

Collins v Sammmy Group LLC
2026 NY Slip Op 30196(U)
January 13, 2026
Supreme Court, New York County
Docket Number: Index No. 652127/2025
Judge: Lyle E. Frank
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. LYLE E. FRANK PART 11M

Justice

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JUSTIN COLLINS,

Plaintiff,

- v -

SAMMMY GROUP LLC,COLUMBUS PROPERTY
MANAGEMENT LLC,MOINIAN LLC,AKA THE MOINIAN
GROUP, DAVID MOINIAN, JOSEPH MOINIAN, MATTHEW
MOINIAN, MITCHELL MOINIAN, KIMBERLY CAFARO,
HARRY DREZIEN, MARIO FENKO, ALANA SCHOLL

Defendant.

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INDEX NO. 652127/2025
MOTION DATE 08/27/2025
MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

were read on this motion to/for REARGUMENT/RECONSIDERATION.

I. Background¹

In May of 2023, Justin Collins (“Plaintiff”) signed a one-year residential lease with defendant Sammy Group LLC (collectively with all named defendants except for Alana Scholl, “Defendants”) for an apartment located at 1264 Lexington Avenue, Apartment 4W, New York, New York 10028 (the “Apartment”). Plaintiff alleges that from the time he was supposed to move in, conditions at the Apartment were dangerous and unsanitary. Allegations include repeated carbon monoxide leaks, as well as harassment from the owners of the building. In February of 2024, Plaintiff left the premises, leaving behind some personal effects including a computer monitor and some kitchenware. Plaintiff characterizes this as a constructive eviction due to unsafe conditions and maintains that he did not relinquish control of the apartment.

¹ The Court would like to thank Special Master to the Court, Jason Lowe, Esq. for his assistance in this matter.

Defendants characterize this action as an abandonment of the apartment. The parties are engaged in other litigation proceedings on this matter, including a summary proceeding and an Article 7A proceeding in Civil Court.

In February of 2025, defendant Alana Scholl entered into a residential lease with the Sammy Group LLC for the apartment in question. The following month, upon learning that the apartment had been leased to Ms. Scholl, Plaintiff unsuccessfully attempted to enlist the aid of the NYPD in regaining possession of the apartment. Shortly thereafter, he commenced this underlying proceeding, with claims for unlawful eviction, ejectment, malicious prosecution, harassment, intentional infliction of emotional distress, and private nuisance. He is seeking damages and a permanent injunction.

Plaintiff previously sought a temporary restraining order restoring him to possession of the apartment and the eviction of Ms. Scholl. This Court denied that motion. Plaintiff now moves to reargue. In addition, all defendants other than Alana Scholl, cross-move to dismiss the complaint.

II. Motion to Reargue

Plaintiff's motion to reargue is denied.

III. Cross-Motion to Dismiss

A. Standard For Motion to Dismiss

Plaintiff moves to dismiss the counterclaims pursuant to both CPLR 3211(a)(1), (5), and (7). The Court may dismiss a cause of action pursuant to CPLR 3211 (a) (1) the grounds that "a defense is founded upon documentary evidence." "A motion to dismiss founded upon documentary evidence may be granted 'only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law'" (*Stem v*

Farney Daniels, P.C., 2018 NY Slip Op 32768[U], 2018 NY Misc LEXIS 4955, *13 [Sup Ct, NY County 2018], quoting *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 774 N.E.2d 1190, 746 N.Y.S.2d 858 [2002]).

It is well-settled that on a motion to dismiss for failure to state a cause of action pursuant to CPLR 3211(a)(7), the pleading is to be liberally construed, accepting all the facts as alleged in the pleading to be true and giving the plaintiff the benefit of every possible inference. See *Avgush v Town of Yorktown*, 303 AD2d 340, 755 N.Y.S.2d 647 [2d Dept 2003]; *Bernberg v Health Mgmt. Sys.*, 303 AD.2d 348, 756 N.Y.S.2d 96 [2d Dept 2003].

In order to obtain dismissal of an action based on expiration of statute of limitations under CPLR 3211(a)(5), the movant must demonstrate “prima facie, that the time within which to commence the cause of action has expired” (*MTGLQ Investors, LP v Wozencraft*, 172 AD3d 644, 644, 102 N.Y.S.3d 25 [1st Dept 2019]). If the movant succeeds, then the opposing party has the burden to “raise a question of fact as to whether the statute of limitations is inapplicable or whether the action was commenced within the statutory period” (*id.* at 645). The parties agree that the statute of limitations for the causes of action alleged in the complaint, both based on professional malpractice, is 3 years. (*R.M. Kliment & Frances Halsband, Architects v. McKinsey & Co.*, 3 N.Y.3d 538 [2004]).

B. Individual Defendants’ Motion to Dismiss

Defendants David Moinian, Joseph Moinian, Matthew Moinian, Mithcell Moinian, Kimberly Cafaro, Harry Drezien and Mario Fenko (the “Individual Defendants”) move to dismiss on the grounds that the alleged wrongdoing in the complaint was done by corporate entities and the Individuals Defendants being members or managers of the corporate defendants

is insufficient for the Individual Defendants to be liable for any acts or omissions of the corporate defendants.

“A member of a limited liability company ‘cannot be held liable for the company's obligations by virtue of his [or her] status as a member thereof’” (*Matias v Mondo Props. LLC*, 43 AD3d 367, 367-368 [1st Dept 2007] quoting *Retropolis, Inc. v 14th St. Dev. LLC*, 17 AD 3d 209, 210, 797 NYS2d 1 [2005]; see also Limited Liability Company Law §§ 609, 610). Plaintiff, citing *Nájera-Ordóñez v. 260 PARTNERS, LP*, 217 AD 3d 580 (1st Dept. 2023), argues that an owner or agent who participates in a fraudulent scheme is not shielded from liability pursuant to Rent Stabilization Code § 2520.6 (i). However, the Complaint does not allege that the Individual Defendants participated in a fraudulent scheme, nor does the Complaint allege specific actions of the Individual Defendants. Rather, the allegations regarding the Individual Defendants focus on their association with the corporate defendants. These allegations are insufficient to allege a cause of action against the Individual Defendants.

Therefore, the cross-motion to dismiss is granted to the extent the Complaint is dismissed in its entirety with respect to the Individual Defendants.

C. Motion to Dismiss Malicious Prosecution Cause of Action

The Defendants move to dismiss the fourth cause of action in the Complaint which is for malicious prosecution. "The elements of an action for malicious prosecution are (1) the initiation of a proceeding, (2) its termination favorably to plaintiff, (3) lack of probable cause, and (4) malice" (*Morant v City of NY*, 95 AD3d 612, 612-613 [1st Dept 2012]) quoting *Colon v City of New York*, 60 NY2d 78, 82, 455 NE2d 1248, 468 NYS2d 453 [1983]).

The Complaint does not allege that any proceeding was terminated in his favor. Therefore, the Complaint fails to state a cause of action for malicious prosecution and the cause of action is dismissed.

D. Intentional Infliction of Emotional Distress Cause of Action

The Defendants move to dismiss the sixth cause of action in the Complaint which is for intentional infliction of emotional distress. There is a one-year statute of limitations for intentional infliction of emotional distress claims (*Jarusauskaite v Almod Diamonds, Ltd.*, 198 AD3d 458, 459 [1st Dept 2021][“The one-year statute of limitations bars plaintiff’s claim for intentional infliction of emotional distress”]). The Complaint states that Plaintiff has not been at the Apartment since February 2024. This action was filed in April of 2025. Therefore, the statute of limitations bars the intentional infliction of emotional distress claim, and it is dismissed.

E. Nuisance Cause of Action

The Defendants move to dismiss the sixth cause of action in the Complaint which is for nuisance. "The elements of a cause of action for a private nuisance are: an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failure to act" (*Ewen v Maccherone*, 32 Misc.3d 12, 14, 927 N.Y.S.2d 274 [1st Dept. 2011], quoting *Copart Indus, v Consolidated Edison Co. of N.Y.*, 41 NY2d 564, 570, 362 N.E.2d 968, 394 N.Y.S.2d 169 [1977]).

Defendants argue that the second and fourth elements above are missing. However, considering the liberal construction of pleadings, the Court determines that the Complaint does properly allege a nuisance cause of action.

F. Misdemeanor Cause of Action

The Defendants move to dismiss the eighth cause of action in the Complaint which is for misdemeanor pursuant to RPAPL § 768. Plaintiff does not explain why he believes RPAPL § 768 creates a private cause of action. Further, other Courts that have examined the issue have found that it does not create a private cause of action (*Avignone v. Valigorski*, 70 Misc. 3d 905, 911, 137 N.Y.S.3d 911, *11 [N.Y. City Ct. 2020])[“Considering the statutory silence, the court doubts that RPAPL §768 creates a private cause of action. Moreover, where a statute creates criminal liability, as RPAPL §768[2][a] does, then, generally, no private cause of action may be implied”]; *Calkins v. Johnson*, 83 Misc. 3d 1258(A), 214 N.Y.S.3d 676 [N.Y. City Ct. 2024])[“the Court has doubt as to whether it has authority to impose civil penalties under the statute in the context of a private civil action”]. The Court adopts this line of reasoning. As such, the misdemeanor cause of action is dismissed.

G. Motion to Dismiss Based on Documentary Evidence

Defendants also move to dismiss the first, second, third, and fifth causes of action pursuant to CPLR 3211(a)(1) based on documentary evidence. Defendants argue the evidence attached to the motion shows that Plaintiff abandoned the apartment, and that Plaintiff had no interest in the apartment.

Plaintiff argues a motion based on CPLR 3211(a)(1) was waived by the filing of an answer. However, a CPLR 3211(a)(1) motion must be made, "before an answer is interposed or preserved in a responsive pleading" (*M & E 73-75, LLC v 57 Fusion LLC*, 189 AD3d 1, 6 11st Dcpt 20201). In this case, Defendants' answer did preserve the documentary evidence as a defense (see Answer, fourth affirmative defense). Therefore, it is proper for the Court to consider Defendants' CPLR 3211(a)(1) motion.

Nevertheless, "[a] motion to dismiss founded upon documentary evidence may be granted 'only where the documentary evidence utterly refutes [the complaint's] factual allegations, conclusively establishing a defense as a matter of law'" (*Stem v Farney Daniels, P.C.*, 2018 NY Slip Op 32768[U], 2018 NY Misc LEXIS 4955, *13 [Sup Ct, NY County 2018], quoting *Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326, 774 N.E.2d 1190, 746 N.Y.S.2d 858 [2002]).

In this case, the documentary evidence does not utterly refute the allegations in the Complaint. "A surrender by operation of law occurs when the parties to a lease do some act inconsistent with the subsisting relationship of landlord and tenant, indicating that they have both agreed to a surrender" (*Stahl Assocs. Co. v Mapes*, 111 A.D.2d 626, 628, 490 N.Y.S.2d 12 [1st Dept. 1985]). Though Plaintiff moved most of his possessions from the Apartment and stopped paying rent, Plaintiff claims that rent is in dispute and the premises lacks a certificate of occupancy. Considering this record, the motion to dismiss based on documentary evidence must be denied.

H. Motion to Strike Jury Demand

Defendants move to strike the jury demand based on a request for equitable relief in the Complaint and language in the lease. Though there is an exception to the jury waiver language in the lease, the fact that the Complaint demands equitable relief, mandates striking the jury trial demand.

"When, as here, the complaint either joins legal and equitable causes of action arising out of the same alleged wrong or seeks both legal and equitable relief, there is a waiver of a plaintiff's right to a jury trial" (*Errant Gene Therapeutics, LLC v Sloan-Kettering Inst. for Cancer Research*, 176 AD3d 459, 107 NYS3d 847 [1st Dept 2019] [citations omitted]). A

plaintiff can waive "his right to a jury trial by including a claim for equitable relief which is not merely incidental to his claims at law" (*Daley v Related Companies, Inc.*, 213 AD2d 205, 205, 623 NYS2d 248) [1st Dept 1995]). "The fact that plaintiff is seeking money damages does not, in and of itself, guarantee entitlement to a jury trial" (*Aroch v 391 Broadway LLC*, 203 AD3d 642, 163 NYS3d 406 [1st Dept 2022] [internal quotations and citation omitted]).

In this case, there are extensive requests for equitable relief including a request for a declaration that Plaintiff has a right to immediate possession of the apartment and a judgment ejecting Defendant Alana Scholl from the apartment. These requests are not merely incidental to the legal relief sought. Therefore, the demand for a jury trial is stricken.

Accordingly, it is hereby

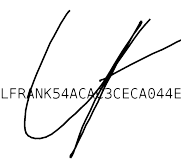
ADJUDGED that the motion to reargue is denied; and it is further

ORDERED the Complaint is dismissed against Defendants David Moinian, Joseph Moinian, Matthew Moinian, Mithcell Moinian, Kimberly Cafaro, Harry Drezien and Mario Fenko in its entirety; and it is further

ORDERED the fourth, sixth, and eighth causes of action are dismissed; and it is further

ORDERED the demand for a jury trial is stricken; and it is further

ORDERED all other requests for relief are denied.


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LYLE E. FRANK, J.S.C.

1/13/2026
DATE

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