

31 Spencer Unit 7 LLC v TD Bank, N.A.

2026 NY Slip Op 30294(U)

January 22, 2026

Supreme Court, Kings County

Docket Number: Index No. 531060/2025

Judge: Reginald A. Boddie

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This opinion is uncorrected and not selected for official publication.

At an IAS Commercial Term Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 22nd day of January 2026

P R E S E N T:

Honorable Reginald A. Boddie
Justice, Supreme Court

-----X
31 Spencer Unit 7 LLC,

Plaintiff,

Index No. 531060/2025
Cal. No. 2

-against-

DECISION AND ORDER

TD Bank, N.A.,

Defendant.
-----X

The following e-filed papers read herein
MS 2

NYSCEF Doc. Nos.
Doc. Nos. 1-28

Upon the motion of TD Bank (“TD” or the “Bank”), pursuant to CPLR 3211 (a)(1) and (a)(7), seeking dismissal of Plaintiff’s claims for declaratory judgment and breach of contract against TD, the motion is decided as follows:

Plaintiff, 31 Spencer Unit 7 LLC (or “Spencer”) is the owner of real property located at 31 Spencer Street in Brooklyn. On or about January 10, 2024, Plaintiff entered into two loans with TD, a mortgage loan in the amount of \$2,562,000.00, along with a Mortgage and Security Agreement, and a Building Loan Agreement in the amount of \$475,000.00, which included an assignment of leases and rents to secure the loan. According to the undisputed facts, HML Brokerage LLC, and three individuals, executed guarantees on both loans. Plaintiff avers that the Bank alleges it is currently in default of the loans on the grounds that “(i) the ownership interest

in HML Brokerage LLC, a Guarantor and the original tenant of the Premises, has changed without the consent of the Bank, (ii) the Premises is no longer owner occupied because less than 51% of the property is occupied by HML, [and] (iii) HML is no longer a going concern.” Therefore, Plaintiff has asserted claims in its complaint for a declaratory judgment that it is not in default, and for breach of contract.

TD, in response, moves to dismiss the declaratory judgment claim as duplicative of the claim for breach of contract, and, further, requests that the breach of contract claim also be dismissed on grounds of the documentary evidence or failure to state a cause of action.

A party may move for judgment dismissing one or more causes of action asserted on the ground that a defense is founded upon documentary evidence (CPLR 3211[a][1]) or fails to state a cause of action (CPLR 3211[a][7]). A motion to dismiss on the ground that the action is barred by documentary evidence, pursuant to CPLR 3211(a)(1), may be granted only where the documentary evidence utterly refutes the plaintiff’s factual allegations, conclusively establishing a defense as a matter of law (*see Goshen v Mutual Life Ins. Co. of N.Y.*, 98 NY2d 314, 326 [2002]; *Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). For purposes of a motion to dismiss, the evidence must be “unambiguous, authentic, and undeniable,” such as judicial records and documents reflecting out-of-court transactions or mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable (*Phillips v Taco Bell Corp.*, 152 AD3d 806, 808 [2d Dept 2017]). Letters, emails, and affidavits do not meet the requirements for documentary evidence (*id.*)

On a motion to dismiss for failure to state a cause of action, pursuant to CPLR 3211(a)(7), the pleading is to be afforded a liberal construction (see CPLR 3026; *Leon v Martinez*, 84). The facts as alleged in the complaint are accepted as true, a plaintiff is accorded the benefit of every

possible favorable inference, and courts determine only whether the facts as alleged fit within any cognizable legal theory, without regard to whether the allegations can ultimately be established (*id.*; *JGK Indus., LLC v Hayes NY Bus., LLC*, 145 AD3d 979, 980 [2d Dept 2016] [citation omitted]). “Where evidentiary material is submitted and considered on a motion to dismiss a complaint pursuant to CPLR 3211(a)(7), and the motion is not converted into one for summary judgment, ‘the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one, and, unless it has been shown that a material fact as claimed by the pleader to be one is not a fact at all and unless it can be said that no significant dispute exists regarding it, [] dismissal should not eventuate’” (*Tsinias Enters. Ltd. v Taza Grocery, Inc.*, 172 AD3d 1271, 1272 [2d Dept 2019] [quoting *Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1997]]). A plaintiff may submit evidence of its own, and a complaint will not be dismissed for failure to state a cause of action where affidavits or other documentary evidence submitted by the plaintiff demonstrate that a cause of action may exist (*Johnson City Cent. School Dist. v Fid. and Deposit Co. of Maryland*, 263 AD2d 580 [3d Dept 1999]).

As an initial matter, the claim for declaratory judgment is dismissed as duplicative of the claim for breach of contract (*see 189 Schermerhorn Owners Co., v Board of Mgrs. Of the Be@Schermerhorn Condominiums*, 186 AD3d 1467 [2d Dept 2020]; *see also, Rabizadeh v 165 E 66, LLC*, 238 AD3d 575[1st Dept 2025]).

Defendant’s motion seeking dismissal of the remaining claim for breach of contract on the grounds of failure to state a cause of action and documentary evidence is denied. Plaintiff has properly plead a breach of contract claim (*JP Morgan Chase v J.H. Elec. Of N.Y., Inc.*, 69 AD3d 802 [2d Dept 2010]). Moreover, the documents adduced by TD are not properly established as business records (CPLR 4518). Additionally, Plaintiff’s claim of breach of contract is not utterly

refuted. Accordingly, the motion is granted only to the extent the claim for declaratory relief is dismissed.

ENTER:



Hon. Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.