

1798 Third Ave. Assoc. LLC v Gallegos

2026 NY Slip Op 31363(U)

April 6, 2026

Supreme Court, New York County

Docket Number: Index No. 155589/2025

Judge: Nicholas W. Moyne

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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. NICHOLAS W. MOYNE PART 41M

Justice

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1798 THIRD AVENUE ASSOCIATES LLC,

Plaintiff,

- v -

ROBERTO GALLEGOS, NEW YORK CITY DEPARTMENT
OF SOCIAL SERVICES, NEW YORK CITY HUMAN
RESOURCES ADMINISTRATION, THE CITY OF NEW
YORK

Defendant.

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INDEX NO. 155589/2025

MOTION DATE 08/11/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23

were read on this motion to/for DISMISS.

Upon the foregoing documents, it is

In this action to recover unpaid rent, use and occupancy, and legal fees, defendants New York City Department of Social Services – New York City Human Resources Administration ("DSS/HRA") and the City of New York (collectively, the "Municipal Defendants") move pre-answer to dismiss the Complaint against them pursuant to CPLR §§ 3211(a)(1), 3211(a)(7), and 3016(b).

For the reasons set forth below, the Municipal Defendants' motion is granted in its entirety.

The following facts are drawn from the Complaint and the Affirmation of Peter Polow submitted by the plaintiff and are accepted as true for the purposes of this motion. In March 2021, plaintiff 1798 Third Avenue Associates LLC (the "Landlord") entered into a residential apartment lease with defendant Roberto Gallegos (the "Tenant") for Apartment 3C located at 1798 Third Avenue, New York, NY. To secure the apartment, the Tenant provided Plaintiff with an HRA security voucher in the amount of \$1,625. During the tenancy, DSS/HRA paid the Tenant's rent directly to Plaintiff.

Prior to June 1, 2024, DSS/HRA approved the Tenant to move into a luxury apartment in the Bronx and began paying rent for that new apartment starting May 1, 2024. However, DSS/HRA did not initially inform plaintiff that the tenant had

vacated or that rent payments for the subject apartment would cease, and in fact continued to pay rent to Plaintiff through May 2024.

On July 1, 2024, the plaintiff noticed the Tenant was in arrears for June and July rent. Plaintiff reached out to the Tenant's DSS/HRA caseworker, Cornelius Milligan, on July 2, 2024. During this call, Milligan informed plaintiff that the Tenant had moved to the Bronx. Milligan conceded that DSS/HRA had made a mistake and personally promised to assist the plaintiff in obtaining vacant possession of the apartment.

Although the Tenant eventually surrendered the keys to the plaintiff on July 16, 2024, he did not surrender vacant possession; instead, he left behind an illegal subtenant. Because of this occupant, the plaintiff was forced to commence a holdover summary proceeding, eventually obtaining a warrant of eviction and regaining vacant possession on January 10, 2025, while incurring significant legal fees.

The complaint asserts two causes of action against the Municipal Defendants: the fifth cause of action is for negligent misrepresentation and/or omission, and the sixth cause of action is for Negligence.

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must accept the facts as alleged in the complaint as true, accord the plaintiff the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994]). However, bare legal conclusions and factual claims which are flatly contradicted by the record or documentary evidence are not presumed to be true (*see Connaughton v. Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 141-142 [2017]).

To state a claim for negligent misrepresentation, a plaintiff must allege: "(1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information" (*J.A.O. Acquisition Corp. v. Stavitsky*, 8 NY3d 144, 148 [2007]). Such a claim must also be pleaded with particularity pursuant to CPLR § 3016(b). In the commercial context, "liability for negligent misrepresentation has been imposed only on those persons who possess unique or specialized expertise, or who are in a special position of confidence and trust with the injured party such that reliance on the negligent misrepresentation is justified." (*Kimmell v Schaefer*, 89 NY2d 257, 263 [1996])

The plaintiff argues that a privity-like relationship was created when DSS/HRA issued the security voucher and directly paid the Tenant's rent. However, the statutory framework governing DSS/HRA makes clear that housing assistance is provided exclusively for the benefit of the welfare recipient, not the landlord. New York Social Services Law (SSL) § 143-b permits social services to pay rent directly to landlords to prevent the eviction of public assistance recipients. Similarly, SSL § 143-c allows the issuance of security vouchers to secure housing for tenants. These statutes do not create a special duty or a privity-like relationship flowing from the municipality to the landlord.

Moreover, the plaintiff's claim that DSS/HRA had a duty to disclose the Tenant's new housing approval is precluded by law. Under SSL § 136 and 18 N.Y.C.R.R. § 357.2(a), communications and information relating to a person receiving public assistance are strictly confidential. Disclosing the Tenant's status and/or the approval of his application for a new apartment would have violated this statutory duty. The Court will not penalize a municipal agency for adhering to state confidentiality laws.

The plaintiff heavily relies on a 1979 Civil Court decision *Friedman v. New York Dep't of Social Services* to argue that DSS can be held liable for failing to notify a landlord of a change in rent payments (*see Friedman v. New York Dep't of Social Services*, 102 Misc. 2d 372 [Civ Ct Kings County 1979] [liability where DSS re-directed moneys owed to landlord to pay for tenant's moving expenses to new apartment without notifying landlord of change in payment]). However, that holding was squarely rejected by the Appellate Term in *Pecenik v. City of N.Y.* (*see Pecenik v. City of N.Y.*, 114 Misc2d 418 [Appellate Term 1982]). In *Pecenik*, the Appellate Term found no actionable misrepresentation by HRA to landlords in nearly identical circumstances, effectively overruling *Friedman*.

The plaintiff's negligence claim must also be dismissed. Here, the Municipal Defendants were clearly performing a governmental function through the administration of housing assistance. When a public entity is sued for its negligent performance of a governmental function, liability cannot attach unless the plaintiff establishes that the municipal defendant owed a special duty specifically to the injured person, as opposed to a duty owed only to the general public (*see Ferreira v. City of Binghamton*, 38 NY3d 298, 309-310 [2022]; *Valdez v. City of New York*, 18 NY3d 69, 75 [2011].)

The plaintiff alleges that the special duty was created during the July 2, 2024 phone call, when caseworker Milligan affirmatively promised to help the plaintiff regain possession of the apartment from the illegal subtenant. The plaintiff alleges that by assuming this duty voluntarily, the Municipal Defendants can be sued for

performing that assumed duty negligently or by failing to perform it all. To the extent the plaintiffs are alleging a special relationship was created by the voluntary assumption of a duty by the City, they must establish: (1) an assumption by the municipality, through promises or actions, of an affirmative duty to act on behalf of the party who was injured; (2) knowledge on the part of the municipality's agents that inaction could lead to harm; (3) some form of direct contact between the municipality's agents and the injured party; and (4) that party's justifiable reliance on the municipality's affirmative undertaking. (*See Cuffy v City of New York*, 69 NY2d 255, 260 [1987]).

Assuming the truth of the allegation concerning Milligan and his promise to assist the plaintiff in regaining possession of the apartment, the negligence claim still fails as a matter of law because the plaintiff cannot establish causal reliance. In order to create a special relationship with the Municipal Defendants by the voluntary assumption of a duty, the plaintiff's reliance on the Municipal Defendants undertaking the promised duty must be shown to be casually related to the harm suffered (*see Cuffy*, 69 NY2d at 264). There is no colorable claim that the plaintiff's injuries were the result of any justifiable reliance on the caseworker's assurances. Even if the caseworker promised to help, the plaintiff admits in its own pleadings that the Tenant illegally installed a subtenant who refused to vacate the premises. Because the apartment was occupied by a third party, the plaintiff was legally required to commence a formal holdover proceeding to obtain a warrant of eviction, regardless of any assistance or promises offered by DSS/HRA. The presence of the subtenant severs any causative link between the caseworker's alleged promise and the damages the plaintiff suffered. The plaintiff was not lulled into a false sense of security that would have prevented it from avoiding legal fees, because the holdover proceeding was the only legal avenue available to displace the subtenant. Therefore, the plaintiff cannot establish the justifiable and causal reliance necessary to create a special duty.

Accordingly, it is hereby

ORDERED that the Municipal Defendants' motion to dismiss the Complaint pursuant to CPLR §§ 3211(a)(7) and 3016(b) is GRANTED; and it is further

ORDERED that the Fifth Cause of Action and Sixth Cause of Action are dismissed in their entirety as against Defendants New York City Department of Social Services – New York City Human Resources Administration and the City of New York.



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4/6/2026
DATE

NICHOLAS W. MOYNE, J.S.C.

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| CHECK ONE: | <input type="checkbox"/> | CASE DISPOSED | <input checked="" type="checkbox"/> | DENIED | <input checked="" type="checkbox"/> | NON-FINAL DISPOSITION | |
| | <input type="checkbox"/> | GRANTED | | | <input 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 |