

<b>Fuentes v 65 Franklin LLC</b>
2026 NY Slip Op 31889(U)
May 1, 2026
Supreme Court, New York County
Docket Number: Index No. 152496/2020
Judge: Arlene P. Bluth
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
This opinion is uncorrected and not selected for official publication.

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. ARLENE P. BLUTH PART 14**

*Justice*

-----X

FERNANDO CRUZ FUENTES,  
Plaintiff,

- v -

65 FRANKLIN LLC, HAP CONSTRUCTION LLC, NOBLE  
CONSTRUCTION GROUP, LLC,

Defendants.

-----X

65 FRANKLIN LLC

Plaintiff,

-against-

HAP CONSTRUCTION LLC, NORDEST SERVICES LLC

Defendants.

-----X

65 FRANKLIN LLC

Plaintiff,

-against-

BELLE EYE LLC

Defendant.

-----X

65 FRANKLIN LLC, HAP CONSTRUCTION LLC

Plaintiffs,

-against-

NY ORTHO, SPORTS MEDICINE & TRAUMA P.C., JEFFREY  
KAPLAN, JOSEPH WEINSTEIN, JOSEPH WEINSTEIN, D.O.,  
P.C. D/B/A COMPREHENSIVE ORTHOPEDIC & SPINE CARE

Defendants.

-----X

INDEX NO. 152496/2020  
MOTION DATE 04/29/2026  
MOTION SEQ. NO. 007

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595312/2020

Second Third-Party  
Index No. 595508/2021

Third Third-Party  
Index No. 596193/2025

The following e-filed documents, listed by NYSCEF document number (Motion 007) 183, 184, 185, 186, 187, 188, 191, 192, 193, 194, 195, 196, 197, 209, 210

were read on this motion to/for DISMISS.

Third third-party defendants (collectively, “Movants”) motion to dismiss the third third-party complaint is granted in part and denied in part.<sup>1</sup>

**Background**

This Labor Law case arises out of an accident that took place on February 11, 2020 in which plaintiff says he fell from a flatbed truck while stacking wooden planks. Plaintiff points out that he filed a note of issue on November 13, 2024. This Court issued a decision on defendants’ summary judgment motion in August 2025 and the case is currently awaiting a trial date.

Movants seek to dismiss the recently filed third third-party action which alleges that they, the medical providers for plaintiff, committed medical malpractice. They observe that third third-party defendant Dr. Weinstein performed a posterior lumbar microsurgical decompressive laminectomy in August 2021 and a cervical fusion in August 2023 and that third third-party defendant Dr. Kaplan performed a left knee medial meniscectomy and right shoulder arthroscopy in September 2022.

Movants contend that the third third-party plaintiffs lack standing to assert a medical malpractice claim against them because they were not the patient who received treatment. They

---

<sup>1</sup> Although the Court granted previous motions to sever the third third-party action (NYSCEF Doc. No. 204), the Court will nevertheless issue a decision on this motion rather than wait for the third third-party action to be officially severed and delay deciding this application.

contend that there are limited circumstances in which a third-party can assert such a claim but those instances do not apply here. Movants point to examples where a wife had standing to bring suit for a botched vasectomy on her husband. They claim that no such basis applies here as Movants had no duty of care to third third-party plaintiffs, parties that are corporate entities. Movants also insist that the contribution claim against them should be dismissed because it is based entirely on the medical malpractice claim.

In opposition, third third-party plaintiffs contend that they have the right to seek contribution from Movants on the theory that they can be indemnified for the wrongdoing of Movants. They contend that “Movants are responsible for some, if not essentially all, of the injuries claimed by Plaintiff due to their own negligent and intentional conduct, and for aggravation of the injuries alleged to have been caused by Franklin” (NYSCEF Doc. No. 191, ¶ 11). Third third-party plaintiffs maintain that the contribution claim should survive because Movants are successive or independent tortfeasors.

In reply, Movants argue that third third-party plaintiffs have no standing to bring a medical malpractice claim against them and that the entire third third-party complaint was untimely.

### **Discussion**

“In the context of a motion to dismiss pursuant to CPLR 3211, the court must afford the pleadings a liberal construction, take the allegations of the complaint as true and provide plaintiff the benefit of every possible inference. Whether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss” (*EBC I, Inc. v Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005]).

The Court therefore begins with the allegations contained in the third third-party complaint. This pleading asserts both a medical malpractice and contribution claim against Movants. The first claim, for medical malpractice, is severed and dismissed as third third-party plaintiffs do not have standing to bring such a claim. The medical care was provided to plaintiff, who has (to this Court's knowledge) not asserted a claim for medical malpractice against these providers.

Third third-party plaintiffs did not cite any binding caselaw for the proposition that they have standing to bring a case for medical malpractice against practitioners who did not provide medical care for them or someone such as a spouse or dependent.

However, the Court denies the motion to the extent it seeks to dismiss the contribution claim. "The "critical requirement" for apportionment by contribution under CPLR article 14 is that the breach of duty by the contributing party must have had a part in causing or augmenting the injury for which contribution is sought. Thus, contribution is available whether or not the culpable parties are allegedly liable for the injury under the same or different theories, and the remedy may be invoked against concurrent, successive, independent, alternative and even intentional tortfeasors" (*Raquet v Braun*, 90 NY2d 177, 183, 659 NYS2d 237 [1997] [internal quotations and citations omitted]).

Third third-party plaintiffs cited cases that stand for the principle that defendants can seek third party recovery, such as indemnity, from medical practitioners on the ground that these individuals aggravated or increased the total damages (*e.g.*, *Musco v Conte*, 22 AD2d 121, 254 NYS2d 589 [2d Dept 1964]). In *Musco*, the plaintiff sought damages arising out of severe hand injuries he suffered while helping defendant remove his car from a parking lot (*id.* at 123). The

defendant was permitted to implead medical providers on the ground that medical providers improperly administered anesthesia to plaintiff, which caused him to pass away, thereby dramatically increasing the damages at issue (*id.* at 123-25). In other words, the defendant claimed that although he might have some liability to the plaintiff for the accident and hand injury, it was the doctor's actions that killed him, which is obviously much worse than a hand injury.

Here, the third third-party complaint contends, albeit in a boilerplate and never-ending run-on sentence, that Movants aggravated plaintiff's damages through negligent diagnosis and treatment (NYSCEF Doc. No. 192, ¶ 30). At the pleading stage, this suffices to survive a motion to dismiss. Of course, discovery will require third third-party plaintiffs to furnish a more cogent theory of contribution. But third third-party plaintiffs need not prove their theory or provide exhaustive detail in a pleading. To the extent that Movants cite to the newly enacted CPLR 1007(b), which prescribes time limits for third-party complaints, that rule does not apply retroactively to this case.

In accordance with the Court's previous order, this third third-party action is now severed and the proper steps must be taken (such as obtaining a separate index number) in order for this case to move forward.

Accordingly, it is hereby

ORDERED that third third-party defendants' motion to dismiss is granted only to the extent that the claim for medical malpractice is dismissed; and it is further

ORDERED that these third third-party defendants are directed to answer this pleading within 20 days after a new index number for the severed action is obtained so as to ensure the answer is filed in the right docket.

5/1/2026

DATE



ARLENE P. BLUTH, 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