

**Worob v Gilbert**

2026 NY Slip Op 31267(U)

March 26, 2026

Supreme Court, New York County

Docket Number: Index No. 653870/2025

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*

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**INDEX NO. 653870/2025**

AMMITAI WOROB, WOROB CHIROPRACTIC PLLC

**MOTION DATE 09/24/2025**

Plaintiff,

**MOTION SEQ. NO. 001**

- v -

FRANKLIN GILBERT, CENTRAL PARK WEST  
CHIROPRACTIC, P.C.,

**DECISION + ORDER ON  
MOTION**

Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21

were read on this motion to/for DISMISSAL.

Upon the foregoing documents, the motion is denied.

**Background**

This motion stems from a dispute between two chiropractors over the purchase and sale of a clinic. Plaintiff Ammitai Worob is a chiropractor in Ithaca, who in late 2021 was in the market to purchase a practice. A broker connected Worob to defendant Franklin Gilbert regarding the potential purchase of Gilbert’s Manhattan practice, defendant Central Park West Chiropractic, P.C. (“CPWC”). During the due diligence process, Plaintiffs allege that Gilbert made several knowingly false statements of fact and omitted other material facts regarding CPWC’s financial status and relationship with insurance carriers. Before the purchase, CPWC was subletting office space to another chiropractor, Todd Sinnett, D.C., and Veterans Evaluation Services (“VES”). Plaintiffs allege that various misrepresentations were made regarding the subtenants’ future intentions once the sale was complete. One of these allegations is that a

physical therapist employed by Dr. Sinnett expressed a desire to rent directly from Plaintiff and that Gilbert informed her this was impossible.

In December of 2022, the parties entered into an asset purchase agreement (the “APA”) for the purchase of the Manhattan practice. The APA contained two separate representation clauses. It also contained a provision stating that Gilbert would assist in the post-closing transition, and Plaintiffs allege that assistance was not properly forthcoming. Plaintiffs also allege that various misrepresentations, particularly concerning the subtenants, were made after executing the APA with the intent of inducing Plaintiff to close on the sale. Plaintiffs filed the underlying proceeding in June of 2025, pleading claims for breach of contract, fraudulent inducement, and tortious interference. Defendants bring the present pre-answer motion to dismiss, which is opposed by Plaintiffs.

### **Standard of Review**

It is well settled that when considering a motion to dismiss pursuant to CPLR § 3211, the pleading is to be liberally construed and the nonmovant is entitled to every favorable inference. *See, e.g., Granite State Ins. Co. v. Transatlantic Reins. Co.*, 132 A.D.3d 479, 481 [1st Dept. 2015]. Dismissal of the complaint is warranted “if the plaintiff fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” *Connaughton v. Chipotle Mexican Grill, Inc.*, 29 N.Y.3d 137, 142 [2017].

CPLR § 3211(a)(1) allows for a complaint to be dismissed if there is a “defense founded upon documentary evidence.” Dismissal is only warranted under this provision if “the documentary evidence submitted conclusively establishes a defense to the asserted claims as a matter of law.” *Leon v. Martinez*, 84 N.Y.2d 83, 88 [1994]. A party may move for a judgment

from the court dismissing causes of action asserted against them based on the fact that the pleading fails to state a cause of action. CPLR § 3211(a)(7). For motions to dismiss under this provision, “[i]nitially, the sole criterion is whether the pleading states a cause of action, and if from its four corners factual allegations are discerned which taken together manifest any cause of action cognizable at law.” *Guggenheimer v. Ginzburg*, 43 N.Y. 2d 268, 275 [1977].

### **Discussion**

Defendants argue that the complaint must be dismissed because 1) the claims asserted are refuted by documentary evidence; and 2) the claims are otherwise insufficiently pled. Plaintiffs oppose the motion. For the reasons that follow, the motion is denied.

#### *Breach of Contract Claim Is Validly Pled, and the Emails Are Not Conclusively Dispositive*

Plaintiffs’ third cause of action is for breach of the APA. They allege that Defendants breached a variety of provisions in the contract and give as examples a list of ways in which Defendants allegedly failed to provide the required assistance post-sale. Defendants have moved to dismiss this claim on the grounds that documentary evidence shows that Gilbert provided the required assistance. For this, they rely on Gilbert’s affidavit and an email from Worob stating that he appreciated Gilbert’s “spirit in which you’re helping.” Plaintiffs have challenged the admissibility of the emails and argued that Worob was attempting to “play nice” with Gilbert in order to encourage his assistance. It appears that there are multiple areas of disputed fact regarding the breach of contract claim, thus making dismissal at this juncture inappropriate.

As stated above, the standard for documentary evidence is that it must “conclusively” establish a defense to the claim that is asserted. *Leon*, at 88. Here, giving Plaintiffs every favorable inference, it cannot be said that the emails in question conclusively establish that

Gilbert satisfied all his obligations under the agreement. Plaintiffs have validly pled the elements of a claim for breach of contract.

*The Tortious Interference Claim Is Validly Pled*

Plaintiffs' second cause of action is for tortious interference with a prospective economic advantage, and it is based on the alleged interference with the subtenants. Specifically, it refers to the alleged statement to the physical therapist that renting directly from Plaintiffs instead of Dr. Sinnett was not possible. Tortious interference with prospective economic advantage requires that "(a) the plaintiff had business relations with a third party; (b) the defendant interfered with those business relations; (c) the defendant acted with the sole purpose of harming the plaintiff or by using unlawful means; and (d) there was resulting injury to the business relationship." *Thome v. Alexander & Louisa Calder Found.*, 70 A.D.3d 88, 108 [1st Dept. 2009]. Defendants move to dismiss this claim on the grounds that it fails to validly plead several required elements.

First, Defendants argue that Plaintiffs fail to allege a business relation with the physical therapist. Plaintiffs have alleged that the therapist expressed a desire to enter into a sublease prior to the alleged statements that it was not possible. On the standard of a motion to dismiss, that is sufficient to establish a business relation. Defendants also argue that Plaintiffs did not allege an injury because it was speculative that the physical therapist would have actually signed a lease. By its nature, any prospective economic advantage would involve some degree of speculation as it has not occurred yet. By alleging that the therapist was desirous of subleasing directly from Plaintiffs prior to the alleged statements, these two elements of a tortious interference claim have been made out.

And finally, Defendants argue that Plaintiffs have not alleged the requisite wrongful means. A claim for tortious interference requires that the interference be accomplished either

through the use of “wrongful means” or made with the “sole purpose of harming the plaintiff.” *Snyder v. Sony Music Entertainment, Inc.*, 252 A.D.2d 294, 300 [1st Dept. 1999]. Plaintiffs argue that in making the statements at question, Gilbert was acting with the sole intent of harming Plaintiffs. Whether Gilbert did or did not make the statements alleged and if so, did so with the sole intent of harming the Plaintiffs is a disputed area that would make dismissal of this claim at this stage premature.

*The Fraudulent Inducement Claim Is Not Barred by the Merger Clauses to the Extent It Is Based on Post-Agreement Representations*

Plaintiffs have pled a fraudulent inducement claim in the first cause of action, based on alleged misrepresentations and material omissions made before and after the APA was executed. Defendants move to dismiss this claim, relying on the merger clause in the APA which states that Defendants made no representations or warranties with respect to the assets in the sale other than those set forth in the APA. Another merger clause in the APA states broadly that the APA constituted the entire agreement and understanding between the parties “with respect to the subject matter hereof”, superseding any prior representations. They also argue that the fraud claim was not pled with the requisite particularity.

The general rule is that a merger clause such as the ones in the APA bars fraud claims based on pre-agreement representations. *See, e.g., Mahn Real Estate Corp. v. Shapolsky*, 178 A.D.2d 383, 385 [1st Dept. 1991]. But here, Plaintiffs allege that there were false representations made after the APA was executed. Specifically, Plaintiffs allege that when Worob stated he would not go through with the closing without assurance that VES rent income would be forthcoming, Gilbert told him that it would be despite being aware that VES had rented another

space. As these representations could not have been waived via the earlier merger clause in the APA, these allegations can withstand a claim for fraudulent inducement of the closing.


*The Fraudulent Inducement Claim Is Validly Pled*

Defendants also argue that the fraudulent inducement claim fails otherwise to plead a claim. The elements of a claim for fraudulent inducement are “a material misrepresentation of a fact, knowledge of its falsity, an intent to induce reliance, justifiable reliance by the plaintiff and damages.” *Eurycleia Partners, L.P. v. Seward & Kissel, LLP*, 12 N.Y.3d 553, 559 [1st Dept. 2009]. Fraud claims must also be pled with particularity. *Id.* Defendants argue that the fraudulent inducement claim fails to meet this standard as it does not assert the alleged words used or the date on which they were made. Here, Plaintiffs have alleged that at some time between the execution of the APA and closing, they were told that VES intended to sublet the space when they had in fact already obtained another office. They submit an affidavit stating that these representations were made at several points over December 2022, and then again in the first few weeks of January 2023. This is sufficient to satisfy the particularity requirement of the CPLR.

Defendants also argue that the Plaintiffs failed to plead justifiable reliance. They argue that Plaintiffs could have directly reached out to the subtenants to confirm whether they were going to continue to lease from Plaintiffs. While a fact finder could agree with that assessment, on the standard of a motion to dismiss Plaintiffs are entitled to every favorable inference. Here, they argue that they were entitled to rely on the representations allegedly made by Gilbert. And the issue of whether reliance was reasonable is generally not one subject to summary disposition and should be left to the factfinder to resolve. *See, e.g., Brunetti v. Musallam*, 11 A.D.3d 280, 281 [1st Dept. 2004]. Therefore, Plaintiffs have at this stage satisfied the pleading requirements for a fraudulent inducement claim. Accordingly, it is hereby

ADJUDGED that the motion is denied; and it is further

ORDERED that the defendants are directed to serve an answer to the complaint within 20 days after service of a copy of this order with notice of entry.

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LYLE E. FRANK, J.S.C.

3/26/2026  
DATE

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	
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APPLICATION:	<input type="checkbox"/>	SETTLE ORDER			OTHER
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