

**Wiener Realty Mgt., LLC v One Penn Plaza LLC**

2026 NY Slip Op 30058(U)

January 6, 2026

Supreme Court, New York County

Docket Number: Index No. 162194/2023

Judge: Ashlee Crawford

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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. ASHLEE CRAWFORD PART 38
Justice
INDEX NO. 162194/2023
WIENER REALTY MANAGEMENT, LLC,
Plaintiff, MOTION SEQ. NO. 003

- v -

ONE PENN PLAZA LLC,
Defendant.

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 003) 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 84, 85, 93 were read on this motion to/for AMEND CAPTION/PLEADINGS

Upon the foregoing documents, it is

Defendant-landlord One Penn Plaza LLC moves pursuant to CPLR 1002(b), 1003, and 3025(b) for leave to file and serve a supplemental summons and amended answer upon non-parties Wiener Realty Management II LLC ("Wiener Realty II") and Joel Wiener as third-party defendants; and pursuant to CPLR 3025(b) for leave to amend its answer to include an additional counterclaim against plaintiff-tenant Wiener Realty Management LLC ("Wiener Realty") and third-party claims against Wiener Realty II and Joel Wiener. Plaintiff opposes the motion.

Background

Pursuant to a written lease between the parties, plaintiff was a commercial tenant of the 39th and 40th floors at One Penn Plaza, in Manhattan ("premises"). Plaintiff alleges that in June 2023, an active waste line for the building burst, causing raw sewage to leak into the premises.

Defendant allegedly performed some cleaning of the premises, but refused to sanitize and replace tiles and carpeting to plaintiff's satisfaction. Plaintiff asserts six separate claims against defendant for breach of the lease, negligence, declaratory judgment, and injunctive relief. In its answer, defendant asserts counterclaims for declaratory judgment, unpaid rent, and expense damages.

By prior order dated June 3, 2024, the Court (Nock, J.) granted plaintiff's motion for a Yellowstone injunction (NYSCEF Doc. 39), which was later vacated on consent after the parties terminated the lease and plaintiff delivered possession of the premises to defendant (8/26/24 Termination & Delivery of Possession Agreement [NYSCEF Doc. 74]; 8/28/24 So-Ordered Stipulation [NYSCEF Doc. 58]).

### **Discussion**

“Leave to amend the pleadings should be freely given absent prejudice to the opposing party and where the proposed claims are not palpably insufficient or devoid of merit” (Leyton v Siegel, 212 AD3d 521 [1st Dept 2023][internal citations omitted]; CPLR § 3025[b]). “[T]o conserve judicial resources, an examination of the proposed causes of action is warranted and leave to amend will be denied where the proposed pleading fails to state a cause of action or is palpably insufficient as a matter of law” (Davis & Davis, P.C. v Morson, 286 AD2d 584, 585 [1st Dept 2001][internal citations omitted]; Thompson v Cooper, 24 AD3d 203, 205 [1st Dept 2005][same]).

Defendant argues in support of its motion that non-parties Wiener Realty II and Joel Wiener should be held liable for plaintiff's obligations under the parties' lease under theories of alter-ego liability, successor liability, and piercing the corporate veil. Defendant contends that Wiener Realty II is the alter ego and successor entity of plaintiff formed by Joel Wiener for the

purpose of transferring plaintiff's business to a different premises under a new lease and evading plaintiff's liability to defendant pursuant to the lease (Ansell Aff. ¶¶ 9-12, 15 [NYSCEF Doc. 61]). Such actions, defendant argues, constitute a consolidation or de facto merger of plaintiff and Wiener Realty II, and demonstrates that Wiener Realty II is an alter ego of, and successor to, plaintiff (Ansell Aff. ¶ 15 [NYSCEF Doc. 61]).

Defendant further asserts that Joel Wiener owns, dominates, and controls Wiener Realty, Wiener Realty II, and "Pinnacle," the trade name used by Wiener Realty and Wiener Realty II. As such, defendant contends that the corporate veils of Wiener Realty and Wiener Realty II should be pierced, and Joel Wiener should be held personally liable for debts owed by plaintiff and Wiener Realty II to the landlord (Ansell Aff. ¶¶ 13-14, 16 [NYSCEF Doc. 61]).

Defendant also seeks to amend its answer to assert a counterclaim of "termination damages" against plaintiff, and to add third-party claims against Wiener Realty II and Joel Wiener for joint and several liability for all sums due to defendant (see Proposed Answer and Redlined Version of Proposed Answer [NYSCEF Docs. 78-79]).

In opposition, plaintiff argues that defendants' proposed claims against Wiener Realty II and Joel Wiener lack merit as a matter of law and/or fail to state a cause of action. Plaintiff argues that the proposed claims against Wiener Realty II and Joel Wiener are barred by the express terms of the lease (see Section 29.2 of the Lease [NYSCEF Doc. 63 at 76]; Pl.'s Opp. ¶¶ 8-9 [NYSCEF Doc. 84]). According to plaintiff, section 29.2 of the lease provides that Joel Wiener, as member of plaintiff, is not liable for plaintiff's obligations under the lease, and that defendant may only look to plaintiff Wiener Realty's assets to enforce plaintiff's obligations under the lease. Plaintiff notes that its interest in the lease was never assigned. Additionally,

plaintiff contends that the proposed amended answer does not state a claim for piercing plaintiff's corporate veil to impose liability for the lease on Joel Wiener.

As an initial matter, that part of defendant's motion to amend its answer to assert an additional counterclaim of termination damages against plaintiff is granted without opposition by plaintiff. The remainder of defendant's motion is discussed herein.

*Piercing the Corporate Veil: Proposed Claims Against Joel Wiener*

"New York law disfavors disregard of the corporate form" (Sutton 58 Assocs. LLC v Pilevsky, 189 AD3d 726, 729 [1st Dept 2020][citation omitted]). "The concept of piercing the corporate veil is a limitation on the accepted principles that a corporation exists independently of its owners, as a separate legal entity, that the owners are normally not liable for the debts of the corporation, and that it is perfectly legal to incorporate for the express purpose of limiting the liability of the corporate owners" (Matter of Morris v New York State Dept. of Taxation & Fin., 82 NY2d 135, 140 [1993]).

At the pleading stage, "[t]he party seeking to pierce the corporate veil must allege particularized statements detailing fraud or other corporate misconduct by individuals in complete control of the corporation" (134 Emmut Properties LLC v Galaxy Light. 136, Inc., 211 AD3d 505, 505 [1st Dept 2022][internal quotation and citation omitted]; see also Cortlandt St. Recovery Corp. v Bonderman, 31 NY3d 30, 47-48 [2018]).

Here, defendant attempts to pierce plaintiff's corporate veil and hold Joel Wiener personally liable through bare allegations made primarily "upon information and belief," which are palpably insufficient and devoid of merit (see Proposed Redline Amended Answer ¶¶ 86-92 [NYSCEF Doc. 79]; 501 Fifth Ave. Co. LLC v Alvona LLC, 110 AD3d 494 [1st Dept 2013][affirming dismissal of veil piercing claims where allegations were conclusory and mere

recitation of the elements of the claim upon information and belief]). Particularly, defendant's allegation that "Joel Wiener used his domination and control over Wiener and Wiener Realty II to wrongfully injure" defendant is conclusory and insufficient, without more, to pierce plaintiff's corporate veil (see Proposed Redline Amended Answer ¶ 92; Cornwall Mgt. Ltd. v Kambolin, 140 AD3d 507 [1st Dept 2016]; cf. 245 E. 19 Realty LLC v 245 E. 19th St. Parking LLC, 223 AD3d 604, 605-606 [1st Dept 2024]; 134 Emmut Properties LLC v Galaxy Light. 136, Inc., 211 AD3d at 505; BP 399 Park Ave. LLC v Pret 399 Park, Inc., 150 AD3d 507, 508 [1st Dept 2017]). Accordingly, that part of defendant's motion seeking to amend the answer to add a claim against Joel Wiener, premised on a veil-piercing theory, is denied.

***Alter Ego and Successor Liability: Proposed Claims Against Wiener Realty II***

In its proposed amended answer, defendant alleges upon information and belief that Wiener Realty II was formed to carry on the business of Wiener Realty, and that the new entity entered into a lease at a new location (see Proposed Redline Amended Answer ¶¶ 69-85). Defendant speculates that the alleged transfer of business from Wiener Realty to Wiener Realty II was made without "significant consideration" and "was performed in an improper manner and for the purpose of evading Wiener Realty's liability to [defendant] pursuant to the Lease" (*id.* at ¶ 83).

These conclusory allegations against Wiener Realty II are palpably insufficient under an alter ego theory (see S.M. v Madura, 223 AD3d 486, 487 [1st Dept 2024]; P & HR Solutions, LLC v Ram Capital Funding, LLC, 195 AD3d 473, 474 [1st Dept 2021]), including because there are no allegations of "complete domination and control" by one corporate entity over another, and no specific allegations of a fraud or wrong, such as the disregard of corporate formalities (see Rich v J.A. Madison, LLC, 2025 NY Slip Op 04818, \*1 [1st Dept Aug. 28,

2025]; Baby Phat Holding Co., LLC v Kellwood Co., 123 AD3d 405, 407-408 [1st Dept 2014]). Defendant's conclusory allegations similarly fail under a successor liability theory (see Avamer 57 Fee LLC v Hunter Boot USA LLC, 241 AD3d 401, 402-403 [1st Dept 2025]; Highland Crusader Offshore Partners, L.P. v Targeted Delivery Tech. Holdings, Ltd., 184 AD3d 116, 126-127 [1st Dept 2020]).

Finally, the Court rejects defendant's argument that it requires discovery concerning whether Wiener Realty failed to adhere to corporate formalities or was rendered judgment-proof, both because this argument was improperly raised for the first time in reply (WV Partners LLC v Hudson Private Corp., 236 AD3d 481, 482 [1st Dept 2025]; Erdey v City of New York, 129 AD3d 546, 546-47 [1st Dept 2015]; Reply Br. at 7 [NYSCEF Doc. 85]), and because it fails on the merits (see Max Markus Katz, P.C. v Sterling Natl. Bank, 206 AD3d 533, 535 [1st Dept 2022]; Board of Mgrs. of 325 Fifth Ave. Condominium v Continental Residential Holdings LLC, 149 AD3d 472, 475 [1st Dept 2017]).

That part of defendant's motion seeking to assert a claim against Wiener Realty II under an alter ego or successor liability theory is, therefore, denied.

For the foregoing reasons, it is hereby

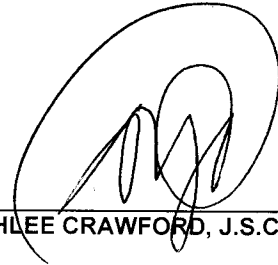
**ORDERED** that that part of defendant's motion seeking to amend its answer to assert an additional counterclaim of termination damages against plaintiff is GRANTED, and the remainder of defendant's motion is DENIED; and it is further

**ORDERED** that within 14 days of entry of this order, defendant shall serve a copy of this order with notice of entry upon plaintiff via NYSCEF; and it is further

**ORDERED** that within 14 days of entry of this order, defendant shall file and serve an amended answer with counterclaims in a form consistent with this order; and it is further

**ORDERED** that all parties shall appear for a status conference on February 25, 2026, at 10:00 AM, at 111 Centre St., Room 1166, New York, New York.

This constitutes the decision and order of the Court.



ASHLEE CRAWFORD, J.S.C.

1/6/2026  
DATE

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