

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT

Korpenn LLC v. One Penn Plaza LLC

2026 NY Slip Op 00195 (App. Div. 1st Dep't 2026) · No. Index No. 651615/23; Appeal No. 5601; Case No. 2024-07361 · Decided January 15, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed the denial of One Penn Plaza LLC’s motion to dismiss Korpenn LLC’s complaint. The court held that the submitted documents did not conclusively refute allegations that a sublease had been extinguished by a 1999 surrender and could not be revived through a 2022 corrected memorandum of assignment or novation.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Rodriguez, J.; Pitt-Burke, J.; Chan, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	January 15, 2026
DOCKET	Index No. 651615/23; Appeal No. 5601; Case No. 2024-07361
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an order of Supreme Court, New York County, denying its motion under CPLR 3211(a)(1) and (7) to dismiss the complaint.
STANDARD OF REVIEW	On a CPLR 3211(a)(1) motion, dismissal is warranted only when the documentary evidence utterly refutes the factual allegations and conclusively establishes a defense as a matter of law; the complaint's allegations are otherwise accepted as true for purposes of a CPLR 3211(a)(7) motion.
PRECEDENTIAL VALUE	published
PARTIES	One Penn Plaza LLC v. Korpenn LLC

TOPICS

- landlord tenant
- contract interpretation
- motions to dismiss
- commercial litigation
- appellate procedure

PRACTICE AREAS

contract law

real estate law

commercial litigation

civil procedure

appellate procedure

QUESTIONS PRESENTED

1. Whether documentary evidence conclusively refuted the complaint's allegations that the 1999 surrender of subleases extinguished the sublease.
2. Whether the complaint adequately alleged that the 2022 Corrected Memorandum of Assignment of Subleases could not revive or novate the extinguished sublease.
3. Whether comments by the lower court concerning the sublease's value improperly usurped the appraisers' role or affected the legal issues concerning the ground lease and the alleged amendment or novation.

HOLDINGS

1. The motion to dismiss was properly denied because the documents submitted by the defendant did not utterly refute the complaint's allegations that the 1999 surrender of subleases extinguished the sublease.
2. The complaint adequately alleged that the 2022 memorandum was of no force and effect because the sublease had been extinguished before the successor-in-interest acquired its interest, and the defendant did not establish that the successor had authority to enter into a novation of the 1999 surrender or that the novation was otherwise proper.
3. The lower court's dicta concerning the value of the sublease did not usurp the appraisers' role and did not alter the legal significance of articles 21 and 28 of the ground lease or the question whether the 1999 surrender was amended or novated by the 2022 memorandum.

KEY QUOTATIONS

*“None of the documents submitted by defendant utterly refutes the allegations in the complaint that the sublease, as defined in section 28.01(i) of the ground lease, was extinguished upon defendant's execution of the 1999 surrender of subleases.” (*1)*

FACTUAL BACKGROUND

The dispute concerned a sublease defined in section 28.01(i) of a ground lease. The complaint alleged that the sublease was extinguished when the defendant executed a 1999 surrender of subleases and that the sublease could not later be revived by a December 21, 2022 Corrected Memorandum of Assignment of Subleases, which purportedly assigned the sublease retroactively to a successor-in-interest that acquired the former sublessee in 2006. The complaint also alleged that the successor-in-interest was a stranger to both the sublease and the 1999 surrender and lacked authority to novate or revive the surrender.

PROCEDURAL HISTORY

Supreme Court, New York County, denied One Penn Plaza LLC's motion to dismiss the complaint on documentary-evidence and failure-to-state-a-cause-of-action grounds. The Appellate Division unanimously affirmed the order without costs.

DISPOSITION

affirmed

CASES CITED

- Arici v. Poma, 202 AD3d 584, 585 (1st Dep't 2022)
- Vermont Teddy Bear Co. v. 538 Madison Realty Co., 1 NY3d 470, 475 (2004)
- City of New York v. FC 42nd St. Assoc., L.P., 169 AD3d 431, 432 (1st Dep't 2019)

OPINION

PER CURIAM.

Korpenn LLC v One Penn Plaza LLC (2026 NY Slip Op 00195) Korpenn LLC v One Penn Plaza LLC 2026 NY Slip Op 00195 Decided on January 15, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 15, 2026 Before: Kennedy, J.P., Rodriguez, Pitt-Burke, Chan, JJ. Index No. 651615/23|Appeal No. 5601|Case No. 2024-07361| [*1]Korpenn LLC, Plaintiff-Respondent, v One Penn Plaza LLC, Defendant-Appellant.

Sullivan & Cromwell LLP, New York (Robert J. Giuffra, Jr. of counsel), for appellant. Haynes Boone, LLP, New York (Brett Dockwell of counsel), for respondent. Order, Supreme Court, New York County (Arthur F. Engoron, J.), entered November 27, 2024, which denied defendant's motion pursuant to CPLR 3211(a)(1) and (7) to dismiss the complaint, unanimously affirmed, without costs.

Supreme Court correctly denied defendant's motion to dismiss the complaint. None of the documents submitted by defendant utterly refutes the allegations in the complaint that the sublease, as defined in section 28.01(i) of the ground lease, was extinguished upon defendant's execution of the 1999 surrender of subleases. Nor did defendant refute the allegations that once extinguished the sublease could not be revived by the December 21, 2022 Corrected Memorandum of Assignment of Subleases, purportedly assigning the sublease retroactively to a third-party successor-in-interest, which acquired the former sublessee in 2006.

The complaint adequately alleges that the sublease was extinguished before the successor-in-interest acquired its interest in the former sublessee, rendering the 2022 memorandum of no force and effect. Because defendant failed to meet its burden to establish that the successor-in-interest — a stranger to the sublease and the 1999 surrender of subleases — had the authority to enter into a novation of the 1999 surrender of subleases, or that the novation was otherwise proper, the motion to dismiss the complaint was properly denied (see Arici v Poma, 202 AD3d 584, 585 [1st Dept 2022]).

Indeed, the 1999 surrender of subleases contained no terms permitting the parties to revive the sublease at some future point, or for a third-party to revive the sublease (see generally *Vermont Teddy Bear Co. v 538 Madison Realty Co.*, 1 NY3d 470, 475 [2004]).

The court's comments in dicta relating to the value of the sublease did not usurp the role of the appraisers in setting the value of the land (see *City of New York v FC 42nd St. Assoc., L.P.*, 169 AD3d 431, 432 [1st Dept 2019]). Those comments do not alter the legal valence of articles 21 and 28 of the ground lease or affect the ultimate question of whether the 1999 surrender was effectively amended or novated by the 2022 memorandum (see generally *Vermont Teddy Bear Co.*, 1 NY3d at 475).

We have considered defendant's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: January 15, 2026