

**Board of Mgrs. of the 15 Union Sq. W. Condominium  
v BCRE 15 Union Sq. W. LLC**

2026 NY Slip Op 31076(U)

March 20, 2026

Supreme Court, New York County

Docket Number: Index No. 162500/2015

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*

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BOARD OF MANAGERS OF THE 15 UNION SQUARE  
WEST CONDOMINIUM,

Plaintiff,

- v -

BCRE 15 UNION SQUARE WEST LLC,

Defendant.

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BCRE 15 UNION SQUARE WEST LLC, MOSHE AZOGUI,  
ISSAC HERA, BCRE 15 USW HOLDINGS LLC, BCRE 15  
USW SECOND LLC, BCRE 15 USW CORP, BCRE SERVICES  
LLC, BCS USA LLC, BRACK CAPITAL REAL ESTATE USA  
CORP

Plaintiff,

-against-

CARDRONA, INC., J&R GLASSWORKS, INC., RCI  
PLUMBING, CPN MECHANICAL, INC., L.E.A. ELECTRIC  
CORP., LIGHTING MANAGEMENT, INC., SAINT-GOBAIN  
GLASS EXPROVER NORTH AMERCA CORP. N/K/A SAINT-  
GOBAIN GLASS CORPORATION, ALLIED METAL  
ENTERPRISES, INC., BLUE JAY CONSTRUCTION, INC., A  
EAGLES, INC., DIRECTOR DOOR INDUSTRIES, LTD.,  
PERKINS EASTMAN ARCHITECTS, P.C., GEIGER  
ENGINEERING, MARINO, GERAZOUNIS & JAFFE  
ASSOCIATES, INC. A/K/A MG ENGINEERING, GILSANZ  
MURRAY STEFICEK, LLP, VICENTE WOLF ASSOCIATES,  
ODA ARCHITECTURE, ROBERT GERMAN, P.E., ENDLESS  
POOLS, NY LOFT KITCHENS & HOME INTERIORS,  
SPECIAL TREATMENT GC CORP., HI-I, LLC, SPRAY TECH  
CORPORATION, LONG ISLAND SWIMMING POOL  
SERVICE, JOMAR MECHANICAL, MIRAGE CONTRACTING  
CORP., NEW LINE STONE CO., INC., MC CONSTRUCTION  
CONSULTING, INC., CABRERA CONSTRUCTION,  
VANGUARD CONSTRUCTION SERVICES, JOHN DOES 1-  
10, ABC CORPORATIONS 1-10

Defendant.

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INDEX NO. 162500/2015

MOTION DATE 12/01/2025

MOTION SEQ. NO. 021

**DECISION + ORDER ON  
MOTION**

Third-Party  
Index No. 595428/2023

The following e-filed documents, listed by NYSCEF document number (Motion 021) 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547

were read on this motion to/for

SUMMARY JUDGMENT(AFTER JOINDER)

Upon the foregoing documents, the motion is granted.

### **Background**

This motion arises out of a condominium sponsor action. Plaintiff is the board of managers for a condominium association located on 15 Union Square West. BCRE 15 Union Square West LLC (“Defendant”) is the building sponsor, who filed the building’s offering plan in 2007. The plan was for an existing building to be renovated, adding additional floors and a brick façade. Plaintiff alleges that there were a variety of construction defects in the finished building that constitute a breach of the offering plan. The first complaint listed 46 specific problems and defects with the building. Relevant for this motion, Plaintiff now alleges that there are structural issues with underground vaults and with the pool. There were a series of expert reports on the building’s status that Plaintiff had prepared (the “Rand Reports”) for this litigation. Several of these reports date from 2017, and they raise structural issues with the vaults and the pool. Defendant received these reports as part of discovery in December of 2022.

### **Procedural Background**

Plaintiff initiated this proceeding in December of 2015, with claims asserted against Defendant and other parties. Defendant has answered and filed a third-party complaint asserting claims against various other entities involved in the renovation. In the years since this proceeding was initiated, various claims and defendants have been dismissed through motion practice. A first amended complaint was filed by Plaintiff in July of 2025, with a second following in September of 2025. The problems with the vaults and the pool were first mentioned in the

second amended complaint, which Defendant has answered. Plaintiff's sole remaining claim against Defendant is for breach of contract.

### **Discussion**

Defendant here moves for partial summary judgment, seeking dismissal of the claim for breach of contract to the extent that it is based on defects related to the vaults and the pool. They argue that the claim is barred by the statute of limitations and that they would be prejudiced by the late addition. They further argue that there is no legal basis for a breach of contract claim as it relates to the vaults, because Defendant bore no liability for the vaults under the offering plan. Plaintiff opposes the motion, arguing that the claims relate back because Defendant had sufficient notice of general defects in the building from the first complaint.

When a party seeks to amend a complaint that, as is the case here, contains an untimely claim against an existing defendant, the "relevant considerations are simply (1) whether the original complaint gave the defendant notice of the transactions or occurrences at issue and (2) whether there would be undue prejudice to the defendant if the amendment and relation back are permitted." *O'Halloran v. Metropolitan Transp. Auth.*, 154 A.D.3d 83, 87 [1st Dept. 2017]. If there is both an absence of prejudice and the defendant had notice, the amendment should be granted. *Id.*, at 91 – 92. For the reasons that follow, the motion is granted, and the two new claims are dismissed because of the undue prejudice to Defendant should the relation-back doctrine be applied.

### **Defendant Would Be Prejudiced by the Additional Claims Due to the Delay and Subsequent Repairs**

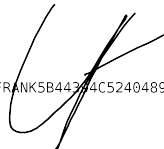
Defendant argues that at this stage, they would be prejudiced by the addition of the claims for the vaults and pool. The standard is that "prejudice occurs when the party opposing

amendment has been hindered in the preparation of his case or has been prevented from taking some measure in support of his position.” *Jacobson v. McNeil Consumer & Specialty Pharms.*, 68 A.D.3d 652, 654 – 55 [1st Dept. 2009]; *see also Loomis v. Civetta Corinno Constr. Corp.*, 54 N.Y.2d 18, 23 [1981].

It appears that in the years since the renovation, various repairs have already been made to the vaults and pool, thus depriving Defendants of the opportunity to have their own experts examine the contested areas. This lack of ability to inspect constitutes undue prejudice. *See, e.g., Pecora v. Pecora*, 204 A.D.3d 611, 612 – 13 [1st Dept. 2022] (denying amendment when a delay “hindered defendants in establishing defenses to the new claim”). When a party would be unduly prejudiced by an amendment, such amendment should be denied. *See, e.g., Id.* at 613 (holding that “[i]n any event, amendment and relation back would be improper because of the prejudice to defendants”); *see also Kimso Apts., LLC v. Gandhi*, 24 N.Y.3d 403, 411 [2014]. The extended delay between Plaintiff’s awareness of alleged issues with the vaults and pool and their second amended complaint, coupled with a lack of any reasonable excuse for the delay, further supports dismissal of the two new claims. *See, e.g., Heller* at 24. Particularly given the fact that both the vaults and the pool are not areas that are Defendant’s responsibility under the contract that forms the basis for the sole remaining claim against them, Defendant will have been unduly prejudiced should the claim now be amended to add defects in the vaults and pool. Because the Court finds that Defendant has made an adequate showing that there would be undue prejudice in permitting the two new claims, it does not need to reach the issue of whether Defendant had sufficient notice from the first complaint’s use of “including but not limited to” in listing the alleged defects. Accordingly, it is hereby

ADJUDGED that the motion is granted; and it is further

ORDERED that claims (uu) and (vv) are hereby dismissed from the second amended complaint.

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3/20/2026  
DATE

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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