Gilgurd v Rubinov
2025 NY Slip Op 34557(U)
November 21, 2025
Supreme Court, Kings County
Docket Number: Index No. 524720/2023
Judge: Reginald A. Boddie
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At an IAS Commercial Part 12 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, located at 360 Adams Street, Borough of Brooklyn, City and State of New York on the 21st day of November 2025.

PRESENT:
Honorable Reginald A. Boddie
Justice, Supreme Court

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BORIS GILGURD, individually and derivatively on behalf of 1002 REALTY CORP.,

Plaintiff,

-against-

LUDMILLA RUBINOV, et al.,

Defendants.

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Index No. 524720/2023

Cal. No. 8 MS 2

Decision and Order

The following e-filed papers read herein:	NYSCEF Doc Nos.
MS 2	41-59

Defendants' motion to amend their answer is decided as follows:

Background

Upon completion of discovery in this action, a Note of Issue was filed on November 15, 2024 (NYSCEF Doc No. 36); the summary-judgment deadline expired on February 17, 2025 (NYSCEF Doc No. 38) without either side interposing a dispositive motion; and the matter is scheduled for a bench trial from May 4 to May 8, 2026 (NYSCEF Doc No. 39). Nearly ten months after the close of discovery, defendants now move pursuant to CPLR 3025 to amend their answer to add a counterclaim for unpaid rent and to compel acceptance of the amended pleading. Defendants contend that discovery purportedly demonstrates that plaintiff Boris Gilgurd and EZ

Duct owe significant rent arrears to 1002 Realty Corp., and that the proposed counterclaim simply conforms the pleadings to the evidence, without giving rise to prejudice or surprise.

In opposition, plaintiff argues that the motion should be denied because the proposed rent counterclaim is both procedurally defective, as defendants failed to provide the required CPLR 3025(b) redline and seek relief against non-party EZ-Duct, and substantively meritless and time-barred. Plaintiff asserts that the Stipulation of Settlement dated February 16, 2017 (NYSCEF Doc No. 47) merely required execution of a three-year lease, which occurred, and any obligations under it expired years ago. Plaintiff argues that the lease itself expired in 2019 without renewal, and its terms cannot govern a later month-to-month tenancy. Plaintiff further maintains that he was not an owner of EZ-Duct, never used or controlled the premises, and defendants have no basis to offset his shareholder distributions with alleged 2020–2025 arrears. Insofar as defendants were long aware of these facts, yet waited until the completion of discovery, and the eve of trial, to seek an amendment, plaintiff contends that such proposed amendment is untimely, prejudicial and without merit.

In reply, defendants argue that the amendment should be permitted since rent arrears have been an integral part of the case from the outset, plaintiff admitted responsibility in his deposition, and the counterclaim is supported by the lease, the parties' conduct and RPL §232-c. Defendants assert that there is neither prejudice nor surprise, the claim is not patently devoid of merit, and plaintiff's procedural objections, such as the lack of a redline or joinder of EZ-Duct, constitute minor issues that can readily be cured. Defendants contend that timing alone is not a basis to deny amendment and that the counterclaim arises from the same facts already litigated.

Discussion

"While leave to amend a pleading shall be freely granted, a motion for leave to amend is committed to the broad discretion of the court" (*Yong Soon Oh v Hua Jin*, 124 AD3d 639, 640 [2d

Dept 2015] [citations omitted]). "In exercising its discretion, the court should consider how long the party seeking the amendment was aware of the facts upon which the motion was predicated [and] whether a reasonable excuse for the delay was offered" (*id.*). "Generally, in the absence of prejudice or surprise to the opposing party, leave to amend pleadings should be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit" (*id.*). "However, where the application for leave to amend is made long after the action has been certified for trial, judicial discretion in allowing such amendments should be discrete, circumspect, prudent, and cautious" (*id.* at 641 [internal quotation marks omitted]). "Moreover, when ... leave is sought on the eve of trial, judicial discretion should be exercised sparingly" (*id.*).

In the present proceeding, defendants' request comes long after discovery has closed, long after the note of issue was filed, on the eve of trial, and long after the action has been certified for trial. Defendants were indisputably aware of the alleged rent arrears for years, yet they offer no reasonable excuse for waiting until September 2025 to move to add this counterclaim.

Moreover, the amendment is procedurally defective and therefore improper. Defendants' proposed amended answer expressly alleges that "Plaintiff Gilgurd and EZ Duct are in breach of the lease," and seeks relief against EZ Duct. However, EZ Duct is not a party to this action, and defendants made no attempt to implead this plainly necessary party. Plaintiff has sufficiently established that a counterclaim purporting to seek affirmative relief or a money judgment against a non-party is legally insufficient on its face.

Based on the foregoing, plaintiff's motion is denied. Any argument not explicitly

addressed herein was considered and deemed to be without merit or unnecessary to address given the court's determination.

ENTER:

Honorable Reginald A. Boddie
Justice, Supreme Court

HON. REGINALD A. BODDIE
J.S.C.