I80 Group Lending Opportunities Funding Trust 2018 v Meritize Fin., Inc.
2026 NY Slip Op 31500(U)
April 9, 2026
Supreme Court, New York County
Docket Number: Index No. 653670/2023
Judge: Andrea Masley
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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I80 GROUP LENDING OPPORTUNITIES FUNDING TRUST 2018,

Plaintiff,

- v -

MERITIZE FINANCIAL, INC.,

Defendant.

INDEX NO. 653670/2023

MOTION DATE

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

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HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 6, 7, 8, 9, 10, 11, 12, 13, 36, 40, 48, 49, 50, 51, 52, 53, 54, 55, 56

were read on this motion to/for DISMISS.

This action arises from purchase and servicing agreements between i80 Group Lending Opportunities and Meritize Financial, Inc.

In motion sequence 001, defendant Meritize Financial, Inc. (Meritize) moves to dismiss pursuant to CPLR 3211(a)(7). (NYSCEF Doc. No. [NYSCEF] 6, Notice of Motion.)

Plaintiff i80 Group Lending Opportunities Funding Trust 2018 (i80) alleges that Meritize breached express representations and warranties by selling loans that did not meet Tier 9 eligibility criteria, selectively offloading lower-quality TMIKY[1] loans, providing materially incomplete or misleading diligence information, and obstructing i80's contractual compliance review rights. (NYSCEF 1, Complaint.) With respect to

[1] The term "TMIKY" refers to a consortium of schools including The Medical Institute of Kentucky, The Medical Institute of Kentucky – Bowling Green, Choice MD, the Institute of Dental Technology, and the Institute of Medical and Dental Technology. (NYSCEF 1)

servicing, i80 alleges that Meritize failed to provide required reporting, improperly serviced the loans, and prevented i80 from exercising its contractual right to replace the servicer. (*Id.*)

Background

The following background is taken from the amended complaint unless otherwise noted, and for the purposes of this motion, is accepted as true.

i80 is a statutory trust established to purchase loans for financial investment. (*Id*. ¶¶ 1, 12.) Meritize is generally in the business of originating loans made to students. (*Id*. ¶ 1.) Meritize also services and sells to investors loans utilized by students who attend skills-based educational institutions. (*Id*. ¶ 24)

On August 8, 2018, i80 entered into a Loan Purchase Agreement, amended on July 16, 2019, (Amended Purchase Agreement) under which i80 agreed to purchase certain student loans from Meritize. (NYSCEF 1, Complaint ¶¶ 2, 14; NYSCEF 2; Amended Purchase Agreement.) On that same day, the parties also entered into a Loan Servicing Agreement (Servicing Agreement), under which Meritize agreed to continue servicing the loans sold to i80. (NYSCEF 3, Service Agreement.) Among Meritize's obligations under the Servicing Agreement are a duty to provide information requested by i80 needed to assess Meritize's compliance with the agreements and to provide a quarterly and annual financial statements to i80. (*Id.*)

On July 19, 2019, i80 purchased $7.912 million of face value Tier 9 Eligible Loans from Meritize for $2.936 million. (NYSCEF 1, Complaint ¶ 6.) That purchase included $2.375 million of loans to students at TMIKY schools with a net purchase price of $817,369 (T9 TMIKY Loans). (*Id*. ¶ 76.) Tier 9 Eligible Loans are a discount loan

product offered by Meritize to students who do not satisfy its more stringent credit criteria. (*Id*. ¶ 3.) i80 states that it only made that purchase based on Meritize's due diligence materials and its repeated assurances and representations. (*Id*., ¶ 6.) i80 alleges that Meritize omitted material facts. (*Id*.)

i80 states that it purchased additional face value Tier 9 Eligible Loans based on Meritize's continued promotion. (*Id.* ¶ 93.) In total between July and October 2019, i80 purchased $2,668,112 of face value T9 TMIKY Loans, for a total net purchase price of $924,349. (*Id.* ¶ 94.) Plaintiff states that Meritize represented to i80 that T9 TMIKY Loans were performing consistent with historical data and in compliance with Meritize's Credit Policy. (*Id.* ¶¶ 7, 66.)

i80 alleges that on December 13, 2019, during a quarterly review presented by Meritize's Risk Team, it became aware that Meritze's representations that T9 TMIKY Loans were performing consistent with historical data and in compliance with Meritize's Credit Policy, were false. (*Id*. ¶ 7.) i80 also alleges that Meritize's Risk Team revealed that it had been monitoring T9 TMIKY Loans for poor performance since at least the fourth quarter of 2018, concealing this information from i80 all while it promoted and sold the T9 TMIKY Loans to i80. (*Id*. ¶ 83.) Moreover, Meritize revealed that it stopped originating loans to TMIKY schools in August 2019—just two weeks after Meritize sold those loans to i80. (*Id*., ¶¶ 84, 89.)

i80 states that between December 2019 and June 2020, i80 attempted to work with Meritize to understand the cause of the losses it was suffering on the T9 TMIKY Loans. (*Id.,* ¶ 103.) i80 requested information from Meritize to conduct a compliance review in accordance with Sections 4.4(h) of the Amended Purchase Agreement and

4.01(n) of the Servicing Agreement. (*Id.*) In April 2020, i80 engaged a financial consulting firm pursuant to its rights under both the Servicing and Amended Purchase Agreements, to verify the information Meritize had presented to i80. (*Id*., ¶ 104.) According to i80, Meritize largely ignored these requests and failed to provide information relating to the Purchase Agreement. (*Id*., ¶ 108.)

On July 1, 2020, i80 alleges it notified Meritize of its default (Default Notice) and also notified Meritize that it was exercising its right to sell to Meritize those loans sold in violation of the Purchase Agreement. (*Id.,* ¶ 112.) In its Default Notice, i80 advised Meritize that it violated § 4.1(b) of the Purchase Agreement by knowingly selling i80 underperforming loans originated from TMIKY. (*Id*., ¶ 113.) i80 demanded that Meritize repurchase all the T9 TMIKY loans in accordance with §§ 7.1 and 7.2 of the Amended Purchase Agreement. (*Id*., ¶ 115.)

Meritize moved to dismiss the complaint in its entirety. (NYSCEF 6, Notice of Motion.)

Discussion

Legal Standard

On a motion to dismiss pursuant to CPLR 3211 (a) (7), the court must "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].) "[B]are legal conclusions, as well as factual claims which are either inherently incredible or flatly contradicted by documentary evidence" cannot survive a motion to dismiss. (*Summit Solomon & Feldesman v Lacher*, 212 AD2d 487, 487 [1st Dept 1995] [citation omitted].)

Plaintiff asserts nine causes of action: (1) breach of purchase agreement for breach of representations and warranties, (2) breach of purchase agreement for failure to permit compliance review, (3) breach of purchase agreement for failure to repurchase purchased loans; (4) breach of servicing agreement for failure to permit compliance review (5) breach of servicing agreement for failure to service accordance with servicing standard, (6) breach of servicing agreement for failure to deliver financial statements in a timely manner, (7) breach of servicing agreement for failure to replace subcontractors in a timely manner; (8) fraudulent inducement; and (9) negligent misrepresentation, plead in the alternative to fraudulent inducement. (NYSCEF 1, Complaint.)

Breach of Purchase Agreement, Claims I and III

The elements of a breach of contract claim are: (1) existence of a contract, (2) plaintiff's performance pursuant to the contract, (3) defendant's breach of contractual obligations, and (4) resulting damages. (*Harris v Seward Park Housing Corp.,* 79 AD3d 425, 426 [1st Dept 2010] [citation omitted].) The court will enforce a clear and complete written agreement according to the plain meaning of its terms and not look to extrinsic evidence to create ambiguities within the four corners of the contract. (*New York City Off-Track Betting Corp. v Safe Factory Outlet, Inc.,* 28 AD3d 175, 177-78 [1st Dept 2006] [citations omitted].) "In order to state a cause of action to recover damages for a breach of contract, the plaintiff's allegations must identify the provisions of the contract that were breached." (*Barker v Time Warner Cable, Inc.,* 83 AD3d 750, 751 [2d Dept 2011] [citations omitted].) The court looks to written words of the parties' agreement to determine intent. (*Greenfield v Philles Records, Inc.,* 98 NY2d 562, 569 [2002] [citations omitted].) "Thus, a written agreement that is complete, clear and

unambiguous on its face must be enforced according to the plain meaning of its terms." (*Id*.) Certainty of the material matters of the contract is the core of contract law. *(Joseph Martin, Jr., Delicatessen, Inc. v Schumacher*, 52 NY2d 105, 109 [1981] [citations omitted].)

Both parties acknowledge they entered into an agreement. (NYSCEF 1, Complaint and NYSCEF 7, MOL in Support of MTD). i80 alleges that Meritize breached its obligations under the Purchase Agreement, in failing to abide by its representations and warranties and by its failure to repurchase the loans. (NYSCEF 1, Complaint ¶¶ 125-133, 139-143.)

The parties each provide competing facts, as to whether Meritize randomly selected the loans and or whether Meritize made true and correct representations and warranties. (NYSCEF 7, MOL in Support of MTD and NYSCEF 1, Complaint.)

Accordingly, the allegations are sufficient to state claims for breach of contract at the pleading stage. Whether the loans in fact complied with contractual standards, or whether a repurchase obligation was triggered, all present factual issues not resolvable on a motion to dismiss.

Meritize's reliance on alleged waiver ratification or exclusive remedy provisions is unavailing. Ratification occurs when a party accepts the benefits of a contract and fails to act promptly to repudiate it. (*Allen v Riese Org*., 106 AD3d 514, 517 [1st Dept 2013].) However, ratification, "whether express or implied, must be performed with full knowledge of the material facts relating to the transaction, and the assent must be clearly established and may not be inferred from doubtful or equivocal acts or language[.]" (*Farro v Schochet*, 190 AD3d 698 (2021) [citations omitted].) Here, i80

alleges that it had no knowledge that the loans were performing poorly because Meritize concealed that information. (NYSCEF 1, Complaint ¶ 7.) Thus, Meritize's argument – that i80 ratified the transaction, waived its rights, or was itself in prior breach – raise fact-intensive issues that cannot be resolved at the pleading stage.

While the purchase agreement provides a repurchase remedy (NYSCEF 2 at 42, Purchase Agreement), whether Meritize timely complied with that obligation, or whether its conduct frustrated plaintiff's ability to invoke the remedy, again raises fact intensive issues that cannot be resolved on a motion to dismiss. Thus, at this stage of litigation, i80 has sufficiently pled breach of contract and Meritize's motion to dismiss the first and third causes of action is denied.

Breach of Purchase Agreement and Service Agreement, Claims II and IV

i80 also alleges Meritize breached both the Purchasing Agreement and Servicing Agreement by failing to permit compliance review. (NYSCEF 1, Complaint ¶¶ 134-138, 144-150.)

Section 4.4(h) permits i80 to conduct a compliance review and grants access to:

> (i) verify the compliance by Seller with this Agreement, (ii) verify the compliance by Seller with Applicable Laws and other legal compliance related to the Purchased Loans, (iii) verify compliance of the Purchased Loans and other Loans subject to Purchase Obligations hereunder with the criteria under the definition of "Eligible Loan" and the representations and warranties in Section 4.2, (iv) inspect Seller's and its Affiliates' books and records (including Electronic Records) related to the Purchased Loans and (v) review and verify such other material information relating to Purchased Loans that Purchaser reasonably requests. (NYSCEF 2, Purchasing Agreement at 27 [emphasis added].)

In a substantially similar provisions § 4.01(n) of the Servicing Agreement entitles i80 to:

> (i) verify the compliance by Servicer with this Agreement, (ii) verify the compliance by Servicer with Applicable Laws and other legal compliance related

> to the Loans serviced pursuant to this Agreement, (iii) verify the accuracy of the Loan Schedules and any reporting and data tapes, (iv) inspect Servicer's and its Affiliates' books and records (including electronic records) related to the Loans serviced pursuant to this Agreement and (v) review and verify such other material information relating to Loans serviced pursuant to this Agreement that Purchaser reasonably requests. (NYSCEF 3, Servicing Agreement at 18 [emphasis added].)

i80 states that it engaged a financial consulting firm to verify the correctness of the information Meritize presented to i80, information sufficient to perform a compliance review. (NYSCEF 1, Complaint ¶¶ 104, 105.) Among the information requested on i80's behalf were referral program agreements for schools participating in the Loan Purchase Program, the most recent version of Meritize's School Diligence Policy, and presentations and documents relating to performance of the Tier 9 Eligible Loans from January 1, 2018 to May 31, 2020. (*Id.,* ¶ 107.) Aside from these requests, i80 does not allege that Meritize denied any requests made to conduct a compliance review that it was actually entitled to, specifically requests for information "related to Purchased loans" (NYSCEF 2, Purchase Agreement at 27) or "Loans serviced pursuant to this Agreement that Purchaser reasonably requests." (NYSCEF 3, Servicing Agreement at 18.) Accordingly, the second and fourth causes of action are dismissed.

Breach of Service Agreement, Claims V, VI, VII

The fifth, sixth, and seventh causes of action all raise issues of facts. In its fifth cause of action, i80 claims Meritize failed to service the loans in accordance with servicing standards and failed to use commercially reasonable efforts to collect monthly payments. (NYSCEF 1, Complaint ¶ 152.) In its sixth cause of action, i80 claims that Meritize failed to deliver financial statements in a timely manner and in its seventh cause of action, i80 alleges that Meritize failed to replace subcontractors in a timely

manner. (*Id.* ¶¶ 158-159, 163.) Meritize claims i80 initially breached the Service Agreement by failing to make payments for at least two years. (NYSCEF 7, MOL in Support of MTD at 20.) The parties each provide different accounts as to which side initially breached the Service Agreement. (NYSCEF 1, Complaint and NYSCEF 7, MOL in Support of MTD.)

Whether Meritize failed to properly service the loans, provide financial statements or replace subcontractors, are all issues or fact not resolvable on a motion to dismiss, as discussed *supra*.

Meritize's reliance on alleged waiver ratification for these causes of action is also unavailing. (*see supra* at 6-7.) Accordingly, Meritize's motion to dismiss the fifth, sixth and seventh causes of action is denied.

Fraudulent Inducement (VII)

The elements of a claim for fraudulent inducement are a "misrepresentation or a material omission of fact which was false and known to be false by defendant, made for the purpose of inducing the other party to rely upon it, justifiable reliance of the other party on the misrepresentation or material omission, and injury." (*United States Life Ins. Co. in City of New York v Horowitz*, 192 AD3d 613, 614 [1st Dept 2021] [internal quotation marks and citation omitted].)

"In the context of a contract case, the pleadings must allege misrepresentations of present fact, not merely misrepresentations of future intent to perform under the contract, in order to present a viable claim that is not duplicative of a breach of contract claim…. Moreover, these misrepresentations of present fact must be collateral to the contract and [must have] induced the allegedly defrauded party to enter into the contract

…. Therefore, [a]s a general rule, to recover damages for tort in a contract matter, it is necessary that the plaintiff plead and prove a breach of duty distinct from, or in addition to, the breach of contract." (*Wyle Inc. v ITT Corp.*, 130 AD3d 438, 438-39 [1st Dept 2015] [internal quotation marks and citations omitted].) Fraud claims must be pled with particularity pursuant to CPLR 3016(b).

i80 alleges that the true performance data of the TMIKY loans were held exclusively by Meritize and that the data provided was affirmatively misleading. (NYSCEF 1, Complaint ¶¶ 181-183.) At the 3211 stage, the court cannot determine as a matter of law that plaintiff could have discovered the alleged fraud through "ordinary intelligence" or independent diligence, as the underlying loans files and internal monitoring reports were alleged to be controlled by Meritize. (*Id*.) Meritiz's argument that the fraud claim is duplicative of the contract claim is unavailing. A fraud claim is not redundant where it is based on misrepresentations of present fact, such as the current performance of the loans, that induced the party to enter into the agreement, rather than mere promises of future performance (*Wyle Inc. v ITT Corp.,* 130 AD3d 438 [1st Dept 2015]). The representations regarding the current health of the TMIKY loans are collateral to the eventual performance warranties in the contract.

Accepting the allegations as true, i80 has sufficiently pled that Meritize knowingly withheld material adverse information to offload poorly performing loans. These allegations are sufficiently detailed to fairly apprise Meritize of the circumstances "constituting the wrong." (CPLR 3016[b].)

Meritize argues that as a sophisticated business entity, i80 cannot claim justifiable reliance in the face of contractual disclaimers. (NYSCEF 7, MOL in Support

of MTD at 17-18.) The Court disagrees. While specific disclaimer may often bar a fraud claim, the "peculiar knowledge exception" holds that even a sophisticated party's disclaimer of reliance will not preclude a fraud claim where the relevant facts were "peculiarly within the knowledge" of the defendant. (*Basis Yield Alpha Fund v Goldman Sachs Group, Inc.*, 115 AD3d 128 [1st Dept 2014]).

Accordingly, Meritize's motion to dismiss the eighth cause of action for fraudulent inducement is denied.

Negligent Misrepresentation (IV)

A claim for negligent misrepresentation requires the plaintiff to demonstrate (1) the existence of a special or privity-like relationship imposing a duty on the defendant to impart correct information to the plaintiff; (2) that the information was incorrect; and (3) reasonable reliance on the information." (*J.A.O. Acquisition Corp. v Stavitsky*, 8 NY3d 144, 148 [2007] [citations omitted].)

While New York courts are cautious in permitting negligent misrepresentation claims between sophisticated commercial entities, such claims may proceed at the pleading stage where defendant is alleged to have possessed unique or specialized knowledge and to have provided information for the guidance of the plaintiff in the transaction. (*Kimmell v Schaefer*, 89 NY2d 257, 263-64 [1996].)

i80 alleges that it had a special relationship of trust and confidence with Meritize, which had a duty to provide correct information. (NYSCEF 1, ¶ 182.) Further, i80 alleges that Meritize, as servicer of the loans "had superior, exclusive knowledge of the problems of the TMIKY Loans." (*Id.*, ¶183.) i80 alleges that Meritize possessed unique information regarding the payment history and performance indicators of the TMIKY

loans. (*Id.,* ¶ 77.) The plaintiff alleges that the loan data tape Meritize provided to i80 did not include data for delinquent Tier 9 Eligible loans and showed no eligible loans were in default. (*Id.*, ¶¶ 52, 53.) Further, shortly after i80 purchased the Tier 9 Eligible Loans, Meritize ceased originating Tier 9 Eligible Loans from the TMIKY consortium. (*Id.,* ¶ 7.) Following the logic in *Kimmel*, because defendant provided specific assurances regarding the loan performance while holding "unique or specialized expertise", a special relationship is sufficiently pled to survive a motion to dismiss.

Meritize relies on the parties' sophistication and contractual non-reliance clauses. However, under the "special facts" doctrine, a party's duty to disclose arises where one party's superior knowledge of essential facts renders a transaction without disclosure inherently unfair. (*Creative Waste Management, Inc. v Capital Environmental Services*, 429 FSupp2d 582 [SDNY 2006].)

i80 alleges that Meritize held "superior knowledge" of its internal monitoring and Meritize's own decision to exit the TMIKY market - facts i80 could not have discovered through "ordinary intelligence". (NYSCEF 1, Complaint ¶¶ 171, 172, 176.) i80 alleges that Meritize made misleading and false statements and omission regarding the performance of the TMIKY loans to induce the transaction. (*Id.*, ¶181.)

The court rejects Meritiz's argument that this claim is merely a repackaged breach of contract. Plaintiff alleges that it initially rejected the idea of purchasing the Tier 9 Eligible loans and only reconsidered based on specific, pre-contractual representations regarding the loans' performance. (*Id.*, ¶¶ 3-6.) These allegations concern a duty to speak with care not solely based on contractual duties. (*Kimmel*, 89 NY2d at 263.)

Accordingly, defendant's motion to dismiss the cause of action for negligent misrepresentation is denied.

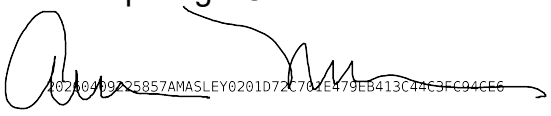
Accordingly, it is

ORDERED that motion is granted in part as to the second and fourth causes of action for failure to permit compliance review and denied as to the first, third, fifth, sixth, seventh, eighth and ninth causes of action for breach of representations and warranties, failure to repurchase purchased loans, breach of servicing agreement for failure to service accordance with servicing standard, breach of servicing agreement for failure to deliver financial statements in a timely manner, breach of servicing agreement for failure to replace subcontractors in a timely manner, fraudulent inducement, and negligent misrepresentation, plead in the alternative to fraudulent inducement; and it is further

ORDERED that defendant shall file an answer within 20 days of the date of this order; and it is further

ORDERED that parties shall exchange initial disclosures within 10 days of the date of this decision; and it is further

ORDERED that parties shall submit a PC order within 10 days of the filing of the answer. If parties cannot agree to dates, they may file competing PC orders.



4/9/2026
DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:	☐	**CASE DISPOSED**		☒	**NON-FINAL DISPOSITION**		
	☐	**GRANTED**	☐ **DENIED**	☒	**GRANTED IN PART**	☐	**OTHER**
APPLICATION:	☐	**SETTLE ORDER**		☐	**SUBMIT ORDER**		
CHECK IF APPROPRIATE:	☐	**INCLUDES TRANSFER/REASSIGN**		☐	**FIDUCIARY APPOINTMENT**	☐	**REFERENCE**