

**Triangle Gen. Agency, Inc. v Amtrust Agric. Ins.
Servs., LLC**

2026 NY Slip Op 31640(U)

April 15, 2026

Supreme Court, New York County

Docket Number: Index No. 656839/2022

Judge: Andrea Masley

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This opinion is uncorrected and not selected for official publication.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

-----X

TRIANGLE GENERAL AGENCY, INC. D/B/A AG
ARMOUR,

Plaintiff,

- v -

AMTRUST AGRICULTURE INSURANCE SERVICES,
LLC, AMTRUST FINANCIAL SERVICES, INC., AMTRUST
AGENCY HOLDINGS LLC, PRODUCERS AG
INSURANCE GROUP, INC., and PRO AG TRANSITION
SERVICES, LLC,

Defendants.

-----X

INDEX NO. 656839/2022

MOTION DATE _____

MOTION SEQ. NO. 003

**DECISION + ORDER ON
MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 139, 146, 147, 148, 149, 151, 152

were read on this motion to/for AMEND CAPTION/PLEADINGS.

This is an action about the sale of plaintiff's private crop insurance business wherein plaintiff asserts that defendants underpaid plaintiff when defendants failed to calculate the fee from customer transactions for the three-year period following the closing. Plaintiff alleges that after the closing, defendants transferred the insurance business purchased from plaintiff, without any consideration and no notice to plaintiff, leaving the corporation that purchased plaintiff's business a shell with no business on which to calculate the balance due to plaintiff, but plaintiff's contract was with that now shell company, not the new owner.

In motion 003, plaintiff, Triangle General Agency, Inc. (Triangle), moves pursuant to CPLR 3025 for leave to file the proposed Second Amended Complaint (PSAC)¹ and pursuant to CPLR 305(a) to file and serve a supplemental summons on Pro AG Management (PAM). Triangle asserts new claims for (1) rescission based on fraudulent inducement involving the First Earn-Out payment against defendant Am Trust Agriculture Insurance Services, LLC n/k/a Pro AG Transition Services LLC² (Agriculture) in the new second cause of action and involving the Second Earn-Out payment against all defendants in the new third cause of action and (2) breach of the covenant of good faith and fair dealing against defendants Agriculture, Producers AG Insurance Group Inc. (PAIG),³ and PAM in the new fourth cause of action. Triangle also seeks to add PAM as a defendant as successor to Agriculture and/or assignee of the Purchase Agreement (Agreement) to the first cause of action for breach of contract, fifth cause of action for an accounting,⁴ seventh cause of action for tortious interference with contract, and eighth cause of action for unjust enrichment.

¹ Parties are reminded to review the Part 48 Procedures which require exhibits to be filed separately, e.g. NYSCEF 102 redlined version of proposed PSAC.

² In the operative complaint, Agriculture and Transition were listed as distinct defendants. (NYSCEF 27, Triangle's November 10, 2022 Amended Complaint.)

³ PAIG, a holding company, owns PAM which provides services and operations for PAIG. (NYSCEF 102 PSAC ¶¶ 10, 51.)

⁴ Triangle also substitutes PAM for Transition as a defendant on the claim for an accounting. (NYSCEF 102, PSAC.)

Background

Purchase Agreement

On September 1, 2017, Agriculture⁵ entered into the Agreement with Triangle. (NYSCEF 3, Purchase Agreement at 3/79⁶.) Pursuant to § 1.1 of the Agreement, Agriculture acquired the assets and rights⁷ from Triangle in exchange for a cash payment of \$500,000. (*Id.*) In addition to the cash payment, Triangle was to receive three years' worth of "Earn-Out Payments" calculated using the Gross Written Premium⁸ after the closing of the sale. (*Id.*) Agriculture was to provide Triangle with a report explaining the Gross Written Premium for each Earn-Out Period. (*Id.*) The Gross Written Premium was to reflect all the premiums collected by Agriculture for policies produced by all the agents, brokers, and/or producers (Producers) that generated any of the Insurance Contracts set forth in Schedule 6.1 (a)⁹ of the Agreement. (*Id.* at 26/79.) Under §1.5(c)(ii) and (iii) of the Agreement, Agriculture was to provide the Earn-Out Statement within 90 days from the end of the period and all information, records, data, and working papers and access to its facilities and personnel. (*Id.*) Finally, §7.5 of the

⁵Until May 1, 2019, Agriculture was owned by Agency and AFS. (NYSCEF 102, PSAC ¶¶ 6, 7.) AFS owns Agency. (*Id.* ¶15.)

⁶ NYSCEF pagination.

⁷ Agriculture purchased "Renewal Rights, enumerated tangible assets, books, records and files, lists of Producers and Policy Holders, Employee Personal Data and personnel files relating to the Business Employees, software, Intellectual Property and Contracts." (NYSCEF 3, Agreement at 3-4/79.)

⁸ "Gross Written Premium means, with respect to each Earn-Out Period, the number that results from the following calculation: the gross written premium collected by the Buyer and/or any insurance company Affiliates of the Buyer after the Closing for any Buyer Policies during the applicable Earn-Out Period as recorded by the Buyer, net of all cancellations, return premiums and uncollectible accounts on such Buyer Policies". (NYSCEF 3, Purchase Agreement at 24-25/79.) NYSCEF pagination.

⁹ Schedule 6.1(a) appears to be found at NYSCEF 3, Agreement at 54-78/79. (NYSCEF pagination).

Agreement provides that it “shall not be assignable or otherwise transferable by any party, directly or indirectly, without the prior written consent of the other parties, provided that [Agriculture] shall be entitled to assign its rights and obligations under this Agreement to an Affiliate, it being understood that no such assignment shall relieve [Agriculture] of its obligations hereunder.”

Pro Ag Transaction

Triangle alleges that on May 1, 2019, Amtrust Agency Holdings LLC (Agency) and AmTrust Financial Services, Inc. (AFS)¹⁰, conveyed Agriculture to Producers AG Insurance Group, Inc (PAIG)¹¹ and PAM (together Pro Ag Defendants.) (Pro Ag Transaction). (NYSCEF 102, PSAC ¶¶11.) Agriculture’s name was changed to Pro Ag Transition Services LLC (Transition). (*Id.*) Thereafter, Agriculture ceased its operations and has not placed any policies. (*Id.* ¶ 49.) PAM has operated Agriculture since May 1, 2019. (*Id.* ¶ 52.) On February 26, 2020, AFS confirmed that it had sold Agriculture to the Pro Ag Defendants. (*Id.* ¶ 68.) Triangle was never informed of the Pro Ag Transaction. (*Id.* 50.) Accordingly, Triangle seeks to hold defendants responsible for payment of the third Earn-Out Payment and to correct the First and the Second Earn-Out Payments.

¹⁰ Triangle alleges that AFS and Agency owned Agriculture until May 2019. (NYSCEF 102, PSAC ¶¶ 6, 7.) AFS also owned defendant Agency. (*Id.* ¶ 5.) When PAIG purchased Agriculture, it renamed it PATS. (NYSCEF 102, PSAC 11; NYSCEF 132, Defendants’ MOL at 6/28 n. 2.)

¹¹ Neither PAIG nor PAM are affiliated with AFS or Agency or Agriculture. (NYSCEF 102, PSAC ¶ 57.)

First Earn-Out Payment

Agriculture issued the first Earn-Out Statement in which it had “unilaterally” omitted Producers who had pre-existing relationships with defendants contrary to the Agreement. (NYSCEF 102, PSAC ¶¶27, 28; NYSCEF 103, October 4 email from Agriculture at 1.) On October 29, 2018, Am Trust Agriculture sent Triangle a spreadsheet entitled “AA Analysis” and identified only ten Producers from the long §6.1(a) list. (NYSCEF 104, October 29, 2018 email from AFS.) Triangle alleges that the parties discussed the significant differential. (NYSCEF 102, PSAC ¶ 32.) Thereafter, the parties agreed to an amendment of Schedule 6.1(a), the list of Producers. (NYSCEF 102, PSAC ¶32.) On November 19, 2018, Agriculture made the First Earn-Out payment. (*Id.* ¶ 35.) Agriculture represented that the amount consisted of the Gross Written Premium of all the Producers on the amended list. (*Id.* ¶ 36.) In reliance of this representation, Triangle signed the November 19, 2018 letter agreement (Letter Agreement), waving any claim with respect to the First Earn-Out Payment. (*Id.* ¶ 39.) Since defendants had control of the calculation, Triangle had no reason to know that the amount was incorrect. (*Id.*)

It was only during discovery that Triangle learned that the First Earn-Out Payment did not include the 3% Gross Written Premium collected by Agriculture from all the Producers resulting in a shortfall of at least \$163,918.35. (*Id.* ¶ 40.)

Second Earn-Out Payment

Triangle alleges the same problem with the Second Earn-Out Payment. Agriculture represented that the Second Earn-Out payment consisted of all the

premiums collected from the Producers on Schedule 6.1(a). (*Id.* ¶ 63.) Triangle alleges that it relied on Agriculture's representations and accepted the payment. (*Id.* ¶¶ 59-66.)

Again, during discovery, Triangle learned that the Second Earn-Out Payment omitted the 3% Gross Written Premium collected from all Producers on the amended § 6.1(a) list and improperly excluded the Gross Written Premium collected by Agriculture from many Producers causing a shortfall of \$1,792,950.54. (*Id.* ¶ 67.)

Procedural History

In the operative complaint, Triangle asserts: (1) breach of contract against Agriculture, PAIG, and Transition; (2) specific performance against Agriculture, PAIG and Transition; (3) accounting against Agriculture, PAIG, and Transition; (4) tortious interference with contract against AFS and Agency; and (5) unjust enrichment against PAIG and Transition. (NYSCEF 27, Amended Complaint.) The claims in the 2022 Amended Complaint are related to the Third Earn-Out Payment. (See generally *id.*) In the PSAC, Triangle seeks to add claims related to the short falls in the First and Second Earn-Out payments. (See generally NYSCEF 102, PSAC.)

Legal Standard

Pursuant to CPLR 3025, "leave to amend should be freely granted so long as the amendment is not plainly lacking in merit and there is no significant prejudice to the nonmoving party." "[L]eave to amend a complaint should be denied if the proposed complaint could not survive a motion to dismiss. A proposed amended complaint that would be subject to dismissal as a matter of law is, by definition, 'palpably insufficient or clearly devoid of merit' and thus should not be permitted under CPLR 3025. (*Olam Corp. v Thayer*, 2021 WL 408232, *3-4 [Sup Ct NY County 2021].)

Discussion

Defendants oppose the motion for leave to amend the complaint because Triangle fails to state a claim and the PSAC would not survive a motion to dismiss. (NYSCEF 132, defendants' MOL at 15/28¹².)

Recission based on Fraudulent Inducement

Triangle seeks rescission of the Letter Agreement and October 6, 2019 email wherein Triangle accepted the Second Earn-Out Payment. The remedy is based on Triangle's claim of fraudulent inducement by defendants to cause Triangle to accept the First and Second Earn-Out Payments and to execute the Letter Agreement and send the email accepting the Second Earn-Out payment. Triangle also seeks damages to correct the Payments and punitive damages. In the PSAC, Triangle alleges that it reasonably relied on misrepresentations by Agriculture regarding the accuracy of the First and Second Earn-Out Payments. (See generally NYSCEF 102, PSAC, ¶¶ 39-66.) Defendants object to this claim on two bases: (1) Triangle cannot sufficiently plead reasonable reliance where Triangle failed to demand information under §1.5(c)(iii) of the Agreement and (2) the First Earn-Out Payment claim is barred by the merger clause of the Letter Agreement.

Triangle relies on email exchanges between the parties that show that Triangle requested information regarding the First and Second Earn-Out payments, thereby exercising its right under §1.5(c)(iii) of the Agreement. (*Id.*) However, these emails specifically pertain to the First Earn-Out Payment; there is no mention of the Second Earn-Out Payment in the emails. (See NYSCEF 103 and 104, October 4, 2018, and

¹² NYSCEF pagination.

October 28, 2018, emails.) Therefore, plaintiff's motion to amend to add fraud involving the Second Earn-Out payment is denied.

Defendants argue that the second cause of action for fraudulent inducement involving the First Earn-Out Payment is barred by the merger clause contained in the Letter Agreement which provides:

"This letter agreement sets forth the final agreement among the Parties regarding the determination of the Earn-Out Payment for the First Earn-Out Period and the amount payable pursuant to Section 1.5(c) of the Purchase Agreement. By executing and delivering this letter agreement, Seller and Triangle hereby expressly waive any time period, dispute procedures, breach or claim under Section 1.5(c) of the Purchase Agreement relating to the First Earn-Out Period or Earn-Out Payment relating thereto. This letter agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and representations, both written and oral, between or among the Parties with respect to the subject matter hereof. (NYSCEF 125, November 19, 2018 letter agreement at 2/5.¹³)

Triangle asserts that the merger clause is too general to be applicable. Triangle relies on *Laduzinski v Alvarez & Marsal Tax and LLC*, 132 AD3d 164 [1st Dept 2015] where the merger clause reads: "this Agreement constitutes the entire agreement between the parties with respect to subject matter and supersedes all previous understandings...". (*Id.* at 169.) In *Laduzinski*, the "merger clause contained general boilerplate language and made no reference to the misrepresentations alleged by defendants," it was too "vague and general" to preclude parole evidence from establishing fraudulent inducement to enter into the contract." (*Id.*)

Here, on other hand, a plain reading of the Letter Agreement reveals its specific nature. By signing the Letter Agreement, Triangle agreed to waive any claims regarding the First Earn-Out Payment. It cannot now circumvent it. Therefore, the motion to

¹³ NYSCEF pagination.

amend the first cause of action to allege fraud based on the First Earn-Out Payment is denied, making it unnecessary to address the statute of limitations.

Adding PAM as Defendant

Triangle argues that because of the Pro Ag Transaction, the Pro Ag Defendants assumed all the liabilities of Agriculture and that AFS divested all of Agriculture's assets to the Pro Ag Defendants for no consideration, rendering Agriculture an insolvent shell. (NYSCEF 102, PSAC, ¶¶ 88-90.) Further, Triangle alleges that the Pro Ag Transaction constituted a de facto merger. (*Id.* ¶ 91.) As a result of this de facto merger, Triangle alleges that Pro Ag Defendants are successors in interest and PAM is a mere continuation of Agriculture as the Pro Ag Defendants acquired Agriculture in its entirety and continued to use its assets. (*Id.* ¶ 92.) Furthermore, Triangle asserts that Pro Ag Defendants expressly or impliedly assumed the liability of Agriculture either in the Pro Ag Transaction or by other actions. (*Id.* ¶ 94.) Alternatively, Triangle alleges that the Pro Ag Defendants are the assignees of Agriculture because Agriculture transferred all or substantially all of its rights under the Purchase Agreement to the Pro Ag Defendants. (*Id.* ¶ 95.)

For successor liability, courts recognize four exceptions to the general rule that the corporation is not liable for the torts of its predecessor, namely where: "(1) the [corporation] expressly or impliedly assumed the predecessor's tort liability, (2) there was a consolidation or merger of the seller and purchaser, (3) the purchasing corporation was a mere continuation of the selling corporation, or (4) the transaction is entered into fraudulently to escape such obligations." (*Matter of NY City Asbestos Litig.*, 217 AD3d 557 [1st Dept 2023].) To prove a successor in interest, a party must plead

facts that establish one of the four exceptions. (*O'Loughlin v Commack Propane*, 2020 NY Misc LEXIS 8547 [Sup Ct, Suffolk County Feb. 10, 2020, No. 605301/2019].)

Further, bald and conclusive assertions are insufficient when they are refuted by documentary evidence. (See *Id.* at 4.)

Defendants counter that since plaintiff asserted a claim against PAM's parent, PAIG, there is no need for plaintiff to add PAM under the same theory. (NYSCEF 132, defendant's MOL at 25/28.¹⁴) Further, defendants object to adding PAM because Agriculture, now known as PATS, is actively defending Triangle's claims in this action. In the absence of a legal argument to deny Triangle's motion, the court rejects defendants' argument. Accordingly, Triangle's motion to amend to add PAM as a defendant is granted.

Breach of the covenant of good faith and fair dealing

Triangle seeks to add a claim for breach of the covenant of good faith and fair dealing against Agriculture and PAM. Implied in every agreement is a covenant that "neither party will do anything which has the effect of destroying the right of the other to receive the fruits of the contract." (*Dalton v Educ. Testing Serv.*, 87 NY2d 384, 397, 396 [1995].) Triangle argues that it expected to be paid 3% of the Gross Premium collected under the Agreement by all Producers on the amended 6.1(a) list. Triangle adds PAM to the claim as Agriculture transferred all its assets to the Pro Ag Defendants, including PAM, allegedly making them liable. (NYSCEF 102, PSAC ¶ 17.)

¹⁴ NYSCEF pagination.

Defendants oppose adding PAM in the absence of any contractual relationship.¹⁵ (NYSCEF 132, defendants' MOL at 26¹⁶.) Since the successor liability theory proceeds against PAM, as discussed above, Triangle has leave to add PAM to this claim.

Tortious Interference against PAM

Triangle alleges tortious interference as an alternative to the breach of contract and breach of the covenant of good faith and fair dealing claim against AFS and Agency and seeks to add PAM. Specifically, AFS and Agency caused Agriculture to (1) fail to pay Triangle completely and accurately all three Earn-Out Payments, (2) fail to provide complete and accurate Earn-Out Statements, and (3) fail to provide information, records, data in contravention of Section 1.5(c)(iii) of the Agreement. (NYSCEF 102, PSAC ¶¶150-152.) Finally, Triangle alleges that AFS and Agency caused Agriculture to assign the Agreement to the Pro Ag Defendants without Triangle's prior consent. (*Id.* at ¶ 151.) Triangle insists that AFS and Agency's procurement of the breach was intentional, without justification, and by improper means resulting in \$4,000,000 damages to Triangle. (*Id.* ¶ 152.)

To state a claim for tortious interference with contractual relations, Triangle must allege (1) a valid contract (the Agreement) between Triangle and defendants; (2) AFS and Agency's knowledge of the Agreement; (3) AFS and Agency's "intentional procurement" of the Agreement's breach "without justification," (4) "actual breach" of the Agreement and (5) "damages resulting therefrom." (*Lama Holding Co. v Smith Barney Inc.*, 88 NY2d 413, 424 [1996] [citations omitted].)

¹⁵ Defendants are silent on adding Agriculture to this claim.

¹⁶ NYSCEF pagination.

Defendants argue that Triangle fails to allege that Agriculture would not have breached the Agreement but for the conduct of defendants. Since Triangle's allegations are far from vague, conclusory or mere speculation, as in the sole case that defendants cite, Triangle's allegations support but for causation without using the words "but for." Accordingly, the motion for leave to amend to add PAM to the tortious interference claim is granted.

Unjust Enrichment against Pro Ag Defendants

Triangle alleges unjust enrichment against PAIG and Transition, initially, and now against PAIG and PAM instead of Transition as an alternative to the first and second causes of action for fraud. Triangle alleges that it is inequitable for Agriculture to retain the entire Gross Written Premium that was owed to Triangle as part of the Second and Third Earn-Out Payments. (NYSCEF 102, PSAC ¶ 165.) Defendants fail to address unjust enrichment against the Pro Ag Defendants.

Accordingly, it is

ORDERED that Triangle's motion 003 for leave to amend is granted, in part, and Triangle may proceed on its new claim for breach of good faith and fair dealing, but not for rescission based on fraudulent inducement which is stricken from the PSAC; and it is further

ORDERED that Triangle's motion 003 is granted to the extent that PAM is added as a defendant as indicated in the PSAC except as to fraudulent inducement; and it is further

ORDERED that a supplemental summons and amended complaint, in the form annexed to the motion papers, shall be served, in accordance with the Civil Practice

Law and Rules, upon the additional parties in this action within 10 days after service of a copy of this order with notice of entry; and it is further

ORDERED that the action shall bear the following caption:

TRIANGLE GENERAL AGENCY, INC. d/b/a AG ARMOUR,

Plaintiff,

-against

AMTRUST AGRICULTURE INSURANCE SERVICES, LLC n/k/a PRO AG
TRANSITION SERVICES, LLC, AMTRUST FINANCIAL SERVICES, INC;
AMTRUST AGENCY HOLDINGS LLC; PRODUCERS AG INSURANCE
GROUP, INC., and PRO AG MANAGEMENT, INC.

Defendants.

and it is further

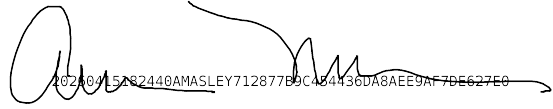
ORDERED that counsel for the moving party shall serve a copy of this order with notice of entry upon the County Clerk and the Clerk of the General Clerk's Office, who are directed to mark the court's records to reflect the parties being added pursuant hereto; and it is further

ORDERED that such service upon the County Clerk and the Clerk of the General Clerk's Office 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.) and it is further

ORDERED that the PSAC in the form annexed to the motion papers, shall be deemed served upon defendants when Triangle files the Second Amended Complaint in NYSCEF by April 20, 2026; and it is further

ORDERED that defendants shall serve an answer to the second amended complaint by April 30, 2026; and it is further

ORDERED that the parties shall submit a current discovery schedule by April 30, 2026.



4/15/2026

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