

Grace Realty Group LLC v 25 Minetta Owners Corp.

2026 NY Slip Op 31323(U)

April 1, 2026

Supreme Court, New York County

Docket Number: Index No. 153426/2025

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

GRACE REALTY GROUP LLC

Plaintiff,

- v -

25 MINETTA OWNERS CORP.,

Defendant.

-----X

INDEX NO. 153426/2025

MOTION DATE 11/11/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 47, 48, 49, 50, 51, 52, 53, 54, 55

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is denied.

Background

Plaintiff is the owner of a three-story building located at 14 Minetta Street. Defendant is the owner of the adjoining building, with an address at 25 Minetta Lane. Both buildings have been there for many years. At some time around 1940, Defendant’s building was extended to a five-story structure, making it taller than the three-story Plaintiff’s building. Under the Building Code at that time, when a neighboring building was extended to exceed the height of their neighbor, the extended building’s owner had a duty to also extend the neighboring building’s chimneys. Relevant for this motion, under the 1938 Building Code, in such a scenario the taller building’s owner does not have a continuing maintenance obligation for the extended chimneys. Such a continuing duty is present, however, under the 1968 Building Code. It is disputed when the chimneys on Plaintiff’s building were extended, but it is not disputed that they are currently in need of repair.

Plaintiff alleges that starting in early 2023, the parties were in communication regarding the chimneys and that Defendant acknowledged a continuing maintenance duty. But Defendant at some point began to deny such a duty, prompting Plaintiff to file this present proceeding. Plaintiff is seeking a declaratory judgment that Defendant is responsible for the ongoing maintenance and repair of the chimneys, a judgment awarding the maintenance costs and expenses, and a declaratory judgment that Defendant's predecessor-in-interest failed to properly file plans with the DOB when the initial extension was done, or to obtain the necessary work permit. Defendant brings the present pre-answer motion to dismiss the amended complaint.

Standard of Review

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, the pleading is to be liberally construed and the nonmovant is entitled to every favorable inference. *See, e.g., Granite State Ins. Co. v. Transatlantic Reins. Co.*, 132 A.D.3d 479, 481 [1st Dept. 2015]. Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 [1994]. A party may move for a judgment from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the 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.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

Discussion

Defendant is moving to dismiss on the grounds that the chimneys in question are subject to the 1938 Building Code, not the 1968 Building Code. They argue that the chimneys must have been extended around 1940 when their building was raised to five stories. Plaintiff opposes the motion, arguing that Defendant has not met their burden on this motion. They point to the dearth of any building plans or work permits relating to the chimney extension. Plaintiff also argues that if the chimney extension was not lawfully conducted prior to 1968, then it would not have been grandfathered in and therefore the current Building Code would apply to the matter of who bears the duty to maintain.

It has been established that in scenarios such as the present one, an adjoining owner had no continuing maintenance duty on extended chimneys until the 1968 Building Code, which cannot be applied retroactively. *30 E. 33rd St. Realty LLC v. PPF Off Two Park Ave. Owner, LLC*, 105 A.D.3d 515, 516 [1st Dept. 2013]. Therefore, the dispositive issue for this motion condenses to the single matter of when the chimneys on Plaintiff’s building were extended. If they were extended prior to 1968, Defendant bears no continuing maintenance duty and therefore this proceeding likely fails to state a claim. If the chimneys were extended post-1968, then Defendant bears the duty of maintaining and repairing the chimneys. On the standard for a pre-answer motion to dismiss, therefore, Defendant must conclusively establish that the chimneys in question were extended prior to 1968.

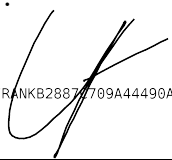
In support of this burden, Defendant argues that the chimneys must have been extended at the time of the duty to extend the chimneys arose, in or around the year 1940. They submit the

certificate of occupancy issued for their building in 1940 showing that the building had been raised to five stories. Defendant’s argument is that because a certificate of occupancy attests generally to the building’s compliance with the approved plans, Building Code, and other applicable laws, the obligation to extend the neighbor’s chimneys must have been satisfied as of 1940. As stated above, documentary evidence must conclusively establish a defense. *Leon*, at 88.

While a certificate of occupancy certifies that the submitted construction plans are permitted, neither party has been able to uncover any submitted plans relating to the chimney extension. Furthermore, Plaintiff has pointed to the provisions of the 1938 Building Code that state that a certificate of occupancy is only issued in relation to the building itself and would be silent on any adjoining chimney work. Nor was such chimney work an explicit condition precedent to the issuance of the 1940 certificate of occupancy. Therefore, this document does not conclusively establish a defense to the claim, particularly when Plaintiff is to be given every favorable inference. Because Defendant has failed to meet their burden on a pre-answer motion to dismiss and conclusively establish that the chimney extension was lawfully conducted prior to 1968, the motion must be denied. Accordingly, it is hereby

ADJUDGED that the motion is denied; and it is further

ORDERED that the defendant is directed to serve an answer to the amended complaint within 20 days after service of a copy of this order with notice of entry.

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LYLE E. FRANK, J.S.C.

4/1/2026
DATE

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/>	GRANTED IN PART
<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>	OTHER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>		<input type="checkbox"/>	REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: