Maddicks v 106-108 Convent BCR, LLC
2026 NY Slip Op 30974(U)
March 12, 2026
Supreme Court, New York County
Docket Number: Index No. 656345/2016
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57M**

Justice

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THERESA MADDICKS, JOHN AMBROSIO, PAUL WILDER, SAMUEL WILDER, ALYSSA O'CONNELL, JOHANNA S. KARLIN, BRIAN WAGNER, TYLER STRICKLAND, DANIEL ROBLES, ELENA RICARDO, LIAM CUDMORE, JENNIFER MAK, JOSHUA BERG, ANISH JAIN, JOHN CURTIN, JONATHAN FIEWEGER, MARIA FUNCHEON, JORDANI SANCHEZ, MELLISA MICKENS, M.D. IVEY, DEVIN ELTING, SEMI PAK, KAITLIN CAMPBELL, SARAH NORRIS, MIKIALA JAMISON, SHERESA JENKINS-RISTEKI, YANIRA GOMEZ, KRISTEN PIRO,

Plaintiffs,

- v -

106-108 CONVENT BCR, LLC,110 CONVENT BCR, LLC,408-412 PINEAPPLE, LLC,510-512 YELLOW APPLE, LLC,535-539 WEST 155 BCR, LLC,3750 BROADWAY BCR, LLC,3660 BROADWAY BCR, LLC,605 WEST 151 BCR, LLC,545 EDGECOMBE BCR, LLC,

Defendants.

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INDEX NO. 656345/2016

MOTION DATE 01/23/2026

MOTION SEQ. NO. 016

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 016) 2, 359, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493

were read on this motion to/for AMEND CAPTION/PLEADINGS.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY

On December 6, 2016, Plaintiffs commenced this rent overcharge class action seeking damages for Defendants' alleged violations of the Rent Stabilization Law (NYSCEF Doc No. 2).

Plaintiffs allege the following information in support of the present motion.

Citizens Bank, N.A. ("Citizens") commenced foreclosure proceedings against the properties of four defendants in this action: 106-108 Convent BCR, LLC; 3750 Broadway BCR, LLC; 510-512 Yellow Apple, LLC and 535-539 West 155 BCR, LLC (NYSCEF Doc Nos. 452–55).

As a result of these proceedings, the New York County Supreme Court (Kahn, III, J.S.C.) appointed a temporary receiver to collect rent benefit of Citizens from the first three defendants' properties on February 21, 2025, and from 535-539 West 155 BCR, LLC's property on March 31, 2025 (NYSCEF Doc Nos. 460–63).

On July 10, 2025, Plaintiffs filed their note of issue (NYSCEF Doc No. 359).

On September 19, 2025, Citizens assigned the rights to receive rent on the properties to Uptown WH Group, LLC ("Uptown") (NYSCEF Doc Nos. 464–67).

PENDING MOTION

On March 6, 2026, Plaintiffs moved for an order (1) joining Citizens Bank, N.A. and Uptown WH Group LLC (the "Prospective Defendants") as defendants and (2) granting their motion to amend (NYSCEF Doc No. 450 [mot. seq. 016]).

DISCUSSION

The Court Denies Plaintiffs' Motion to Amend

CPLR § 1003 provides:

> Parties may be added at any stage of the action by leave of court or by stipulation of all parties who have appeared, or once without leave of court within twenty days after service of the original summons or at anytime before the period for responding to that summons expires or within twenty days after service of a pleading responding to it.

CPLR § 3025(b) provides:

> A party may amend his or her pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties. Leave shall be freely given upon such terms as may be just including the granting of costs and continuances. Any motion to amend or supplement pleadings shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading.

When there is "extended delay in moving to amend, an affidavit of reasonable excuse for the delay in making the motion and an affidavit of merit should be submitted in support of the

motion" (*Cherebin v Empress Ambulance Serv., Inc.*, 43 AD3d 364, 365 [1st Dept 2007], quoting *Volpe v Good Samaritan Hosp.*, 213 AD2d 398, 398–99 [2d Dept 1995]). Appellate case law routinely holds that extended delay in moving to amend occurs when a party seeks leave to amend a pleading post-note of issue (*e.g. Cherebin*, 43 AD3d at 364–65 [*ruling that extended delay occurred when the movant sought leave to amend post-note of issue*]; *Volpe*, 213 AD2d at 398–99 [*finding extended delay after the commencement of trial*]; *Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 24–25 [1st Dept 2003] [*finding extended delay six years after the commencement of the action and after the filing of note of issue*]). Nearly ten years after the commencement of this action—and over six months post-note of issue—Plaintiffs seek to amend their complaint to add the Prospective Defendants to this action. Plaintiffs provide no reasonable excuse as to why they did not seek leave to add Citizens pre-note of issue as Citizens' temporary receiver was appointed for each property by March 2025 and note of issue was filed in July. The Court may deny Plaintiffs' motion on this reason alone (*see Oil Heat Inst. v RMTS Assoc., LLC*, 4 AD3d 290, 294 [1st Dept 2004] ["Since plaintiffs have failed to offer a reasonable excuse for their delay, the court should not have granted them leave to serve an amended complaint"]; *see also Heller*, 303 AD2d at 24–25).

Notwithstanding the foregoing, Plaintiffs' amendment must also be denied as it would be palpably insufficient or patently devoid of merit (*Tribeca Space Mgrs., Inc. v Tribeca Mews Ltd.*, 200 AD3d 626, 628 [1st Dept 2021]). Plaintiff's proposed amended complaint alleges that the Prospective Defendants qualify as an "owner" of the buildings under the Rent Stabilization Code ("RSC"). The definition of "owner" under the RSC is the following:

> Owner. A fee owner, lessor, sublessor, assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or association, or an owner of a condominium unit of the sponsor of such cooperative corporation or association or condominium development, or any

> other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation, or an agent of any of the foregoing, but such agent shall only commence a proceeding pursuant to section 2524.5 of this Title, in the name of such foregoing principals. Any separate entity that is owned, in whole or in part, by an entity that is considered an owner pursuant to this subdivision, and which provides only utility services shall itself not be considered an owner pursuant to this subdivision. Except as is otherwise provided in sections 2522.3 and 2526.1(f) of this Title, a court-appointed receiver shall be considered an owner pursuant to this subdivision. (RSC § 2520.6(i)).

The Prospective Defendants are not fee owners of the properties as a sale has not yet been completed under a judgment of foreclosure. As explained by the Court of Appeals:

> A mortgage is only a lien on the mortgaged real property. Title remains in the mortgagor and those claiming under or through the mortgagor until the lien is foreclosed. Foreclosure of the lien does not take place upon the commencement of a foreclosure action, but upon a sale under a judgment of foreclosure. (*Prudence Co. v 160 W. Seventy-Third St. Corp.*, 260 NY 205, 211 [1932]).

The Prospective Defendants are also not an entity "entitled to receive rent for the use or occupation of any housing accommodation" (RSC § 2520.6(i)). Citizens assigned its rights to receive rent on the properties to Uptown on September 19, 2025 (NYSCEF Doc Nos. 464–67). Uptown is also not entitled to receive any rent from the subject properties: Uptown's *court-appointed receiver* is. The RSC explicitly provides for this situation by stating that "a court-appointed receiver shall be considered an owner pursuant to this subdivision" (RSC § 2520.6(i)). The Court thus holds that the amendment seeking to add the Prospective Defendants is patently devoid of merit as neither of them has received, or is currently entitled to receive, rent on the subject properties.

Even assuming *arguendo* that Plaintiffs had a reasonable excuse and a meritorious amendment, the Court would nevertheless deny leave because the delay in seeking to amend would directly result in prejudice or surprise to the Prospective Defendants (*see Kocourek v Booz Allen Hamilton Inc.*, 85 AD3d 502, 504 [1st Dept 2011]). A party opposing amendment is prejudiced when there is some indication that the party would be hindered in the preparation of

its case or prevented from taking some measure in support of its position (*Loomis v Civetta Corrino Constr. Corp.*, 54 NY2d 18, 23 [1981]). The Prospective Defendants would be significantly hindered in the preparation of their defense as note of issue has been filed and adding them post-note would leave them "deprived of the opportunity to conduct discovery and establish a defense with respect to" Plaintiffs' claims (*Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 23 [1st Dept 2003] [*holding that the posttrial addition of a punitive damages claim would prejudice the defendants*], citing *Licameli v Roberts*, 277 AD2d 1057, 1057 [4th Dept 2000] ["[D]efendant established that he would be prejudiced by the amendment in view of the fact that discovery is complete and a note of issue has been filed"]).

Plaintiffs' remaining argument that the Prospective Defendants should be joined because they are necessary parties under CPLR § 1001 is unavailing as CPLR § 1001 does not require courts to join necessary parties but defines when such parties are necessary and when dismissal of the action is warranted in their absence (*see* CPLR § 1003 ["Nonjoinder of a party who should be joined under section 1001 is a ground for dismissal of an action without prejudice unless the court allows the action to proceed without that party under the provisions of that section"]).

In any event the Court does not find they are necessary parties. A party is necessary only where complete relief cannot be accorded among existing parties; or the absent party would be inequitably affected by a judgment. Neither condition is met here. Plaintiffs' claims are for alleged rent overcharges and lease irregularities arising from conduct by the existing owner-defendants. Those claims do not require the presence of a lender, receiver beneficiary, or assignee. Any monetary relief can be fully adjudicated against the current defendants. If Plaintiffs prevail, they can obtain judgment without Citizens Bank or Uptown WH being parties to the action.

CONCLUSION

Accordingly, it is hereby:

ORDERED that the motion of Plaintiffs (mot. seq. 016) is denied; and it is further

ORDERED that, within twenty (20) days from entry of this order, Defendants shall serve a copy of this order with notice of entry on the Clerk of the General Clerk's Office (60 Centre Street, Room 119, New York, NY 10007); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh).

This constitutes the decision and order of this Court.

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3/12/2026
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:		CASE DISPOSED		X	NON-FINAL DISPOSITION		
		GRANTED	X DENIED		GRANTED IN PART		OTHER
APPLICATION:		SETTLE ORDER			SUBMIT ORDER		
CHECK IF APPROPRIATE:		INCLUDES TRANSFER/REASSIGN			FIDUCIARY APPOINTMENT		REFERENCE