

SOL-MM III LLC v Ameream Mezz I, LLC

2025 NY Slip Op 33955(U)

October 10, 2025

Supreme Court, New York County

Docket Number: Index No. 158560/2024

Judge: Lynn R. Kotler

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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. LYNN R. KOTLER PART 08

Justice

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INDEX NO. 158560/2024

SOL-MM III LLC,

04/15/2025,

Petitioner,

MOTION DATE 04/15/2025

- v -

MOTION SEQ. NO. 001 004

AMERREAM MEZZ I, LLC, AB AMERREAM MEMBER LLC, AB
AMERREAM MEMBER PARENT LLC,

DECISION + ORDER ON MOTION

Respondents.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 16, 18, 27, 28, 36, 100, 102, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 145, 146, 147

were read on this motion to/for MISCELLANEOUS

The following e-filed documents, listed by NYSCEF document number (Motion 004) 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 89, 95, 101, 103, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 148, 149, 150

were read on this motion to/for DISMISS

This special proceeding arises from the financing for the development of the American Dream Mall in New Jersey (the "Project"), which is the second largest retail and entertainment center in the United States. The mall is owned and managed by the Ghermezian family, which has established various corporate entities to hold its ownership stake. Petitioner SOL-MM III LLC is the administrative agent for a group of junior lenders that made a \$300 million loan in 2019 (the "Junior Mezz Loan") to one of the upstream entities through which the Ghermezian family owned the Project.

The financing structure for the Project had three tiers: (1) a \$1.195 billion first-priority senior loan (the "JPM Loan") from intervenor-respondent JPMorgan Chase Bank, N.A. ("JPM") to non-party Ameream, LLC ("Ameream"), the direct owner of the Project; (2) a \$475 million second-priority senior mezzanine loan (the "Senior Mezz Loan") from non-party AB American Dream Mall Syndicate Joint Venture (the "Senior Mezz Lender") to Ameream's parent, non-

party Ameream Mezz, LLC (“Ameream Mezz” or the “Senior Mezz Borrower”); and (3) the Junior Mezz Loan, the junior-most loan, from the junior lenders to Ameream Mezz’s parent, respondent Ameream Mezz I, LLC (the “Junior Mezz Borrower”). The JPM Loan was secured by a mortgage on the Project itself, while the Senior Mezz Loan was secured by a lien on Ameream Mezz’s 100% equity interest in Ameream. JPM and the Senior Mezz Lender each also received payment guarantees from affiliates of their respective borrowers, which were secured by first- and second-priority pledges, respectively, of collateral. As collateral for the Junior Mezz Loan, petitioner received a Pledge Agreement, dated August 2, 2019, from the Junior Mezz Borrower granting petitioner a security interest in the Junior Mezz Borrower’s 100% equity interest in Ameream Mezz. Like the senior lenders, petitioner also received additional payment guarantees and pledges.

In October 2022, following borrower defaults on all three loans, the Senior Mezz Lender foreclosed on Ameream Mezz’s interest in Ameream (the “Strict Foreclosure”). As a result of the Strict Foreclosure, the Senior Mezz Loan was satisfied and ownership of Ameream was delivered to the Senior Mezz Lender’s designee and affiliate, respondent AB Ameream Member LLC (“Ameream Member”), which is wholly owned by respondent AB Ameream Member Parent LLC (“Ameream Member Parent”). The Strict Foreclosure eliminated petitioner’s subordinate interest in the Project, as ownership of Ameream was delivered to Ameream Member free and clear of any upstream interests in Ameream, including the equity pledge securing the Junior Mezzanine Loan.

Also in October 2022, alongside the Strict Foreclosure, JPM, the Senior Mezz Lender, and the Ghermezian family entered into a series of agreements, including the Omnibus Agreement and Seventh Amendment to Loan Agreement (the “Omnibus Agreement”) and the Standstill Agreement (together, the “2022 Agreements”). Petitioner claims the 2022 Agreements, allegedly executed in secret, together with the Strict Foreclosure were part of a scheme to secure a windfall for the Ghermezian family and the senior lenders by improperly wiping out petitioner’s lien on equity in the American Dream Mall and destroying its contractual rights to be repaid on the Junior Mezz Loan while returning the Ghermezian family and the Senior Mezz Lender to substantially the same positions they had been in prior to the foreclosure.

In February 2023, petitioner commenced an action in this court captioned *SOL-MM III LLC v. Ameream Mezz I, LLC*, Index No. 650741/2023, against the Junior Mezz Borrower and, in May 2023, petitioner obtained a judgment on default in the amount of \$404,399,512.87 (the “Judgment”). Petitioner has been unable to collect on the Judgment, however, because the Strict Foreclosure stripped the Junior Mezz Borrower of its only asset, its indirect equity interest in Ameream.

Petitioner commenced the present turnover proceeding in September 2024, seeking to hold Ameream Member and Ameream Member Parent liable under various theories of successor liability for the May 2023 Judgment obtained against the Junior Mezz Borrower. Petitioner seeks an order directing the Junior Mezz Borrower, Ameream Member, and Ameream Member Parent to turn over to it money or property in their possession sufficient to satisfy the Judgment plus post-judgment interest, together with the attorneys’ fees, costs and disbursements incurred by petitioner in this proceeding. Petitioner further seeks declarations that: (1) the Pledge Agreement applies to Ameream Member Parent’s equity interests in Ameream Member, and that such equity interests in Ameream Member are part of the collateral securing the Junior Mezz Loan pursuant to the Pledge Agreement; and (2) that Ameream Member is bound by the terms of the Pledge Agreement.

Petitioner now moves for the relief sought in the petition (MOT SEQ 001). Respondents move to dismiss the petition pursuant to CPLR 3211(a)(1), (a)(4), and (a)(7), or for a summary denial of the petition pursuant to CPLR 409(b), or for an order converting this proceeding to a plenary action and staying all further proceedings (MOT SEQ 004).¹ Petitioner’s motion is denied and respondents’ motion is granted.

¹ MOT SEQ 004 did not originally seek dismissal pursuant to CPLR 3211(a)(4). However, JPM, in its motion for leave to intervene, also sought, upon leave being granted, to dismiss the petition pursuant to CPLR 3211(a)(4) (MOT SEQ 003). The court granted JPM’s motion by decision and order dated January 28, 2025, to the extent of granting it leave to intervene, but did not reach its arguments in favor of dismissal, instead directing it to submit additional papers in support/opposition to MOT SEQ 001 and 004, to be followed by sur-reply papers by the other parties. JPM thereafter submitted a memorandum of law in opposition to the petition and in support of respondents’ motion to dismiss, reiterating its arguments for dismissal pursuant to CPLR 3211(a)(4), to which petitioner duly responded in its sur-reply. As such, the court will address JPM’s arguments for dismissal pursuant to CPLR 3211(a)(4) in connection with its consideration of MOT SEQ 004.

Pursuant to CPLR 3211(a)(4), a court may dismiss an action where “there is another action pending between the same parties for the same cause of action[.]” “Trial courts are vested with broad discretion in considering whether to dismiss an action on the basis of a prior pending action” (*Colon v Gold*, 166 AD2d 46, 407 [2nd Dept. 1990]; see *Nurlybayev v SmileDirectClub, Inc.*, 205 AD3d 455 [1st Dept. 2022]; *Aon Risk Svcs. v Cusack*, 102 AD3d 461 [1st Dept. 2013]; *JPMorgan Chase Bank, Nat'l Ass'n v Luxama*, 172 AD3d 1341, 1341–42 [2nd Dept. 2019]). Dismissal pursuant to CPLR 3211(a)(4) requires a substantial, though not complete, identity of parties (see *PK Rest., LLC v Lifshutz*, 138 AD3d 434, 436 [1st Dept. 2016]), and an identity of subject matter, regardless of whether different legal theories or claims are set forth in the two actions (see *Shah v RBC Capital Mkts. LLC*, 115 AD3d 444, 445 [1st Dept. 2014]).

In March 2023, petitioner commenced an action in this court captioned *SOL-MMIII LLC v. JPMorgan Chase Bank, N.A., et al.*, Index No. 651509/2023, against JPM, certain of its affiliates, and various guarantors, which was subsequently removed to the United States District Court for the Southern District of New York (the “SDNY Action”). Petitioner thereafter twice amended the complaint in the SDNY Action, filing the operative second amended complaint (“SAC”) in the SDNY Action in June 2024, three months prior to its commencement of the instant proceeding. JPM demonstrates that dismissal of this proceeding is warranted in favor of the prior pending SDNY Action, which involves substantially the same parties, arises out of the same subject matter, and seeks to recover essentially the same relief.

Initially, identity of parties “generally is present when at least one plaintiff and one defendant is common in each action” (*JPMorgan Chase Bank, Nat'l Ass'n v Luxama*, 172 AD3d at 1342 [internal quotation marks omitted]). Here, in addition to sharing a common plaintiff/petitioner, the SDNY Action and this proceeding have an overlapping defendant/respondent in JPM. Contrary to petitioner’s contention, it is of no matter that JPM was not originally named as a respondent in this proceeding, as “[o]nce intervenors become parties to an action . . . they are to all intents and purposes considered as original parties” (*New York Cent. R. R. Co. v Lefkowitz*, 19 AD2d 548, 548 [2nd Dept. 1963]; see *Matter of Crabtree v New York State Div. of Hous. & Community Renewal*, 294 AD2d 287, 290 [1st Dept. 2002], *aff'd* 99 NY2d 606 [2003]; *Love v Perales*, 222 AD2d 661, 662 [2nd Dept. 1995]). Moreover, the respondents in this proceeding, Ameream Member and Ameream Member Parent, are “close corporate

affiliates” and the upstream owners of Ameream, a defendant in the SDNY Action, and, as discussed below, both the petition in this proceeding and the SAC in the SDNY Action “seek[] the same damages for the same alleged injuries relating to the same transaction” (*Syncora Guarantee Inc. v J.P. Morgan Sec. LLC*, 110 AD3d 87, 96 [1st Dept. 2013]).

Though premised on different legal theories, this proceeding and the earlier-filed SDNY Action “arise out of the same subject matter or series of alleged wrongs” and “seek the same recovery for the same alleged injuries” (*id.*). The crux of petitioner’s claim in this proceeding is that the 2022 Agreements, which were allegedly executed in secret, rendered the Strict Foreclosure a “sham” transaction, and were part of “an elaborate and deceptive scheme by the Ghermezian family, [JPM], and the Senior Mezzanine Lender to cut off only Petitioner from the American Dream mall’s capital structure and redistribute value, available to pay the Petitioner, amongst themselves.” The SDNY Action likewise concerns the same 2022 Agreements and alleges the same deceptive scheme. As stated by the District Court in a recent decision in the SDNY Action, “[t]he plaintiff claims that the 2022 Agreements, allegedly executed in secret, were part of the defendants’ purported plan to ‘destroy’ the plaintiff’s lien on equity in the American Dream Mall; to redirect to the [Senior Mezz] Lender funds that the plaintiff claims should have been available to repay the [Junior Mezz] Loan; and to ensure—improperly—that the Ghermezian family retained ownership in the American Dream Mall, notwithstanding that the [Senior Mezz] Lender had supposedly foreclosed on the family’s ownership stake in that mall.”

Further, the relief sought in this proceeding is substantially the same as the relief sought by petitioner in the SDNY Action in connection with its claims concerning the 2022 Agreements (*see Syncora*, 110 AD3d at 96). The petition herein seeks the turnover of assets sufficient to satisfy the Judgment entered against the Junior Mezz Borrower in May 2023 plus post-judgment interest. Likewise, in connection with petitioner’s claims in the SDNY Action regarding the 2022 Agreements, the SAC demands “damages equal to the amount of the Judgment plus interest thereon at the statutory rate.” While petitioner contends that the District Court lacks jurisdiction to hear state-law turnover claims, it does not follow that the petitioner cannot obtain the relief it seeks herein in the SDNY Action. Indeed, the court notes that, in its letter seeking leave to amend the complaint in the SDNY Action a second time, dated May 22, 2024, petitioner

expressly proposed to add Ameream Member and Ameream Member Parent as defendants in the SDNY Action and assert a new claim against them for a declaratory judgment that they are successors to Ameream Mezz and the Junior Mezz Borrower, respectively, under the doctrine of successor liability. Petitioner ultimately made the strategic decision not to ultimately include its successor liability claim in the SAC, and to instead assert it in the context of this proceeding. Petitioner provides no reason, however, why it cannot now “seek leave to supplement its complaint in the other action” to include the successor liability claim it originally proposed to the District Court (*PK Rest., LLC v Lifshutz*, 138 AD3d 434, 436 [1st Dept. 2016]).

Therefore, given the substantial identity of parties and subject matter, dismissal pursuant to CPLR 3211(a)(4) is warranted (*see id.*; *Shah*, 115 AD3d at 445; *Syncora*, 110 AD3d at 96).

Accordingly, it is

ORDERED that respondents’ motion to dismiss the petition (MOT SEQ 004) is granted, petitioner’s motion (MOT SEQ 001) is denied, and the petition is hereby dismissed; and it is further

ORDERED that the Clerk shall mark the file accordingly.

This constitutes the Decision and Order of the court.

10/10/2025
DATE


LYNN R. KOTLER, J.S.C.

CHECK ONE:

CASE DISPOSED

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE