

Jaoude v 75 Wall Garage Corp.
2026 NY Slip Op 31395(U)
April 7, 2026
Supreme Court, New York County
Docket Number: Index No. 155354/2025
Judge: Phaedra F. Perry-Bond
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. PHAEDRA F. PERRY-BOND PART 35

Justice

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INDEX NO. 155354/2025

GRACE ABOU JAOUDE,

MOTION DATE 07/09/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

75 WALL GARAGE CORP., 75 WALL RETAIL LLC, 75 WALL STREET GARAGE LLC, 75 WALL ST. CONDO, DGC CAPITAL CONTRACTING CORP., BLUE SKY HOSPITALITY SOLUTIONS LLC, NAVIKA CAPITAL GROUP LLC, HYATT HOTELS CORPORATION

DECISION + ORDER ON MOTION

Defendants.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35, 37, 38, 40, 41, 42

were read on this motion to/for DISMISSAL

Upon the foregoing documents, Defendants Blue Sky Hospitality Solutions LLC ("Blue Sky"), Navika Capital Group LLC ("Navika"), and Hyatt Hotels Corporation's ("Hyatt") (collectively "Moving Defendants") motion to dismiss Plaintiff's Complaint and Defendant DGC Capital Contracting Corp.'s crossclaims¹ asserted against, is granted in part and denied in part. The motion for sanctions is denied.

Plaintiff alleges that on November 7, 2024, she was walking on the sidewalk near 75 Wall Street, New York, New York (the "Premises") when she tripped and fell. Plaintiff now sues Defendants for personal injury. Plaintiff alleges that Defendants or their agents owned, managed, or maintained the Premises and were negligent in maintaining the sidewalk where Plaintiff fell.

¹ Other crossclaims have since been asserted against Moving Defendants since this motion was filed. Those crossclaims were not the subject of this motion and therefore the Court does not address dismissal of the later filed crossclaims.

The Moving Defendants responded with this pre-answer motion to dismiss, asserting that the Premises is a condominium which includes a commercial unit owned by non-party White Pearl Hospitality LLC that is operated as a Hyatt Hotel. Defendants also argue Navika has an ownership interest in White Pearl, but Hyatt is a holding company which has no relationship to the Premises. However, Moving Defendants concede Hyatt is a franchisor of a hotel operated at the Premises, but the incorrect Hyatt entity was named. Moving Defendants rely on a franchise agreement and condominium documents which they assert relieve them of any liability from maintaining the sidewalks. Plaintiff opposes and argues that the documentary evidence submitted by Moving Defendants is unauthenticated and must be disregarded. Plaintiff also argues the motion is premature because the arguments made are fact intensive and there has not yet been any discovery exchanged by these Defendants, let alone an Answer filed. No other party opposes.

When reviewing a pre-answer motion to dismiss for failure to state a claim, the Court must give the Plaintiff the benefit of all favorable inferences which may be drawn from the pleadings (*Sassi v Mobile Life Support Services, Inc.*, 37 NY3d 236, 239 [2021]). A motion to dismiss based on documentary evidence is appropriately granted when the documentary evidence utterly refutes the plaintiff's factual allegations, conclusively establishing a defense as a matter of law (*Goshen v Mutual Life Ins. Co. of New York*, 98 NY2d 314 [2002]). As a preliminary matter, since Defendant DGC Capital Contracting Corp. does not oppose dismissal of its crossclaims asserted against the Moving Defendants, the crossclaims are dismissed as abandoned (*see Saidin v Negrón*, 136 AD3d 458, 459 [1st Dept 2016]). However, in all other respects, the motion is denied.

To the extent Moving Defendants rely on the affidavits of Naveen Shah and Christina Urbanski, employee affidavits that dispute the accuracy of facts alleged in the Complaint do not constitute documentary evidence (*see Bou v Llamaza*, 173 AD3d 575 [1st Dept 2019]). Likewise,

the affirmation of counsel is hearsay and is devoid of any evidentiary value (*see Beltre v Babu*, 32 AD3d 722 [1st Dept 2006]). The condominium documents and franchise agreement relied upon do not definitively contradict Plaintiff's allegations, nor do they foreclose the existence of other documents which may be uncovered through discovery which may implicate the Moving Defendants.

The arguments made by Moving Defendants are inappropriate on a pre-answer motion to dismiss and are more suited on a motion for summary judgment after there has been some exchange of discovery. Because the arguments made by Moving Defendants are inappropriate at this juncture, and the documentary evidence fails to conclusively absolve the Moving Defendants' of any potential liability, the motion to dismiss Plaintiff's Complaint is denied (*see Wright v City of New York*, 223 AD3d 547 [1st Dept 2024]; *see also Henn v City of New York*, 164 AD3d 766, 766-767 [2d Dept 2018]). Because the Complaint survives, the motion for sanctions is denied.

Accordingly, it is hereby,

ORDERED that the motion is granted solely to the extent that any crossclaims asserted against the Moving Defendants are dismissed without opposition, and the remainder of the motion is denied; and it is further

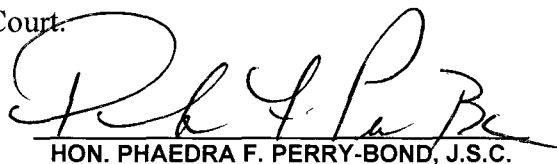
ORDERED that within twenty days of entry, the Moving Defendants shall serve their Answer to Plaintiff's Complaint; and it is further

ORDERED that the parties shall immediately meet and confer and submit a proposed preliminary conference order to the Court via e-mail, but in no event shall the proposed preliminary conference order be submitted any later than May 5, 2026. Discovery shall not be stayed due to the motion to dismiss pending under motion sequence 002, which is still being briefed and which has not yet been fully submitted; and it is further

ORDERED that within ten days of entry, counsel for Plaintiff shall serve a copy of this Decision and Order, with notice of entry, on all parties via NYSCEF.

This constitutes the Decision and Order of the Court.

4/7/26
DATE


HON. PHAEDRA F. PERRY-BOND, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE