

**Lee v UDR, Inc.**

2025 NY Slip Op 33148(U)

August 21, 2025

Supreme Court, New York County

Docket Number: Index No. 151061/2023

Judge: Kathleen Waterman-Marshall

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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. KATHLEEN WATERMAN-MARSHALL PART 31**

*Justice*

-----X

C.K. LEE, COURTNEY MCPHAIL  
Plaintiff,

- v -

UDR, INC., COLUMBUS SQUARE 808, LLC,  
Defendant.

INDEX NO. 151061/2023

MOTION DATE 10/02/2024,  
10/07/2024

MOTION SEQ. NO. 003 004

**DECISION + ORDER ON  
MOTION**

-----X

The following e-filed documents, listed by NYSCEF document number (Motion 003) 46, 47, 48, 49, 50, 58, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 105

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

The following e-filed documents, listed by NYSCEF document number (Motion 004) 51, 52, 53, 54, 55, 56, 57, 59, 61, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 106, 107, 108, 109, 110

were read on this motion to/for ORDER MAINTAIN CLASS ACTION.

This matter was administratively transferred to Part 31 in late January 2025.

Upon the foregoing documents, plaintiff’s motion, pursuant to CPLR 3025, for leave to amend the Amended Complaint to: (1) remove plaintiff Courtney McPhail (“McPhail”) as a party; (2) add Lester Sandres (“Sandres”) as a plaintiff and class representative; (3) make plaintiff C.K. Lee (“Lee”) a class representative; and (4) remove defendant UDR, Inc. (“UDR”) as a party and the consumer fraud causes of action in accordance with the prior jurist’s July 11, 2024 order (Motion Seq. 003), is granted in part. Upon the same record, Plaintiff’s motion, pursuant to CPLR §§ 901 and 902, certifying a class and appointing class counsel (Motion Seq. 004), is granted.

**Brief Background**

This proposed class action arises from a dispute regarding Defendants’ restriction of two of the three lanes of a swimming pool inside a luxury residential building located at 808 Columbus Avenue, New York, New York, 10025 (the “Building”). McPhail represents the class of current and former tenants of the Building. UDR operates the Building for defendant Columbus Square 808, LLC (“Owner”). The Amended Complaint alleges causes of action for violations of N.Y. Gen. Bus. Law §§ 349 and 350 and breach of contract. Plaintiffs allege, *inter alia*, that UDR and Owner breached their leases by authorizing the exclusive use of two thirds of the Building’s pool during 10:00 a.m. and 6:00 p.m. to non-party SwimJim for swim lessons to non-tenants.

On July 11, 2024, the prior jurist granted Defendants’ motion to dismiss the first and second causes of action for violations of N.Y. Gen. Bus. Law §§ 349 and 350, respectively, and the third cause of action for breach of contract solely as against UDR (NYSCEF Doc. No. 42).

Plaintiffs now move to amend the Amended Complaint to: remove McPhail as a party; add Sandres as a plaintiff and class representative; make Lee a class representative; and, in accordance with the prior jurist's July 11, 2024 order, remove UDR as a party and the first and second causes of action for violations of N.Y. Gen. Bus. Law §§ 349 and 350. Owner opposes, arguing that the motion should be denied because: Lee is unqualified to serve as a class representative due to his conflicting role as principal of Lee Litigation Group, PLLC, which seeks to serve as class counsel; Sandres' claim that Owner breached the covenant of good faith and fair dealing by allowing SwimJim to offer swim lessons is not viable since such practice predates his tenancy in the Building; and the amendment is prejudicial in that granting the motion to amend would prolong the litigation and increase Owner's costs.

Plaintiffs also move for class certification and to appoint Lee Litigation Group, PLLC, as class counsel. Owner opposes, arguing that neither Lee nor Sandres are a proper class representative; the motion is procedurally improper as untimely; and Plaintiffs failed to satisfy the requirements for class certification – specifically, Plaintiffs' claims merely “hinge on individualized issues that vary significantly across the class”; Lee's and Sandres' claims are distinguishable from those of other residents; and Plaintiffs failed to identify a sufficient number of individuals in the proposed class.

### Discussion

CPLR 3025(b) governs permissive leave to amend a pleading upon terms which are just. Leave to amend a pleading should, in the absence of prejudice or surprise to the opposing party, be freely granted (*Fahey v County of Ontario*, 44 NY2d 934 [1978]; *170 W. Vil. Assoc. v G & E Realty, Inc.*, 56 AD3d 372 [1st Dept 2008]; *Lanpont v Savvas Cab Corp., Inc.*, 244 AD2d 208 [1st Dept 1997]). However, where a court concludes that an application to amend a pleading clearly lacks merit, leave is properly denied” (*Eight Ave. Garage Corp. v HKL Realty Corp.*, 60 AD3d 404 [1st Dept 2009] [internal citation omitted]). The motion to amend the pleading “shall be accompanied by the proposed amended or supplemental pleading clearly showing the changes or additions to be made to the pleading” (CPLR 3025).

Here, the addition of Sandres as a plaintiff would cause neither surprise nor prejudice as Sandres first leased an apartment in the Building in 2016 and asserts the same breach of contract claim, which survived Defendants' motion to dismiss, as McPhail. Accordingly, the Court finds that Sandres' proposed cause of action against Owner does not clearly lack merit. Therefore, the request to add Sandres as a plaintiff and class representative is granted.

The request to make Lee class representative is denied given his relationship with Lee Litigation Group, PLLC (*Tanzer v Turbodyne Corp.*, 68 AD2d 614, 620 [1st Dept 1979] [“it has generally been held that partners or associates of the firm of attorneys who represent the plaintiffs may not be the class representatives”]).

Upon presuming the truth of the factual allegations in the First Amended Complaint and considering the other proof on the motion for the purpose of assessing whether Plaintiffs' breach of contract claims are not a sham (*see Bloom v Cunard Line, Ltd.*, 76 AD2d 237, 240 [1st Dept 1980] [“To the extent that the merits of the action may be considered in determining whether class action is appropriate, inquiry is limited to a determination as to whether on the surface there appears to be a cause of action for relief which is neither spurious nor sham”]), Plaintiffs established the prerequisites to a class action under CPLR § 901(a), in that: (1) the class is comprised of at least 40 residents of the Building; (2) there are questions of law and fact common to the class, to wit: whether Owner breached their contract with all lessees in the Building when they rented out the pool to SwimJim; (3) typicality of Lee's and Sandres' claims and the proposed class's claims; (4) Sandres will fairly and adequately protect the interests of the class in pursuing the breach of contract claim and it is clear that the Lee Litigation Group, PLLC has the requisite experience and skill to prosecute the class action; and (5) a class action on this breach of contract claim is superior to other methods available to litigate the issues.

For the same reasons, Plaintiffs satisfied the requirements for issuance of an order certifying the class under: CPLR § 902(1), in that the class members would be interested in resolving common questions (*see also* § 901[2], [3]); CPLR § 902(2), in that it would be impracticable to prosecute 40 separate actions (*see also* § 901[1], [5]); CPLR § 902(5), in that it is unlikely that plaintiffs would have difficulties in managing the class action (*see also* § 901[4], [5]). In addition, there appears to be no other pending actions against Owner seeking the same relief (§ 902[3]), and New York County is an appropriate forum given Owner’s undisputed presence in the metropolitan area (§ 902[4]).

The Court notes that, to the extent discovery reveals the class should not have been certified, Owner may seek appropriate relief from this Court (*see Brandon v Chefetz*, 106 AD2d 162, 171 [1st Dept 1985] [“we observe that one of the strengths of CPLR article 9 is its flexibility. A decision granting class action status is not immutable and if later events indicate that the decision should be reversed, altered or amended, requisite relief is authorized”]).

Accordingly, it is hereby

**ORDERED** that the motion for an order, pursuant to CPLR 3025, amending the Amended Complaint is granted to the extent that plaintiff Courtney McPhail and defendant UDR, Inc. are removed as parties in this action, the consumer fraud causes of action are removed in accordance with the prior jurist’s July 11, 2024 order (NYSCEF Doc. No. 42), and Lester Sandres is added as a plaintiff and class representative; and it is further

**ORDERED** that plaintiffs’ request to make plaintiff C.K. Lee a class representative is denied; and it is further

**ORDERED** that the caption in this matter shall be amended to read:

-----X  
C.K. LEE, individually, LESTER SANDRES,  
*on behalf of himself and others similarly situated,*

Plaintiff

-against-

COLUMBUS SQUARE 808, LLC

Defendant  
-----X

; and it is further

**ORDERED** that within ten (10) days of its entry by the Clerk, plaintiffs shall serve a copy of this order with notice of entry on the County Clerk and the Clerk of the Trial Support Office; and it is further

**ORDERED** that upon service on the County Clerk and the Clerk of the Trial Support Office, the County Clerk and the Clerk of the Trial Support Office shall amend their records to reflect the above caption change; and it is further

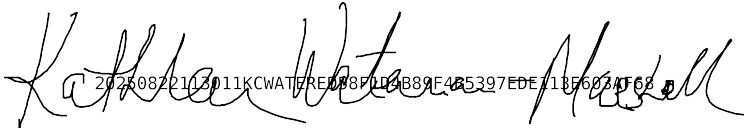
**ORDERED** that plaintiffs shall serve a copy of the proposed amended summons and complaint, in the form annexed to the motion in accordance with this Court’s decision, upon defendant no later than September 12, 2025; and it is further

**ORDERED** that the motion for an order, pursuant to CPLR §§ 901 and 902, granting class certification, is granted; and it is further

**ORDERED** that plaintiffs shall upload to NYSCEF, within ten (10) days of the date hereof, a “Notice of Class Action” and “Publication Order,” in the same form as that attached to the moving papers in accordance with this Court’s decision; and it is further

**ORDERED** that the parties shall appear for a **Preliminary Conference before this Court on January 7, 2026 at 10:00 a.m.** Counsel are reminded of Part 31 Part Rules, specifically those governing conferences and conference orders; and it is further

**ORDERED** that the court has considered the parties’ remaining contentions and finds them unavailing.



8/21/2025  
DATE

KATHLEEN WATERMAN-MARSHALL,  
J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>
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