

New Deal Realty LLC v 684 Owners Corp.

2025 NY Slip Op 32956(U)

July 30, 2025

Supreme Court, New York County

Docket Number: Index No. 652893/2020

Judge: Arlene P. Bluth

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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. ARLENE P. BLUTH **PART** **14**

Justice

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NEW DEAL REALTY LLC,

Plaintiff,

- v -

684 OWNERS CORP., YANNIS BAKOS, FELIX RUO,
BRIAN GLEASON, ALEXANDRA SCOTT, ROBERTA
GOSS, TONY CURTIS, KLEIMAN & WEINSHANK LLP,
WILKIN & GUTTENPLAN, P.C.

Defendant.

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INDEX NO. 652893/2020

MOTION DATE 07/29/2025

MOTION SEQ. NO. 006

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 006) 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166

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

Plaintiff’s motion to amend is granted.

Background

In this action, plaintiff, a commercial tenant, claims it was overcharged rent for many years. Plaintiff entered a commercial lease with defendant 684, a cooperative, on November 15, 1994. Section 4.2 of the lease provides that plaintiff’s rent was calculated as follows: “the amount by which (A) 24% of Landlord’s Qualified Income for that year (excluding, however, amounts attributable to any period prior to the effective date of this lease) exceeds (B) so much of Landlord’s gross income for that year as is neither Qualified Income nor rent under this lease,” (NYSCEF Doc. No. 57 at 3 ¶ 4.2). According to the lease, qualified income included all gross income of 684 derived from the tenant stockholders (id. at 7 ¶ 6.2.2). In other words,

whatever the tenant stockholders paid toward 684, 24% of said amount constituted the plaintiff's rental payment.

Plaintiff insists that there is a carve-out—it insists that the amounts 684 collects and spends for capital improvements have to be removed before the aforementioned 24% rent charge is calculated. Put another way, plaintiff admits it has to pay 24% of the money needed to maintain the building (i.e., taxes and fuel) but that it need not pay money for capital improvement projects. It claims that after 2013, 684 stopped giving credits to plaintiff despite the fact that capital improvements continued; plaintiff argues it made excess rent payments totaling over \$200,000.

In March 2025, this Court marked this case disposed as the parties informed the Cour that they had settled this case in principle. Unfortunately, the settlement was never finalized and the matter was restored to the active calendar (NYSCEF Doc. No. 143).

Plaintiff now moves to amend the complaint to add claims covering the period from 2020 through the present and to add an accounting firm as a direct defendant. Plaintiff also wants to remove the individual defendants from both the case and the caption. The new party (“AMB”) is the firm purportedly responsible for preparing rent calculations and audited financial statements from 2020 through the present. Plaintiff insists that based on its review of the audited financial statements and rent calculations from 2022-2024, it has identified about \$240,000 in overcharges during this three year period alone. It claims that the same improper methodology that formed the basis of the original complaint is still being utilized.

Defendants oppose the proposed amendment in part—they do not object to the dismissal of the individual defendants. Defendants claim that the proposed amendment is too late and is

being sought only after extensive discovery. They insist it would cause substantial prejudice as it would expand the scope of discovery and require additional years of litigation.

In reply, plaintiff emphasizes that the allegations in the proposed amended complaint involve the same exact scheme detailed in the original complaint—the treatment of capital improvements when calculating plaintiff’s rent obligation.

Discussion

“Leave to amend should be freely given absent any prejudice or surprise from a delay in seeking leave” (*Martin v Briggs*, 235 AD2d 192, 199, 663 NYS2d 184 [1st Dept 1997]). The Court grants the motion as there is no prejudice or surprise. The fact is that plaintiff is simply amending its pleading to include allegations for a longer time period. But the underlying theory of the case remains the same—that the rent calculation is incorrect under the terms of the lease. While the addition of a new party will certainly require more discovery, that does not constitute a basis for unfair surprise or prejudice especially given the strong precedent that amendment should be freely granted.

And, although this case has been pending for some time, no note of issue has been filed. Moreover, it is not clear that all depositions have been completed. In fact, when the parties informed the Court that the case had settled in principle (in March 2025), they asked for an adjournment of the deadline to complete depositions (NYSCEF Doc. No. 128). In other words, this amendment will not require repetitive discovery as it appears that much discovery remains outstanding.

Accordingly, it is hereby

ORDERED that the plaintiff's motion for leave to amend the complaint in the proposed form annexed to the moving papers is granted and it shall be deemed served on defendant 684 Owners Corp. upon service of a notice of entry; and it is further

ORDERED that plaintiff shall serve a copy of the amended complaint on the newly-added party pursuant to the CPLR;

ORDERED that the defendants shall serve an answer to the amended complaint or otherwise respond thereto pursuant to the CPLR; and it is further

ORDERED that plaintiff shall upload a clean copy of the amended pleading as a separate NYSCEF document on or before August 12, 2025; and it is further

ORDERED that the caption of this case, after amendment shall be

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: PART 14**

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NEW DEAL REALTY, LLC,
Plaintiff,

-against-

**684 OWNERS CORP., KLEINMAN & WEINSHANK, LLP
WILKIN & GUTTENPLAN, P.C. AND ANTHONY M.
BUZZEO, C.P.A., PLLC,**
Defendants.

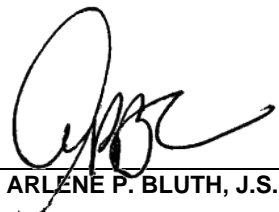
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; and it is further

ORDERED that within 21 days from entry of this order, counsel for the movant shall serve a copy of this decision and order with notice of entry upon the Clerk of the Trial Support Office (Room 158) and the County Clerk (Room 141B) **via e-filing** to reflect the removal of the individual defendants and the addition of the newly-named defendant; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk’s Office 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/suptmanh)].

The Court observes that it has ordered depositions to go forward many, many times and, as noted above, it does not seem to have motivated the parties to actually do depositions. Deadlines for depositions were initially set for August 2021 in the preliminary conference order (NYSCEF Doc. No. 25), followed by an extension to December 2021 (NYSCEF Doc. No. 28) before being extended again and again and again over the last four years. Obviously, holding conferences and setting deadlines for specific tasks, like depositions, has done nothing to get the parties to complete discovery. Therefore, the Court sets a January 15, 2026 date to file the note of issue. This date will not be extended absent good cause. This should provide more than enough time to do depositions and complete discovery. Just because plaintiff has added a single new party as a defendant does not mean that this case requires another five years of discovery.

7/30/2025			
DATE			ARLENE P. BLUTH, J.S.C.
CHECK ONE:	<input type="checkbox"/> CASE DISPOSED	<input checked="" type="checkbox"/> NON-FINAL DISPOSITION	
	<input checked="" type="checkbox"/> GRANTED	<input type="checkbox"/> DENIED	<input type="checkbox"/> OTHER
APPLICATION:	<input type="checkbox"/> SETTLE ORDER	<input type="checkbox"/> SUBMIT ORDER	
CHECK IF APPROPRIATE:	<input type="checkbox"/> INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/> FIDUCIARY APPOINTMENT	<input type="checkbox"/> REFERENCE