

Korpenn LLC v One Penn Plaza LLC

2026 NY Slip Op 30500(U)

February 9, 2026

Supreme Court, New York County

Docket Number: Index No. 651615/2023

Judge: Lyle E. Frank

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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. LYLE E. FRANK PART 11M

Justice

-----X

KORPENN LLC,

Plaintiff,

- v -

ONE PENN PLAZA LLC,

Defendant.

-----X

INDEX NO. 651615/2023

MOTION DATE 11/25/2025

MOTION SEQ. NO. 008

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 008) 219, 220, 221, 222, 223, 224, 225, 226, 228, 231, 232, 233, 234, 235, 236, 237, 238, 240, 244

were read on this motion to/for LEAVE TO FILE.

Upon the foregoing documents, the motion is granted in part.

Background

Plaintiff and Defendant in this matter are the successors in interest to parties who in 1970 entered into a ground lease (the “Lease”) for a city block near Penn Station (the “Property”). According to the terms of the Lease, the fair market value of the Property (“FMV”) was to be renewed on June 17, 2023. This FMV was to be determined by a panel of neutral appraisers, with each party picking one appraiser and either the Real Estate Board of New York or a court choosing the third. Plaintiff filed this underlying proceeding in early 2023, and the case was initially assigned to Justice Engoron. The appraisal process took place in late 2023 and into 2024. A final valuation was announced in 2025. On October 31, 2025, the appraisal was vacated by Justice Engoron who noted an “egregious appearance of impropriety.” Plaintiff’s position is that it is now infeasible for them to obtain the services of an impartial broker, as Defendant’s parent company is one of the largest commercial real estate owners in the city.

Discussion

Plaintiff moves for leave to file a supplemental complaint, or, in the alternative, for a framed issue hearing to be scheduled on the matter of the fair market value of the Property. Defendant opposes the motion on the basis that the Court should not determine FMV but rather direct the parties to engage in another round of the appraisal process as set forth in the Lease. For the reasons that follow, the motion is granted as to the portion of the proposed supplemental complaint that adds a fourth cause of action for breach of contract but denied as to the portion that seeks to add a cause of action for declaratory relief or in the alternative, for a framed issue hearing.

CPLR § 7601 Is Not Properly Before the Court Because No Special Proceeding Has Been Commenced

As an initial matter, the parties dispute whether CPLR § 7601 requires that Article 75 arbitration provisions apply to appraisals and therefore determine whether the alternative relief requested can be granted. Under CPLR § 7601, a party may commence a special proceeding to enforce a question of appraisal to “be determined by a person named or to be selected.” When such a special proceeding is brought, the court “may enforce such an agreement as if it were an arbitration agreement, in which case the proceeding shall be conducted as if brought under article seventy-five of this chapter.” CPLR § 7601; *see also Liberty Fabrics v. Corporate Props. Assocs.* 5, 223 A.D.2d 447, 457 [1st Dept. 1996] (holding that CPLR § 7601 “provides [that] an agreement to submit a valuation question to an independent appraiser may be enforced by a court in the same manner as would an arbitration agreement under CPLR article 75”). This is a plenary action, and no party has brought a special proceeding seeking to enforce any agreement.

Furthermore, despite Defendant's arguments to the contrary it is clearly discretionary under this provision whether a court may apply the Article 75 provisions once such a special proceeding is commenced. But as no special proceeding has been commenced, the matter of the applicability of the arbitration provisions of the CPLR to this appraisal issue is not before the Court at this time. *See, e.g., Matter of 101 W. 23 Owner I LLC v. 715-723 Sixth Ave. Owners Corp.*, 174 A.D.3d 447, 448 [1st Dept. 2019] (applying the article 75 standards to an appraisal when a special proceeding under CPLR article 76 was brought); *Rad v. IAC/InterActiveCorp*, 183 A.D.3d 508, 508 [1st Dept. 2020] (holding that CPLR § 7601 "permits, but does not require, the commencement of a special proceeding to enforce a valuation agreement" and that when "plaintiffs are not seeking to enforce the valuation agreement and are properly seeking relief in a plenary action" arguments about the application of CPLR § 7061 are moot). While Defendant could, pursuant to CPLR § 7061, bring a special proceeding seeking to enforce an appraisal agreement (in which case the Court would have discretion to apply Article 75's provision), such a scenario is inapplicable to this current motion.

The Standard of Review for Leave to Amend the Pleadings

Pursuant to CPLR § 3025(b), a party may supplement their pleadings by leave of court, which is to be "freely given upon such terms as may be just." Such leave is also to be "freely given absent prejudice or surprise resulting directly from the delay." *Pier 59 Studios, L.P. v. Chelsea Piers, L.P.*, 40 A.D.3d 363, 365 [1st Dept. 2007]. A plaintiff "need not establish the merit of its proposed new allegations but simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit." *MBIA Ins. Corp. v. Greystone & Co., Inc.*, 74 A.D.3d 499, 500 [1st Dept. 2010].


The Proposed Amendment is Prejudicial As to the Fifth Cause of Action but Not the Fourth Cause of Action

Although the majority of Defendant's papers relate to the application of Article 75 arbitration rules to appraisals (which, as explained above, is a provision requiring the commencement of a special proceeding), they do briefly argue that they would be prejudiced by the amendment seeking declaratory relief. This proposed cause of action seeks to have the Court issue declaratory relief setting the FMV of the Property. Defendant argues that because this would strip them of the bargained-for contractual right to have the FMV determined via a specific appraisal process, they would be prejudiced.

In this, Defendant is correct. The parties agreed to a specific appraisal process, and while the Court is not insensitive to Plaintiff's position that they will struggle to obtain a neutral appraiser given the importance of Defendant's parent company in NYC real estate, that is not sufficient basis to overturn the contractually bargained-for appraisal provision. Because there has been no attempt to void, rescind, or otherwise alter the contract (that Plaintiff seeks in another cause of action to enforce), the Court is not at this time empowered to overrule the appraisal provision in the Lease. Therefore, the motion to supplement the complaint is premature and properly denied as to the proposed fifth cause of action that seeks to have the Court replace the appraisal provision in the lease with a framed issue hearing.

The proposed supplement also, however, seeks leave to add a fourth cause of action for breach of the Lease. As Defendant does not appear to oppose this amendment (other than the general reference to CPLR § 7061 addressed above), nor does the Court see prejudice in granting a breach of contract cause of action, this portion of the motion will be granted. Accordingly, it is hereby

ADJUDGED that the motion is granted as to the addition of the proposed fourth cause of action and denied as to the remainder of the relief sought.


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2/9/2026
DATE

LYLE E. FRANK, 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"/>
	<input type="checkbox"/>	DENIED		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	