properly addressed in a dispositive motion following the completion of discovery. Consequently, plaintiff's cross-motion to amend her complaint must be granted (CPLR 3025 [b]).

Conclusion

Accordingly, it is hereby

ORDERED, that defendants' motion (Seq. 01) for an order, pursuant to CPLR §§ 3211 [a] [1] and [7], dismissing plaintiff's complaint based upon defenses founded upon documentary evidence and failure to state a cause of action, is denied without prejudice to renew, upon the completion of discovery; and it is further

ORDERED, that plaintiff's cross-motion (Seq. 02) for an order, pursuant to CPLR § 3025 [b], amending the caption and all papers, pleadings, and proceedings in this action, is granted; and it is further

ORDERED, that plaintiff shall serve the proposed Verified First Amended Complaint (NYSCEF Doc. No. 25) on defendants within thirty (30) days from the date this order is e-filed.

Any issue raised and not addressed in this decision and order is denied.

This constitutes the decision and order of the Court.

ENTER

J.S.C.

HON. WAVNY TOUSSAINT
J. S. C.

FILED
JAN 15 2026
KINGS COUNTY CLERK'S OFFICE