

**Metropolitan Partners Group Admin., LLC v Nerney**

2025 NY Slip Op 33212(U)

August 27, 2025

Supreme Court, New York County

Docket Number: Index No. 650013/2025

Judge: Melissa A. Crane

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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. MELISSA A. CRANE PART 60M**

*Justice*

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METROPOLITAN PARTNERS GROUP ADMINISTRATION,  
LLC, METROPOLITAN LEVERED PARTNERS FUND VII,  
LP, METROPOLITAN PARTNERS FUND VII, LP,

Plaintiff,

**INDEX NO.** 650013/2025

**MOTION DATE** 06/06/2025,  
06/06/2025

**MOTION SEQ. NO.** 010 011

- v -

BRIAN NERNEY, DAVID HORTON, SCHWEIZER RSG,  
LLC, RSG SCHWEIZER INVESTORS, LLC, ROTOCRAFT  
SERVICES GROUP, INC., RSG AVIATION, INC., RSG  
AERODESIGN, INC., RSG PRODUCTS, INC.

Defendant.

**DECISION + ORDER ON  
MOTION**

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The following e-filed documents, listed by NYSCEF document number (Motion 010) 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 461, 463, 464, 465, 466, 467, 468

were read on this motion to/for DISMISSAL.

The following e-filed documents, listed by NYSCEF document number (Motion 011) 449, 450, 462, 469 were read on this motion to/for DISMISS.

The motions to dismiss the second amended complaint (SAC) are (largely) denied in accordance with the reasoning on the record of 8/15/2025.

In sum, this case involves a loan and corresponding loan documents, some of which contain a forum selection clause for New York. The court denied dismissal of the non-signatory defendants (Rotorcraft, RSG Aerodesign, RSG Aviation and RSG Products). These parties did not sign the contract containing the forum selection clause. However, plaintiff has raised an issue of fact about transactions and relationships between the non-signatory defendants and the signatory defendants, such that the signatories and the non-signatories could be alter egos (see Transcript dated August 15, 2025, at pgs. 40-42). If the non-signatory defendants were alter

egos, they would be bound by the forum selection clause (see *Cortlandt St. Recovery Corp. v. Bonderman*, 31 N.Y.3d 30, 48 [2018]).

There is a concern that the non-signatories were used by the common owners of all companies to siphon money away from the signatories/borrowers. For example, there is evidence in the record that Schweizer, who was a signatory, was selling equipment to related parties at a 40% discount [see EDOC 413]. This transaction and discount are suspicious given the financial straits that Schweizer allegedly was in. There is a concern that the related party could have then sold the debtor's equipment, which was supposed to have been collateral for the loan, at retail, thereby keeping the profit out of Schweizer's hands and concomitantly away from plaintiff.

Other transactions that potentially could divert money away from the Borrower defendants are the lease for storage space that one of the RSG defendants extended to Schweizer. It would be potentially concerning if Schweizer paid rent to a related third party while stiffing plaintiff. The same concern exists for the services agreement, [EDOC 414]. Schweizer hired defendant Rotorcraft Services Group, Inc, for engineering services, and other support, for a period of 20 years. Did Schweizer pay this company, that has common ownership, before paying plaintiff?

The common elements (same office, employees and similar ownership) between the non-signatory defendants and the signatory defendants also raise concerns that the parties are alter egos. Thus, plaintiff has raised sufficient issues of fact to warrant discovery into at least the threshold issue of whether the non-signatory defendants were, in fact, alter egos of the signatories.

However, plaintiffs cannot succeed on their attempt to rope the non-signatory defendants in under a joint enterprise or "closely related theory. In cases enforcing the forum selection

clause under this easier standard, the non-signatories were involved in the underlying transaction giving rise to the lawsuit. (*see e.g. EPAC Tech. Ltd v Interforum S.A.*, 217 AD3d 623, 625 1<sup>st</sup> Dep't 2023]; [non-signatory managed signatory's performance under the agreement]; *Highland Crusader Offshore Partners L.P. v Targeted Delivery Technologies Holdings, Ltd*, 184 AD3d 116121 [1<sup>st</sup> Dep't 2020] [indenture referenced non signatory throughout and incorporated as a transaction document a subscription agreement in which the non signatory was a party] *Sutton v Houllou*, 191 AD3d 1031 [2d Dep't 2021] [agreement granted exclusive rights for non-signatory AMD to non-signatory F & E's retail business]). Here, the non-signatory defendants did not play any part in Metropolitan's loan to the Borrower defendants. Presumably, Metropolitan could have obtained a guarantee from one or more of the non-signatory defendants but chose not to do so.

With respect to the particular causes of action moved against, the court denied dismissal of the fourth cause of action for breach of contract against the Validity Guarantor defendants for the reasons stated on the record at pages 62-69. The court sustained the fifth cause of action for fraud against the Validity Guarantor Defendants for the reasons expressed on the record at page 87 of the record. The court dismissed the claim for punitive damages for the reasons stated on the record at page 87-88.

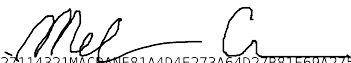
The court sustained the second cause of action for fraud against the Borrower defendants for the reasons set forth on the record at pages 91-92. However, the court dismissed the third cause of action for breach of the covenant of good faith and fair dealing as duplicative (see transcript pgs. 92-93).

Accordingly, it is

ORDERED THAT the court grants dismissal of the claim for breach of the covenant of good faith and fair dealing and dismisses the request for punitive damages and otherwise denies the motions; and it is further

ORDERED THAT the defendants shall answer the second amended complaint by 9/16/25; and it is further

ORDERED THAT the parties must appear for the Compliance Conference at 11:00 a.m. on 10/7/25 over MS Teams.

  
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<u>8/27/2025</u>			<hr/>	
<b>DATE</b>			<b>MELISSA A. CRANE, J.S.C.</b>	
CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION
	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER	<input checked="" type="checkbox"/>	GRANTED IN PART
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>	SUBMIT ORDER
			<input type="checkbox"/>	FIDUCIARY APPOINTMENT
			<input type="checkbox"/>	OTHER
			<input type="checkbox"/>	REFERENCE