

**PCAL Debt EV Broadway, LLC v
462 Bdwy Land, L.P.**

2025 NY Slip Op 33949(U)

October 13, 2025

Supreme Court, New York County

Docket Number: Index No. 850639/2023

Judge: Anar R. Patel

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 45

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PCAL DEBT EV BROADWAY, LLC, PCAL DEBT
III BROADWAY, LLC,

Plaintiffs,

- against -

462BDWY LAND, L.P. A/K/A 462 BDWY LAND,
L.P., 464 BROADWAY ASSOCIATES, LLC,
STEPHEN J. MERINGOFF, JAY H SHIDLER,
MERINGOFF PROPERTIES, INC., NEW YORK
STATE DEPARTMENT OF TAXATION AND
FINANCE, NEW YORK CITY DEPARTMENT OF
TAXATION AND FINANCE, CRIMINAL COURT
OF THE CITY OF NEW YORK, JOHN DOE #1-12,
THE NAMES OF THE LAST 12 DEFENDANTS
BEING FICTITIOUS AND UNKNOWN TO
PLAINTIFFS, PLAINTIFFS INTENDING TO
DESIGNATE THEREBY PERSONS OR PARTIES
HAVING OR CLAIMING TO HAVE AN
INTEREST IN OR LIEN UPON THE DESCRIBED
PREMISES.,

Defendants.

-----X

462BDWY LAND, L.P. A/K/A 462 BDWY LAND, L.P.,
464 BROADWAY ASSOCIATES, LLC, STEPHEN
MERINGOFF, JAY SHIDLER, MERINGOFF
PROPERTIES, INC.

Third-Party Plaintiffs,

-against-

AAREAL CAPITAL CORPORATION, AAREAL
BANK AG, PACIFICCAL DEBT III, LLC

Third-Party Defendants.

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INDEX NO. 850639/2023

04/18/2025,
MOTION 05/23/2025,
DATES 05/23/2025

MOTION SEQ.
NOS. 004 005 006

**DECISION + ORDER ON
MOTIONS**

Third-Party
Index No. 595403/2025

HON. ANAR RATHOD PATEL:

The following e-filed documents, listed by NYSCEF document number (Motion 004) 137–142, 149–161, 163 were read on this motion to AMEND CAPTION/PLEADINGS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 171–180, 182, 185 were read on this motion to DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 006) 165–170, 183, 184 were read on this motion to DISMISS.

Defendants 462 Bdwy Land, L.P. a/k/a 462 Bdwy Land, L.P., 464 Broadway Associates, Stephen J. Meringoff, Jay H. Shidler, and Meringoff Properties, Inc. (collectively, “Defendants”) move, pursuant to CPLR § 3025, for an order granting leave to amend their answers and assert counterclaims for fraudulent inducement and breach of the covenant of good faith and fair dealing against Plaintiffs PCAL Debt IV Broadway, LLC and PCAL Debt III Broadway, LLC (collectively, “Plaintiffs”) (Motion 004).

Third-Party Defendant PacificCal Debt III, LLC (hereinafter, “PacificCal”) moves, pursuant to CPLR §§ 3211(a)(1) and (7), to dismiss the Third-Party Complaint brought by Defendants of the original action/Third-Party Plaintiffs (Motion 005).

Third-Party Defendants Aareal Capital Corporation (“ACC”) and Aareal Bank AG (“Aareal Bank”) (collectively, “Aareal”) moves, pursuant to CPLR §§ 3211(a)(1) and (7), to dismiss the Third-Party Complaint brought by Defendants of the original action/Third-Party Plaintiffs (Motion 006).

Relevant Factual and Procedural Background

The Court assumes familiarity with the facts of this case. The instant action was commenced on November 22, 2023, by original Plaintiffs Aareal and PacificCal seeking to foreclose on two mortgages encumbering real property located at 462 Broadway, New York, NY 10013. *See* NYSCEF Doc. No. 2 (“Compl.”).

On March 24, 2025, the Court (Chan, J.)¹ granted original Plaintiffs’ motion to substitute PCAL Debt IV Broadway, LLC and PCAL Debt, LLC as the substitute Plaintiffs in this matter. NYSCEF Doc. No. 117 (3/24/25 Decision and Order). The Order states that “movants have demonstrated that the original Plaintiffs validly assigned and delivered to the substitute Plaintiffs, PCAL Debt IV Broadway LLC and PCAL Debt III Broadway LLC, the notes and mortgages upon which this foreclosure action was commenced.” *Id.* The Court also denied Defendants’ cross-motion to direct original Plaintiffs to fulfill their discovery obligations as parties. *Id.* The Order determined that any discovery dispute between original Plaintiffs and Defendants “has been resolved...[b]ut even if it were not resolved, defendants have not yet attempted to follow the Rule 14 process to resolve any conflict prior to submit their cross-motion. *Id.*

¹ This action was re-assigned from Justice Margaret Chan to this Court (Patel, J.) on August 1, 2025. NYSCEF Doc. No. 187.

Subsequently on April 18, 2025, Defendants commenced a separate Third-Party action against ACC, Aareal Bank, and PacificCal (collectively, “Third-Party Defendants”), bearing Third-Party Index Number 595403/2025. *See* NYSCEF Doc. No. 134.

In the Third-Party action, Defendants/Third-Party Plaintiffs first allege a claim of fraudulent inducement against Third-Party Defendants, alleging that Aareal represented to Borrowers (462BDWY LAND, L.P. a/k/a 462 BDWY LAND, L.P., 464 Broadway Associates) “that Aareal would remain the lead lender and ACC the agent on the [l]oans.” *Id.* at ¶ 60. Defendants allege that “ACC and Aareal Bank made these misrepresentations and/or omissions with the intention that [b]orrowers rely on them and with the intention of inducing [b]orrowers and [g]uarantors into entering to the Loans.” *Id.* at ¶ 63. Defendants allege they “were damaged by, among other things, forgoing more favorable loans with other lenders.” *Id.* at ¶ 66. Defendants further allege that ACC “fraudulently induced [b]orrowers into not purchasing the supplemental Rate Cap,” *id.* at ¶ 68, and argue that “[b]orrowers have been damaged by, among other things, ACC, individually and as agent for the Lenders, calling a default for the failure to purchase the supplemental Rate Cap, the ensuing alleged payment defaults stemming directly therefrom, and the threat of foreclosure.” *Id.* at ¶¶ 71–72.

Defendants/Third-Party Plaintiffs next allege a claim of breach of implied covenant of good faith and fair dealing against Third-Party Defendants by “representing that [l]enders would not require [b]orrowers to purchase a supplemental Rate Cap and then subsequently declaring [b]orrowers in default for [b]orrower’s failure to acquire such agreement.” *Id.* at ¶ 81. Moreover, Third-Party Defendants are accused of “engaging in restructuring ...even though [l]enders knew they had no intention of restructuring the [l]oans due to [Aareal] intending to sell their portions.” *Id.*

Legal Discussion

Motion 004

It is well settled that “leave to amend a pleading should be freely granted in the absence of prejudice the nonmoving party where the amendment is not patently lacking in merit” (*Davis v South Nassau Communities Hosp.*, 26 NY3d 563, 580 [2015][citation omitted]) or is not “palpably insufficient” (*Smith v Founders Entertainment LLC*, 216 AD3d 417, 417 [1st Dept 2023]). “Mere lateness is not a barrier” (*Edenwald Contr. Co. v City of New York*, 60 NY2d 957, 959 [1983] [internal citation and quotation marks omitted]). Pleadings can be amended at any time so long as the opposing party is not significantly prejudiced (*Edenwald Constr. Co.*, 60 NY2d at 959); *Loomis v Civetta Corrino Constr. Corp.*, 54 NY2d 18, 23 [1981], *rearg denied* 55 NY2d 801 [1981][stating that prejudice requires a showing that the party opposing the amendment “has been hindered in its preparation of [its] case or has been prevented from taking some measure in support of [its] position”]). It is within the Court’s discretion to grant a motion to amend (*Ferrer v Go N.Y. Tours Inc.*, 221 AD3d 499, 500 [1st Dept 2023]).

Here, Defendants move, pursuant to CPLR § 3025, for an order granting leave to amend their answers and assert counterclaims against Plaintiffs PCAL Debt IV Broadway, LLC and PCAL Debt III Broadway, LLC. *See* NYSCEF Doc. Nos. 137–138. Movants allege a cause of

action of fraudulent inducement. NYSCEF Doc. No. 140 at 49–66) and breach of implied covenant of good faith and fair dealings. *Id.* at 67–73.

In opposition, Plaintiffs argue that the proposed counterclaims “are patently devoid of merit...[a]nd, even where that [were not] the case, they fail to adequately plead viable claims for either fraud or breach of the implied covenant as a matter of law.” *See* NYSCEF Doc. No. 161 at 16–17. Plaintiffs further allege that “[c]ounterclaims are barred by the PNA that was entered into on June 12, 2023 – after both allegedly fraudulent misrepresentations had purportedly occurred.” *Id.* at 17. Moreover, Plaintiffs argue that Defendants’ allegations “are patently insufficient to state” any claim for fraudulent inducement. *Id.* Plaintiffs also argue that Defendants’ argument that they experienced a delay because settlement negotiations were ongoing “rings hollow.” *Id.* at 24. Plaintiffs maintain that the “delay is prejudicial to Plaintiffs, who now have to go through a new round of document discovery based upon an incredibly expansive new set of allegations.” *Id.* at 25.

In regard to the Defendants’ first proposed counterclaim, the elements of a fraudulent inducement or misrepresentation claim are: (1) a false representation of fact, (2) knowledge of the falsity, (3) the misrepresentation was made in order to induce reliance, and (4) there was justifiable reliance resulting in an injury for which compensable damages are sought (*see Connaughton v Chipotle Mexican Grill*, 29 NY3d 137, 142 [2017]; *McSpedon v Levine*, 158 AD3d 618, 620 [2d Dept 2018]; *Mariano v Fiorvante*, 118 AD3d 961, 962 [2d Dept 2014]; *Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 421 [1996]).

The crux of Defendants’ proposed counterclaim for fraudulent inducement stems from their alleged reliance on an oral statement from ACC. Critically, Defendants do not allege any misrepresentation—or reliance thereto—made by Plaintiffs or their affiliate PacificCal. Rather, Defendants allege that they were induced by ACC to not purchase a supplemental Rate Cap because “they did not need to purchase one,” thereby resulting in default of the loan terms. *See* NYSCEF Doc. No. 161 at 13. Defendants allege that Aareal made an oral promise that it “would remain the lead lender on the Property, would serve as the agent, and that the relationship between the parties and regarding the Property would remain the same as it had been for years. Relying on these assurances, Borrowers accepted the proposal, in the process turning down several other financing offers—better economic offers...” *See* NYSCEF Doc. No. 138 at 6.

Defendants cannot, as they must, establish a justifiable reliance on any purported oral statement made by Plaintiffs because the alleged misrepresentations are directly contradicted by the terms of the Consolidated Loan Agreement entered to between Defendants, Aareal, and PacificCal. The Agreement explicitly identifies a “Capped Rate... with respect to the interest rate cap required at the Closing Date.” NYSCEF Doc. No. 4 at 7. Section 2.7 of the Agreement states in no uncertain terms:

“(a) **Interest Rate Protection Agreement.** At or before the Closing (or, in the case of Section 2.7(a)(v), as of the date specified therein), Borrower shall enter into and satisfy all conditions precedent to the effectiveness of one or more Interest Rate Protection Agreements that shall collectively satisfy all of the following conditions:

- (i.) [t]he Interest Rate Protection Agreement shall be an interest rate cap, the effect of which is to protect Borrower against upward fluctuations of an Applicable Interest Rate that is LIBOR (as distinguished from the LIBOR Rate) applicable to an Interest Period of one (1) month in excess of the amount that would cause LIBOR to exceed the Capped Rate per annum, for a minimum term of two (2) years in the notional amount equal to the Loan Amount.”

Id. at 34. Pursuant to Section 2.7(c), should Borrowers fail to maintain a Rate Cap, and such failure continues for ten days following written notice from the Agent, then the Agent has the right to obtain a Rate Cap at Borrowers’ sole cost and expense. *Id.* at 34–35.

With respect to the allegations that Defendants justifiably relied on a representation from Aareal that they would remain lead lender, the Agreement states at Section 12.1 that “Lenders shall have the right to assign, sell, negotiate, pledge or hypothecate all or any portion of their rights and obligations hereunder,” except to the extent, as among Agent and lenders only, such right is limited by the Co-Lender Agreement, and “[n]o assignment, sale, negotiation, pledge or hypothecation of all or any part of Agent’s or any Lenders’ rights or obligations hereunder shall require the consent of Borrower.” *Id.* at 93. Section 13.4 provides that “Agent may resign, and be removed by the Lenders in accordance with the Co-Lender Agreement, without the consent of Borrower. Any successor Agent shall be a Lender. This Section 13.4 shall be binding upon and enforceable by Borrower.” *Id.* at 97.

Finally, Section 14.11 establishes that “[e]xcept as set forth in Section 13.1, no amendment, modification, termination, or waiver or any provision of this Loan Agreement or the Loan Documents shall be effective unless in writing and signed by Borrower and Agent.” *Id.* at 101. The Agreement further states:

“**Section 14.7. Entire Agreement.** This Loan Agreement and the other Loan Documents embody the entire agreement and understanding between Borrower, Agent and/or Lenders with respect to the Loan and supersede and cancel all prior loan applications, expressions of interest, commitments, agreements and understandings, whether oral or written, relating to the subject matter hereof, except as specifically agreed in writing to the contrary.”

Id. at 100–101.

Defendants cannot argue that they justifiably relied on oral statements from Plaintiffs that they did not need to purchase a supplemental Rate Cap or that Plaintiff would remain lead lender as they are in direct contravention to the terms of the Agreement entered to by the parties. The First Department “has repeatedly held that a party claiming fraudulent inducement cannot be said to have justifiably relied on a representation when that very representation is negated by the terms of a contract executed by the allegedly defrauded party (*Perrotti v Becker, Glynn, Melamed & Muffly, LLP* (82 AD3d 495, 499 [1st Dept 2011])). The Agreement is clear that Defendants needed a Rate Cap and that the agent, AAC, could be removed without the consent of the Borrower. As

this proposed counterclaim is completely devoid of merit and Defendants cannot establish a claim for fraudulent inducement, Defendants' motion seeking leave of Court is denied.

The same causes of action that Defendants allege as the basis for their fraudulent inducement counterclaim are the basis for their claim of breach of duty of good faith and fair dealing. When a claim for the breach of the duty of good faith and fair dealing arises from the same operative facts and seeks the same damages, it is duplicative and should be dismissed. *NYAHS Servs., Inc., Self-Ins. Trust v Recco Home Care Servs., Inc.*, 141 AD 3d 792, 794 [1st Dept 2016]).

Accordingly, Defendants' motion seeking leave of Court to amend their answers and serve counterclaims is denied.

Motions 005 and 006

“[A] motion to dismiss made pursuant to CPLR § 3211 (a)(7) will fail if, taking all facts alleged as true and according them every possible inference favorable to the plaintiff, the complaint states in some recognizable form any cause of action known to our law” (*East Hampton Union Free School Dist. v Sandpebble Bldrs., Inc.*, 66 AD3d 122, 125 [2d Dept 2009], *affd* 16 NY3d 775 [2011], quoting *Shaya B. Pac., LLC v Wilson, Elser, Moskowitz, Edelman & Dicker, LLP*, 38 AD3d 34, 38 [2d Dept 2006]).

Moreover, in considering a motion to dismiss for failing to state a cause of action pursuant to CPLR § 3211 (a)(7), the pleading is to be afforded a liberal construction (*see* CPLR § 3026), and the court should “accept the facts as alleged in the complaint as true, accord Plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory” (*Leon v Martinez*, 84 NY2d 83, 87–88 [1994]; *see also African Diaspora Mar. Corp. v Golden Gate Yacht Club*, 109 AD3d 204, 211 [1st Dept 2013]).

Additionally, dismissal pursuant to CPLR § 3211(a)(1) is warranted where the movant submits documentary evidence that “utterly refutes the [p]laintiff’s factual allegations, conclusively establishing a defense as a matter of law” (*Goshen v Mut. Life Ins. Co. of N.Y.*, 98 N.Y.2d 314, 326 [2002]). To satisfy this standard, the evidence must be unambiguous, authentic, and undeniable—not merely evidence that creates a factual dispute (*see Granada Condo. III Ass’n v Palomino*, 78 AD3d 996, 996 [2d Dept 2010]). Acceptable documentary evidence includes “judicial records and documents reflecting out-of-court transactions, such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable” (*Fontanetta v Doe*, 73 AD3d 78, 84 [2d Dept]; *see also Phillips v Taco Bell Corp.*, 152 AD3d 806, 807 [2d Dept 2017]). Although “evidentiary material may be considered in determining the viability of a complaint...the complaint should not be dismissed unless the defendant has established that a material fact alleged by the plaintiff is not a fact at all and that no significant dispute exists regarding it” (*Stewart v New York City Tr. Auth.*, 50 AD3d 1013, 1014 [2d Dept 2008][internal quotation marks and citation omitted]; *see also Nunez v Mohamed*, 104 AD3d 921, 922 [2d Dept 2013]).

Third-Party Defendant PacificCal moves, pursuant to CPLR §§ 3211(a)(1) and (a)(7) seeking dismissal of the Third-Party Complaint. *See* NYSCEF Doc. No. 165–172. Third-Party

Defendant Aereal also moves, pursuant to CPLR § 3211(a)(7) for dismissal of the Third-Party Complaint. Both motions seek dismissal of Third-Party Plaintiffs' claims that they also attempted to assert as counterclaims against current Plaintiffs.

Here, Third-Party Defendants have met their burden to establish entitlement to dismissal of the Third-Party action against them. In the interest of judicial economy, as discussed above, Third-Party Plaintiffs cannot sustain a claim for fraudulent inducement because they have failed to establish justifiable reliance on alleged misrepresentations made by Third-Party Defendants. As discussed *supra*, "a party claiming fraudulent inducement cannot be said to have justifiably relied on a representation when that very representation is negated by the terms of a contract executed by the allegedly defrauded party (*Perrotti*, 82 AD3d at 499).

Lastly, it must also follow that Third-Party Plaintiffs' claims of a breach of duty of good faith and fair dealing must also be denied, as the fact giving rise to those claims are duplicative of those for their claim of fraudulent inducement (*NYAHS A Servs., Inc., Self-Ins. Trust*, 141 AD3d at 794).

Accordingly, the motions of Third-Party Defendants PacificCal and Aereal are granted in their entirety, and Defendants' Third-Party Complaint is dismissed.

The Court has considered the parties' remaining contentions and finds them to be unavailing. Accordingly, it is hereby

ORDERED that the motion of Defendants 462 Bdwy Land, L.P. a/k/a 462 Bdwy Land, L.P., 464 Broadway Associates, Stephen J. Meringoff, Jay H. Shidler, and Meringoff Properties, Inc. seeking an order granting leave to amend their answers and assert counterclaims (Motion 004) is DENIED; and it is further

ORDERED that Plaintiffs shall file the Note of Issue on or before October 20, 2025; and it is further

ORDERED that the parties shall appear for an in-person Trial Readiness Conference on October 22, 2025 in Courtroom 428; and it is further

ORDERED that the motion of Third-Party Defendant PacificCal Debt III, LLC seeking an order dismissing Third-Party Defendants' Complaint as to PacificCal is GRANTED (Motion 005); and it is further

ORDERED that the motion of Third-Party Defendant Aereal Capital Corporation and Aereal Bank AG seeking an order dismissing Third-Party Defendants' Complaint as to Aereal is GRANTED (Motion 006); and it is further

ORDERED that the Third-Party Complaint is dismissed in its entirety and the Clerk of the Clerk is directed to mark Third-Party Index No. 595403-2025 as closed; and it is further

ORDERED that, within twenty (20) days of the e-filing of this Decision and Order, counsel for Third-Party Defendants shall serve a copy of this Decision and Order upon the Clerk of the Court, who shall enter judgment accordingly; and it is further

ORDERED that service upon the Clerk of the Court shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the “E-Filing” page on the court’s website at the address www.nycourts.gov/supctmanh).

10/13/2025
DATE



ANAR R. PATEL, A.J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: