

**Battery Park City Auth. v Pier A Battery Park Assoc.,
LLC**

2025 NY Slip Op 31739(U)

May 13, 2025

Supreme Court, New York County

Docket Number: Index No. 156217/2022

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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BATTERY PARK CITY AUTHORITY D/B/A THE HUGH L.
CAREY BATTERY PARK CITY AUTHORITY,

Plaintiff,

- v -

PIER A BATTERY PARK ASSOCIATES, LLC, PAUL
LAMAS, PETER POULAKAKOS, NEW YORK CITY
WATERFRONT DEVELOPMENT FUND II, LLC

Defendant.

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INDEX NO. 156217/2022

MOTION DATE 11/26/2024,
11/29/2024

MOTION SEQ. NO. 006 007

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 136, 137, 138, 139, 140, 142, 151, 157, 159, 160, 161, 162, 163, 164, 165, 166, 167, 179, 185, 188

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

The following e-filed documents, listed by NYSCEF document number (Motion 007) 148, 149, 150, 152, 158, 168, 169, 170, 171, 172, 173, 174, 175, 176, 180, 186, 189, 190, 204

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

Upon the foregoing documents, the defendants’ motions are denied.

Background

This is a commercial landlord-tenant case centered on a historic building located on Pier A at 22 Battery Place. The building in question is owned by New York City and had been leased to Pier A Battery Park Associates, LLC (“Tenant”) under an agreement with the Battery Park City Authority (“BPCA”). Paul Lamas and Peter Poulakakos (collectively, the “Guarantors”, together with the Tenant “Defendants”) signed a Good Guy Guaranty agreement in favor of the BPCA. Tenant granted New York City Waterfront Development Fund II, LLC (the “Fund”) a security interest in its leasehold estate. In April of 2020, during the COVID-19 pandemic, Tenant sent a letter to BPCA and the Fund claiming to have permanently closed its business and

operations in the Pier A building. In July, Tenant's counsel sent a letter to the BPCA stating that the April letter constituted formal notice that the leasehold was surrendered. This purported surrender was rejected by both the BPCA and the Fund.

In July of 2022, the BPCA filed this underlying suit, asserting claims of breach of the lease and seeking eviction and a declaratory judgment that the lease had been terminated based on Tenant's default under the lease. They also sought to hold the Guarantors liable under the guaranty. Then in March of 2024, the Fund moved to substitute itself as plaintiff in this matter, on the grounds that the BPCA had assigned their rights regarding several of the claims in this proceeding to them on January 03, 2024 (the "Assignment"). This motion was granted. The Defendants have answered.

Discussion

Defendants bring the present motions seeking to amend the answer in order to add counterclaims for commercial tenant harassment. For a motion to amend pleadings, "the court should examine, but need not decide, the merits of the proposed new pleading unless it is patently insufficient on its face." *Hospital for Joint Diseases Orthopaedic Inst. V. James Katsikis Environmental Contractors, Inc.*, 173 A.D.2d 210, 210 [1st Dept. 1991]. Leave to amend should be freely granted "unless the proposed amendment is palpably insufficient or patently devoid of merit." *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 499 [1st Dept. 2010]. BPCA and the Fund have opposed the motion. They argue, among other reasons, that the two-year delay between filing the Answer and this motion is prejudicial and that the proposed counterclaims are without merit. For the reasons that follow, the motions to amend the answer are denied.

Administrative Code § 22-902 and Commercial Tenant Harassment

The proposed counterclaims against the BPCA and the Fund stem from NYC Administrative Code § 22-902, which prohibits a landlord from engaging in commercial tenant harassment. This is defined as “any act or omission by or on behalf of a landlord that (i) would reasonably cause a commercial tenant to vacate covered property, or to surrender or waive any rights under a lease or other rental agreement or under applicable law in relation to such covered property” and includes a list of fourteen scenarios. Administrative Code § 22-902(a). The provision also specifically excludes from the definition the “landlord’s lawful termination of a tenancy, lawful refusal to renew or extend a lease or other rental agreement, or lawful reentry and repossession of the covered property.” Administrative Code § 22-902(b). The Defendants are seeking leave to plead a counterclaim under Section 22-902(a)(14), on the theory that this section was violated by attempts to enforce the Guaranty, despite a purported surrender date within the covered period of the Guaranty Law. They also allege that the attempt to enforce the Guaranty was a violation of Section 22-902(a)(11), which prevents threats to a commercial tenant based on the tenant’s status as an entity impacted by Covid-19.

The Fund and BPCA argue that the proposed counterclaims fail as a matter of law and are devoid of merit because: 1) neither the Tenant nor the Guarantors satisfy the statutory definition of commercial tenant; 2) the conduct complained of would not reasonably cause a tenant to vacate or surrender; 3) the conduct complained of did not violate the Guaranty Law; 4) the Tenant has no standing to plead a counterclaim based on the Guaranty; and 5) that the proposed counterclaims fail because Tenant waived the right to assert counterclaims in the Lease. Because the first argument is dispositive, for the reasons given below, the Court need not address the remaining arguments.

The Defendants Are Not a Commercial Tenant as Defined in Administrative Code § 22-901

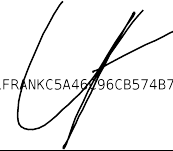
The BPCA and the Fund have argued that the Defendants are not a commercial tenant for the purposes of Administrative Code § 22-902, thus defeating the two counterclaims as a matter of law. A commercial tenant is defined in Administrative Code § 22-901 as “a person or entity lawfully occupying a covered property pursuant to a lease or other rental agreement.” It is undisputed that the Tenant was no longer occupying the property in question as of the dates that all of the complained about activity occurred. In fact, it was Tenant’s departure from the property that motivated the BPCA and the Fund to pursue claims against the Guarantors, which is the basis for the proposed commercial tenant harassment claims. The issue, therefore, is whether a claim for commercial tenant harassment based on the Administrative Code requires that the commercial tenant be currently possessing the property in question when the activity forming the bases for the claim begins. The Court holds that it does.

At the outset, as a matter of statutory construction the use of present tense cannot be overlooked. *See, e.g., People v. Duggins*, 3 N.Y.3d 522, 532 [2004]; *Claim of Foscarinis*, 284 A.D. 476, 477 [3rd Dept. 1954]. Defendants argue that it would defeat the purpose of the Harassment Law and “reward[] the most successful harassers – those who drove tenants from the premises – by insulating them from liability.” While the Court agrees with this reasoning, it is inapplicable here. By Defendants own admissions, the Tenant vacated the premises due to financial constraints arising from the Covid-19 pandemic, and not due to any action or inaction on the part of the landlord. This is not an instance of a landlord’s harassing behavior successfully driving a commercial tenant from the premises or coercing them into surrendering any rights. At the time that the first actions complained about took place, the Defendants were not lawfully

occupying a covered property, and therefore cannot be considered a commercial tenant under the plain language of the NYC Administrative Code. Accordingly, it is hereby

ADJUDGED that the defendants' motions to amend the answer are denied.

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5/13/2025

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