

**Board of Mgrs. of Galleria Condominium v Sky
Tower, Inc.**

2026 NY Slip Op 31990(U)

May 7, 2026

Supreme Court, New York County

Docket Number: Index No. 653973/2024

Judge: James G. Clynes

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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. JAMES G. CLYNES PART 39M

Justice

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INDEX NO. 653973/2024

BOARD OF MANAGERS OF GALLERIA CONDOMINIUM,

MOTION DATE 12/17/2025

Plaintiff,

MOTION SEQ. NO. 001

- v -

SKY TOWER, INC., DAVID COPPERFIELD

DECISION + ORDER ON MOTION

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33

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

Upon the foregoing documents, the motion by plaintiff BOARD OF MANAGERS OF GALLERIA CONDOMINIUM for an Order granting leave to discontinue its first cause of action and leave to file its amended complaint is decided as follows:

Plaintiff moves seeking leave to discontinue its first cause of action without prejudice pursuant to CPLR 3217 (b) and leave to file an amended complaint pursuant to CPLR 3025 (b). Plaintiff contends that there is no valid reason why the defendants should oppose the discontinuance of its first cause of action as plaintiff accepted insurance proceeds from its carrier to cover the water damage caused by the defendants for which plaintiff's first cause of action sought the same relief. Plaintiff also contends it should be allowed to amend its complaint seeking damages in regards to the monitoring of mold growth found in defendants residence found in the summer as defendants consented to seek such damages during litigation between the parties.

Defendants' opposition contends that the portion of plaintiff's motion seeking leave to amend should be denied because defendants cannot ascertain from the proposed amended complaint what the specific claims are and when they occurred. This leaves the defendants to speculate as to what they may have done wrong and when the alleged wrong occurred. The defendants also contend that the specific incidents which give rise to the damages alleged may be

time barred by the statute of limitations and thus plaintiff should be obligated to start a new action for their new claim.

DISCONTINUATION OF PLAINTIFF'S FIRST CAUSE OF ACTION

Pursuant to CPLR 3217 (b) by Order of Court, provides that except as provided in subdivision (a), an action shall not be discontinued by a party asserting a claim except upon order of the court and upon terms and conditions, as the court deems proper. After the cause has been submitted to the court or jury to determine the facts the court may not order an action discontinued except upon the stipulation of all parties appearing in the action.

Here, the branch of plaintiff's motion to discontinue the first cause of action against the defendants is granted. Plaintiff voluntarily withdraws its first cause of action because it accepted insurance proceeds to cover the water damage in defendants' residence and there is no need to seek such relief against the defendants. Defendants' opposition did not provide any reason why plaintiff should not be permitted to withdraw the first cause of action.

Thus, plaintiff's first cause of action is withdrawn without prejudice.

LEAVE TO FILE AN AMENDED COMPLAINT

CPLR 3025(b), "[a] party may amend his pleading, or supplement it by setting forth additional or subsequent transactions or occurrences, at any time by leave of court or by stipulation of all parties." Leave to amend pleadings is generally freely granted, absent prejudice and surprise resulting from the delay. *See Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 (1983); *Antwerpse Diamantbank N.V. v Nissel*, 27 AD3d 207, 208 (1st Dept 2006). To find prejudice, there must be some indication that the defendant has been hindered in the preparation of his case or prevented from taking some measure in support of his position. *See Abdelnabi v NYC Transit Authority*, 273 AD2d 114, 115 (1st Dept 2000).

CPLR 203(f) outlines that the relation back doctrine permits a plaintiff to interpose a claim that would ordinarily be time barred where the allegations of the original Complaint gave notice of the transactions or occurrences to be proven, and the cause of action would have been timely interposed if it was asserted in the original Complaint (*O'Halloran v Metro. Transp. Auth.*, 154

AD3d 83, 86 [1st Dept 2017]). A claim will be found to relate back to the original Complaint and not be barred by the statute of limitations only if the Complaint placed Defendant on notice of the transactions, occurrences, or series of transactions or occurrences to be proved in support of the claims within the Amended Complaint (34-06 73, *LLC v Seneca Ins. Co.*, 39 NY3d 44, 50 [2022]). A search of the four corners of the original pleading is warranted to make the determination whether a defendant was on notice of transactions or occurrences underlying a plaintiff's new claim (*id.* at 51).

Here, plaintiff's motion to amend the complaint is granted over defendants' opposition. Plaintiff seeks to add factual allegations and a cause of action for mold testing, due to mold being found to be in defendants' residence during the summer. Plaintiff's submission sufficiently shows that adding its proposed factual allegations and cause of action relates back to its original complaint and will not result in prejudice or surprise to the defendants resulting from the delay. The Court finds defendants' opposition contradictory to previous email exchanges, vague and unavailing.

First, the defendants assented in an email exchange that plaintiff reserves the right to pursue damages for the mold testing stating "For purposes of interim mold testing plaintiff may enter defendants' residence for the purposes of interim mold testing on the following condition... 3) The parties agree to disagree about the need for interim testing and the cause of any mold issue. In this regard, the Board will not seek payment for these interim inspections as they are performed but reserves its right to pursue those expenditures as compensable damages in litigation between the parties" (NYSCEF DOC 27). Plaintiff is seeking to amend its complaint to add the very cause of action defendants already assented plaintiff may pursue as compensable damages in litigation between the parties.

Secondly, the defendants in their opposition allege "as we proceed through discovery it turns out that plaintiff is actually referring to specific incidents as giving rise to discrete items of damages, those things may be barred by the statute of limitations" (NYSCEF DOC NO 31). As discovery is ongoing, defendants' assertion that a specific incident giving rise to damages "may"

be time barred is not sufficient to warrant a denial of plaintiff's motion seeking to amend the complaint.

Therefore, plaintiff's motion to amend its complaint withdrawing its first cause of action and leave to file an amended complaint is granted. Accordingly, it is

ORDERED that the motion by plaintiff for leave to discontinue its first cause of action and leave to file an amended complaint is granted; and it is further

ORDERED that the amended complaint, in the form annexed to the motion papers, shall be deemed served upon service of a copy of this order with notice of entry upon all parties who have appeared in the action.

This constitutes the Decision and Order of the Court.

5/7/2026
DATE

James G. Clynes

JAMES G. CLYNES, J.S.C.

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