

<b>New York City Hous. Auth. v Baez</b>
2026 NY Slip Op 30451(U)
February 5, 2026
Supreme Court, New York County
Docket Number: Index No. 451263/2023
Judge: Lyle E. Frank
Cases posted with a "30000" identifier, i.e., 2013 NY Slip Op <u>30001</u> (U), are republished from various New York State and local government sources, including the New York State Unified Court System's eCourts Service.
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*

-----X

NEW YORK CITY HOUSING AUTHORITY

Plaintiff,

- v -

WANDA BAEZ,

Defendant.

-----X

INDEX NO. 451263/2023

MOTION DATE 11/04/2025

MOTION SEQ. NO. 002

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 002) 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 were read on this motion to/for AMEND CAPTION/PLEADINGS.

Plaintiff commenced the instant action for unpaid rent. Defendant now moves, pursuant to CPLR § 3025, to amend its answer and summary judgment on its proposed counterclaims. Plaintiff opposes the motion. For the reasons set forth below, defendant’s motion is denied in its entirety.

Background

This matter was commenced to recover unpaid rent. On June 16, 2023, defendant answered the complaint *pro se*, and asserted no claims of uninhabitability, rather in her answer she indicated that she was out of work and seeking assistance to pay her rent and filing for bankruptcy. On October 23, 2023, Lincoln Center Legal Services filed a notice of appearance on behalf of defendant. Discovery commenced and was certified completed on September 5, 2025, when plaintiff filed the note of issue. By order of this Court, the parties had 60 days to file dispositive motions, on the 60th day, defendant filed the instant motion to amend its answer.

Standard of Review

Pursuant to CPLR § 3025 (b), “[a] party may amend his or her pleading, . . . , at any time by leave of court . . . [and] [l]eave shall be freely given upon such terms as may be just including the granting of costs and continuances.” “Unless the proposed amendment is palpably insufficient or patently devoid of merit.” (*MBIA Ins. Corp. v Greystone & Co., Inc.*, 74 AD3d 499, 499 [1st Dept 2010]). The Court of Appeals recognizes that “[a]s a general rule, ‘leave to amend a pleading should be freely granted in the absence of prejudice to the nonmoving party where the amendment is not patently lacking in merit . . . , and the decision whether to grant leave to amend a complaint is committed to the sound discretion of the court.’” *Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015] (internal citation omitted).

"Where there has been an extended delay in moving to amend, the party seeking leave to amend must establish a reasonable excuse for the delay" (*Heller v Louis Provenzano, Inc.*, 303 AD2d 20, 24 [1st Dept 2003], quoting *Jablonski v County of Erie*, 286 AD2d 927, 928 [4th Dept 2001]).

### Discussion

Preliminarily, the motion for summary judgment is denied. Defendant’s combined motion to amend its pleadings and then seeking summary judgment on those amendments is procedurally improper. The Court will now address the portion of the motion seeking an amendment of the pleadings.

In support of its motion to amend its answer, defendant contends that the proposed affirmative defenses and counterclaims only “became apparent only after the close of discovery”, however does not offer any timeline as to when the work orders, on which they admittedly rely on to assert the proposed affirmative defense and counterclaims, were disclosed to them.

Notably, missing is any discussion on the second proposed counterclaim that plaintiff violated federal regulations when they failed to recertify defendant's income.

Defendant does not allege, much less address, the belated application to include the second counterclaim was based on newly discovered evidence. Defendant has not asserted any excuse for the delay in asserting this counterclaim nor has plaintiff made a preliminary showing that the counterclaim is meritorious, nor does it allege that plaintiff will not be prejudiced.

Most perplexing is defendant's contention that "defendant was unaware of the pervasive lead hazard in her apartment" until after the close of discovery while simultaneously alleging in its proposed pleading that "the hazardous condition caused the defendant to surrender her rights [...] and these conditions ultimately forced the defendant to leave her apartment". See NYSCEF Doc. 51, pg. 2 paragraph A; NYSCEF Doc. 50, paragraph 16.

In opposition, plaintiff relies on the First Department's decision in *Cherebin* in support of its contention that defendant is required to submit an affidavit of merit and a reasonable excuse for the delay in seeking the amendment (*Cherebin v Empress Ambulance Serv., Inc.*, 43 AD3d 364, 365 [1st Dept 2007]). There, the First Department also held that prejudice requires "some indication that defendant has been hindered in the preparation of his case" (*id.* internal quotations and citation omitted).

The Court is not persuaded that defendant has established that the asserted affirmative defense and counterclaims are not devoid of merit and that amendment is not prejudicial to plaintiff. Here, it is clear that based on the proposed amendments plaintiff has absolutely been hindered in the preparation of its case and requires the reopening of discovery of issues that were not raised until the deadline to file dispositive motions. Moreover, defendant has not explained the representations made in a complaint filed on April 30, 2024 in the United States District

Court, Southern District of New York, wherein defendant’s reason for vacating the apartment was the “uncertainty over the ability to pay rent” *See* NYSCEF Doc. 57, paragraph 134.

Defendant also urges this Court to consider defendant’s status as an unrepresented litigant during the filing of her first answer as a basis to grant the instant application, this however is unpersuasive. Defendant was represented by counsel approximately four months after her initial appearance, therefore the delay in seeking the amendment is not attributable to her unrepresented status.

To be clear, defendant cannot have it both ways, she cannot allege that she only became aware of the lead condition now, after discovery, while simultaneously blaming the condition for vacatur of her apartment. The Court finds that allowing the proposed amendments that changes the entire scope of the litigation after discovery has been completed and note of issue has been filed is undisputedly prejudicial to plaintiff. Accordingly, it is hereby

ADJUDGED that defendant’s motion is denied in its entirety.

  
20260205161714LFRANKBC53976FEF4349CAB43A58FDA8BDFAE7

2/5/2026  
DATE

\_\_\_\_\_  
LYLE E. FRANK, J.S.C.

CHECK ONE:

<input type="checkbox"/>	CASE DISPOSED	
<input type="checkbox"/>	GRANTED	<input checked="" type="checkbox"/> DENIED

<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
<input type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/> OTHER

APPLICATION:

<input type="checkbox"/>	SETTLE ORDER
<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN

<input type="checkbox"/>	SUBMIT ORDER
<input type="checkbox"/>	FIDUCIARY APPOINTMENT
<input type="checkbox"/>	REFERENCE

CHECK IF APPROPRIATE: