

**Hundred Horizons LLC v Board of Mgrs. of the Vil.  
Green W. Condominium**

2026 NY Slip Op 31901(U)

May 5, 2026

Supreme Court, New York County

Docket Number: Index No. 163399/2025

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

HUNDRED HORIZONS LLC

Plaintiff,

- v -

THE BOARD OF MANAGERS OF THE VILLAGE GREEN  
WEST CONDOMINIUM, A/K/A VILLAGE GREEN WEST  
CONDOMINIUM BOARD OF MANAGERS,

Defendant.

-----X

INDEX NO. 163399/2025

MOTION DATE 12/12/2025

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29

were read on this motion to/for DISMISS.

Upon the foregoing documents, the motion is granted.

**Background**

Plaintiff is a commercial tenant in the condominium building managed by Defendant. In 2018, Defendant entered into a license agreement with the developer of an adjacent property (“FPNY”) for the installation of legally-mandated scaffolding and a sidewalk bridge. As construction was delayed, the license agreement was amended and extended. Plaintiff alleges that as a result of the construction, they had multiple tenants who terminated their leases early. Plaintiff has commenced multiple lawsuits related to the impact of the scaffolding on their business, including this present proceeding against Defendant. In the complaint, Plaintiff pleads claims for tortious interference, negligence, private nuisance, and breach of fiduciary duty.

**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)(5) allows for a complaint to be dismissed because of a valid release. While a valid release generally “constitutes a complete bar”, for a signed release the burden shifts to the plaintiff to “show that there has been fraud, duress, or some other fact which will be sufficient to void the release.” *Centro Empesarial Cempresa S.A. v. América Móvil, S.A.B. de C.V.*, 17 N.Y.3d 269, 276 [2011]. 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 brings the present motion to dismiss, arguing that 1) the negligence claim is time-barred; 2) the negligence claim fails to state a cause of action; 3) this proceeding should have been brought as an Article 78 special proceeding; 4) the private nuisance claim fails to state a cause of action; 5) the breach of fiduciary duty claim fails to state a cause of action; and 6)

Plaintiff has failed to properly show that their damages were caused by Defendant. Plaintiff opposes the motion. For the reasons that follow, the motion is granted.

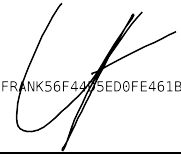
*Plaintiff Fails to State a Valid Claim Against Defendant*

The gravamen of Plaintiff's claims is that Defendant failed to encourage FPNY to finish construction and acted improperly in retaining license fees from the scaffolding and sidewalk bridge. These claims fail because Plaintiff has not shown that Defendant owed Plaintiff any duty to share license fees, or that Defendant had any obligation to try and convince FPNY to finish the construction that gave rise to legally-mandated scaffolding and a sidewalk bridge. The general rule is that when, as is the case here, the parties have a contractual relationship, tort liability requires that a defendant "has breached a duty of reasonable care distinct from its contractual obligations" and that where a plaintiff "is merely seeking to enforce its bargain, a tort claim will not lie." *New York Univ. v. Cont'l Ins. Co.*, 87 N.Y.2d 308, 316 [1995].

Taking all of Plaintiff's factual allegations as true, the complaint does not demonstrate that Defendant had any non-contractual duty of care to Plaintiff to encourage FPNY to finish the construction. As the scaffolding and sidewalk bridge are required by law to be installed during the construction, the mere decision to enter into a license agreement with FPNY cannot sustain a claim against Defendant. Nor has Plaintiff alleged any facts or authority that would support a duty on the part of Defendant to directly share the license agreement payments with Plaintiff. While the Court is not unsympathetic with the negative impacts that scaffolding has on commercial establishments, the fact remains that such scaffolding is required by law to be in place during construction. Accordingly, it is hereby

ADJUDGED that the motion is granted and the complaint is dismissed.

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5/5/2026

DATE

LYLE E. FRANK, 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