

White Rock Ins. (SAC) Ltd. v China Constr. Bank Corp.

2026 NY Slip Op 31778(U)

April 21, 2026

Supreme Court, New York County

Docket Number: Index No. 654432/2024

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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WHITE ROCK INSURANCE (SAC) LTD,
Plaintiff,

INDEX NO. 654432/2024

MOTION DATE _____

- v -

CHINA CONSTRUCTION BANK CORPORATION, CHINA
CONSTRUCTION BANK NEW YORK BRANCH, and
CHINA CONSTRUCTION BANK (ASIA) CORPORATION
LIMITED,

MOTION SEQ. NO. 003 003 004
005

**DECISION + ORDER ON
MOTION**

Defendants.

-----X

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 61, 62, 63, 64, 67, 68, 69, 71, 95, 96, 100, 113, 116, 122

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 003) 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 61, 62, 63, 64, 67, 68, 69, 71, 95, 96, 100, 113, 116, 122

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 004) 53, 54, 55, 57, 58, 59, 60, 65, 66, 70, 97, 101, 117, 123

were read on this motion to/for DISMISS.

The following e-filed documents, listed by NYSCEF document number (Motion 005) 80, 81, 82, 83, 84, 85, 89, 91, 92, 98, 118

were read on this motion to/for STAY.

In motion sequence 003, defendants China Construction Bank Corporation (CCBC) and China Construction Bank New York Branch (CCBNY) move pursuant to CPLR 3211(a)(3), (7), and (8) to dismiss the amended complaint. (NYSCEF Doc. No. [NYSCEF] 40, Notice of Motion.)

In motion sequence 004, defendant China Construction Bank (Asia) Corporation Limited (CCB Asia) moves pursuant to CPLR 3211(a)(3), (7), and (8)¹ to dismiss the amended complaint. (NYSCEF 54, Notice of Motion.)

In motion sequence 005, CCB Asia moves for a stay of proceedings, or in the alternative, for a stay of discovery pending resolution of the motions to dismiss. (NYSCEF 84, Order to Show Cause.)

Background

Plaintiff, White Rock Insurance (SAC) LTD (White Rock), is a Bermuda exempted segregated accounts company (SAC) and a subsidiary of non-party, Aon Plc. (NYSCEF 29, First Amended Complaint [FAC] ¶¶ 10.) White Rock purports to sue on its own behalf, as well as for Segregated Accounts T-94, T-95, T-96, T-100, T-102, T-103, T-107, T-108, T-111, T-113, T-122, T-125, T-126, and T-127 (collectively, the Cells). (*Id.* at 1.)

SACs are a unique Bermudian entity that have been granted the statutory power to create segregated accounts (the Cells), which are designed to legally segregate assets and liabilities from the other Cells and from the general account of the SAC itself. (*Id.* ¶¶ 29.) SACs are utilized by insurance and reinsurance companies to minimize risk, as it allows them to “maintain the assets and liabilities related to one (re)insurance risk or transaction, or a set of risks or transactions, separate from the assets and liabilities of others.” (*Id.*)

¹ The court addressed personal jurisdiction on the record. (NYSCEF 116, Tr at 8:17-8:24 [“finding jurisdiction over CCBC and CCBC New York and direct jurisdictional discovery on CCBC Asia.”])

Insurance companies seeking to obtain reinsurance coverage from investors through the capital market (Cedents) would enter into insurance or reinsurance policies with White Rock, pursuant to which the Cedents would transfer assets to White Rock, which would then be held in segregated accounts and could be used to pay out insurance claims. (*Id.* ¶¶ 2-3.)

Non-party, Vesttoo, an Israeli startup company, purported to operate a platform that enabled Cedents to obtain reinsurance coverage from investors at a competitive rate. (*Id.* ¶ 2.) In 2021, White Rock, the Cedents, and Vesttoo began collaborating to offer reinsurance to the Cedents. (*Id.* ¶ 31.) White Rock would create cells collateralized by one or more letters of credits (LOCs). (*Id.* ¶ 31; *see also* NYSCEF 51, Shareholder Agreement.) Vesttoo would procure these LOCs from international banks representing that the reinsurance transactions were fully collateralized. (*Id.* ¶ 4.) Plaintiff alleges that the majority of these LOCs were issued by defendants, CCBC, CCBNY, and CCB Asia (collectively, CCB). (*Id.* ¶ 6.) CCBC is a Chinese bank headquartered in Beijing. (*Id.* ¶ 11.) CCBNY is the New York branch of CCBC. (*Id.* ¶ 13.) CCB Asia is a subsidiary of CCBC, incorporated under the laws of Hong Kong. (*Id.* ¶ 14.)

In the summer of 2023, Vesttoo's allegedly fraudulent scheme was revealed. (*Id.* ¶ 34.) In July, a Cedent approached CCBNY to verify and demand payment based upon one of the LOCs. (*Id.*) A few days later, CCB stated that it had never issued the LOCs, and claimed they were fraudulent. (*Id.*) An investigation of Vesttoo revealed that two of its co-founders orchestrated a scheme to create fraudulent LOCs despite never actually securing collateralization. (*Id.* at ¶ 37.) The investigation also purportedly

revealed that Chun-Yim Lam, the CCB Assistant Relationship Manager, participated in the scheme by procuring signatures, transmitting, and then verifying the LOCs, allegedly deceiving White Rock into relying on their authenticity. (*Id.* ¶ 37.) White Rock alleges that because the fraudulently obtained LOCs were not collectible, the Cells were forced to release premiums totaling approximately \$140 million. (*Id.* ¶ 67.)

Discussion

I. Standing

Defendants argue that plaintiff lacks standing to initiate this action because they did not suffer an “injury in fact,” and therefore do not have an actual legal stake in this matter. They further argue that while plaintiff alleges that the Cells suffered \$140 million in damages, neither White Rock nor the Cells actually suffered these damages; instead, these claims belong to the Cedents, whose premiums were transferred to Vesttoo through the Cells.

CPLR 3211(a)(3) addresses standing, though the language used in the statute is “capacity”. (*Wilmington Sav. Fund Socy., FSB v Matamoro*, 200 AD3d 79, 90 [2d Dept 2021].) To defeat a defendant's motion to dismiss, plaintiff need only raise a question of fact as to the issue; plaintiff does not have the burden of establishing its standing as a matter of law. (*Id.*)

“Standing is a threshold determination, resting in part on policy considerations, that a person should be allowed access to the courts to adjudicate the merits of a particular dispute that satisfies the other justiciability criteria.” (*Socy. of Plastics Indus. v County of Suffolk*, 77 NY2d 761, 769 [1991] [citations omitted].) “On a pre-answer motion to dismiss for lack of standing, the burden lies with the defendant to establish

prima facie that plaintiff has no standing to sue.” (*Credit Suisse Fin. Corp. v Reskakis*, 139 AD3d 509, 510 [1st Dept 2016] [citations omitted].) “New York courts [treat] standing as a common-law concept, requiring that the litigant have something truly at stake in a genuine controversy.” (*Saratoga County Chamber of Commerce v Pataki*, 100 NY2d 801, 812 [2003].) To establish standing, a plaintiff must demonstrate an injury in fact, that falls “within the zone of interest” sought to be protected by the statute or right under which the suit arose. (*Fritz v Huntington Hosp.*, 39 NY2d 339, 346 [1976].)

a. Capacity to Sue

Capacity to sue is a related, “but conceptually distinct [matter] from, the question of standing.” (*Silver v Pataki*, 96 NY2d 532, 537 [2001].) “Capacity, unlike standing, does not concern the injury a party suffered, but whether the legislature invested that party with authority to seek relief in court.” (*Matter of World Trade Ctr. Lower Manhattan Disaster Site Litig.*, 30 NY3d 377, 384 [2017].)

Here, defendants first argue that plaintiff cannot assert claims on behalf of the Cells because pursuant to the Bermuda Segregated Accounts Company Act of 2000 (BSACA) “the establishment of a segregated account² does not create a legal person distinct from the segregated accounts company” that formed them. (Segregated Accounts Companies Act 2000, § 17 [1] [Act No. 33/200 [Berm.].) However, the BSACA

² BSACA refers to Cells as “Segregated Accounts.” (See Segregated Accounts Companies Act 2000 at 5 [defines ‘segregated account’ to mean “a separate and distinct account . . . of a segregated accounts company pertaining to an identified or identifiable pool of assets and liabilities of such segregated accounts company which are segregated or distinguished from other assets and liabilities of the segregated accounts company for the purposes of this Act.”].)

further provides that “[a] segregated accounts company may sue and be sued in respect of a particular segregated account.” (*Id.* at § 18 [7] [a].) The Bermuda Supreme Court, interpreting this statute, has held that, “[t]he right to sue and be sued on behalf of a segregated account is vested in the company, not the owners of the relevant accounts.” (*BNY AIS Nominees Ltd v New Stream Capital Fund Ltd*, [2012] SC (Bda) 66 Civ ¶ 38 [Berm.]

Further, while an interpretation of this Bermudian statute is a matter of first impression for US state and federal courts, a Montana statute authorizing the creation of a so-called “protected cell captive insurance company” (PCC)³ was considered in *Pac Re 5-AT v Amtrust N. Am., Inc.* (2015 WL 2383406 [D Mont May 13, 2015, No. CV-14-131-blg-CSO]). The court in *Pac Re* held that because the statute provided that individual Cells do not have their own legal identity, they remain a part of the PCC and thus, the PCC has the capacity to act on behalf of the cell. (*Id.* at *4 “[a]lthough a protected cell has many attributes of independence from the PCC, it remains a part of the PCC, which has the capacity to act on behalf of the protected cell.”)

Therefore, the court finds that White Rock has the capacity to sue for alleged injuries suffered by the Cells.⁴ The analysis, therefore, shifts to whether White Rock has standing to sue for the alleged injuries incurred.

³ The Montana statute has since been amended to provide that the creation of a “Cell” creates a “legal person” (see Mont Code Ann § 33-28-301 [2] [c]), however, at the time of *Pac Re*, the statute provided, similarly to BSACA that “[t]he creation of a protected cell does not create, with respect to that protected cell, a legal person separate from the protected cell captive insurance company.” (Mont Code Ann § 33-28-301 [prior to 2019 amendment].)

⁴ While counsel for CCBC and CCBNY conceded during the November 19, 2025 oral argument that White Rock Bermuda would have the capacity to sue, (NYSCEF 118 at 13:3-13:9), the analysis is relevant to the standing issue.

b. Cells' Injury

Defendants argue that White Rock cannot establish standing because neither the company, nor the Cells have suffered an “injury in fact,” and any alleged injury that was caused by the fraudulent LOCs was suffered by the Cedents. Plaintiff argues that the Cells, in fact, suffered injuries, because the premium amounts were paid into the Cells, held in the Cells’ names, and would not have been released by White Rock had it known the Cells were not actually collateralized.

As previously stated, the BSACA provides that each segregated cell is not a separate legal entity but rather a part of White Rock. Moreover, according to the Shareholder Agreements, a Cell acts as an individual reinsurer, which receives the premiums from the Cedents. (NYSECF 51, Shareholder Agreement at 2/15 [NYSCEF pagination].) While the agreement provides that White Rock is to release these premiums from the Cells to Vesttoo, it also provides that:

“[n]otwithstanding any other provision of this Agreement or the SAC Act, a dividend shall not be declared or paid⁵, or a distribution declared or made, in respect of the Participating Shares or other account holdings linked to the Segregated Account if there are reasonable grounds for believing that (a) the Segregated Account is not, or would after the payment not be, solvent . . . or (b) the realisable value of the assets of the Segregated Account would thereby be less than the aggregate of its liabilities and its issued share capital and share premium accounts.” (*Id.* ¶ 3.)

In other words, if White Rock had a reasonable belief that the LOCs were fraudulent, and the Cells would be unable to pay their obligations if the Cedents sought to collect on a potential claim, White Rock would be entitled to withhold the premiums that were held in the Cells. Accordingly, plaintiff argues the Cells suffered an injury

⁵ The “dividend” to be paid in the context of these agreements are the premiums.

because they had a property interest in the premiums that were held in their name, which was relinquished due to Lam's issuance of fraudulent LOCs.

While the defendants are correct that a plaintiff "generally cannot raise the legal rights of another" (*Matter of Douglaston Civic Assn. v City of New York*, 199 AD3d 562, 564 [1st Dept 2021] [citation omitted]), plaintiff is not, as defendants suggest, asserting a cause of action on behalf of the Cedents, but rather doing so on behalf of the Cells' injuries, which they are entitled to do pursuant to the BSACA. That the Cedents may also have legal rights which they may pursue does not negate plaintiff's standing in this action. (See *Kapitus Servicing, Inc. v MS Health, Inc.*, 221 AD3d 504, 505 [1st Dept 2023] [holding that a "servicing agent" had "independent authority and its own beneficial interest in the subject agreement" to establish standing].)

Defendants further argue that because Vesttoo owned the shares in the Cells, the Cells cannot pursue claims because of New York's *in pari delicto* doctrine, which "bars a party that has been injured as a result of its own intentional wrongdoing from recovering for those injuries from another party whose equal or lesser fault contributed to the loss." (*Rosenbach v Diversified Group, Inc.*, 85 AD3d 569, 570 [1st Dept 2011] [citations omitted].) However, the doctrine of "*in pari delicto* is an affirmative defense, not a matter of standing" and thus, need not be addressed at this juncture of the litigation. (*Kirschner v KPMG LLP*, 15 NY3d 446, 459 n 3 [2010].)

Defendants also argue that plaintiff has failed to allege an injury that is "traceable" to defendants' conduct. (NYSCEF 41, MOL at 15.) Traceability is a "requirement of Article III standing . . . [where] there must be a causal connection between the injury and the conduct complained of – the injury has to be fairly . . .

trace[able] to the challenged action of the defendant.” (*Nat. Resources Defense Council, Inc. v US Food and Drug Admin.*, 710 F3d 71, 84 [2d Cir 2013], as amended [Mar. 21, 2013] [internal quotation marks omitted].) While “the constraints of Article III do not apply to state courts” because Article III standing implicates the federal court’s subject matter jurisdiction (*ASARCO Inc. v Kadish*, 490 US 605, 617 [1989]), at least one First Department case has applied the “fairly traceable” standard to matters of state court standing. (See *People v Grasso*, 54 AD3d 180, 198 [1st Dept 2008].)

Regardless, traceability “does not create an onerous standard [and] [a]ll the plaintiff must establish is a ‘line of causation’ between the defendant’s conduct and the alleged injury that is not too speculative or attenuated.” (*Walker v NY State Dept. of Health*, 788 F Supp 3d 427, 474 [ED NY 2025] [citations omitted].) “[This] is a lower bar than proving causation on the merits. So long as there is a fairly traceable connection between the alleged injury in fact and the alleged conduct of the defendant, traceability can be satisfied.” (*Id.* [citation omitted].) Here, plaintiff has established “traceability” for standing purposes.

Defendants also argue that plaintiff cannot recover damages based on fees it had to pay due to increased regulatory scrutiny as a result of the fraudulent LOCs, nor can they recover damages for alleged reputational harm they suffered as a result of the scandal. They argue that these damages are too speculative, and essentially, prematurely seek contribution damages in other litigation. While defendants may ultimately be correct that these damages are speculative, and thus unrecoverable, at this juncture plaintiff has alleged an “injury in fact,” and therefore has standing to bring action. (See *Disenos Artisticos E Industriales, S.A. v Work*, 676 F Supp 1254, 1279 [ED

NY 1987] [holding that damages that are difficult to prove but not “highly speculative” does not bar standing so long as an injury is shown].)

II. Failure to State a Claim

On a motion to dismiss pursuant to CPLR 3211, the court must afford the pleadings a liberal construction, “accept the facts alleged in the complaint as true, afford plaintiffs the benefit of every possible favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory.” (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [citation omitted].) “In making this determination, [a court is] not authorized to assess the merits of the complaint or any of its factual allegations.” (*Bangladesh Bank v Rizal Commercial Banking Corp.*, 226 AD3d 60, 86 [1st Dept 2024] [internal quotation marks and citation omitted].)

CPLR 3211(a)(7) allows a party to seek dismissal of a cause of action asserted against him because “the pleading fails to state a cause of action.” (CPLR 3211 [a] [7].) When considering a motion pursuant to CPLR 3211(a)(7) “the criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one.” (*Guggenheimer v Ginzburg*, 43 NY2d 268, 275 [1977].) “[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].) “[H]owever, a court may freely consider affidavits submitted by the plaintiff to remedy any defects in the complaint.” (*Leon*, 84 NY2d at 88 [1994], citing *Rovello v Orofino Realty Co.*, 40 NY2d 633, 635 [1976].)

a. *Group Pleading*

Defendants CCBC and CCBNY argue that the FAC fails to state a cause of action against them because it engages in group pleading and fails to specifically allege conduct attributable to CCBC and CCBNY.

Since, “[a] defendant is entitled to notice of the material elements of each cause of action . . . [a complaint may be dismissed when] causes of action are pleaded against all defendants collectively without any specification as to the precise tortious conduct charged to a particular defendant.” (*Aetna Cas. & Sur. Co. v Merchants Mut. Ins. Co.*, 84 AD2d 736, 736 [1st Dept 1981] [internal quotation marks and citation omitted].) Moreover, allegations of fraud are subject to the heightened pleading standard of CPLR 3016(b) and must be sufficiently particularized to put individual defendants on notice of the alleged acts committed by him. (*47-53 Chrystie Holdings LLC v Thuan Tam Realty Corp.*, 167 AD3d 405, 406-07 [1st Dept 2018].) However, the First Department has recognized that at the pleading stage it may be “impossible to state in detail the circumstances constituting the fraud” and, thus, as long as “the complaint as a whole, adequately alleges a scheme involving [multiple] defendants,” then the complaint will not be dismissed for engaging in impermissible group pleading. (*Bd. of Mgrs. of 411 E. 53rd St. Condominium v Dylan Carpet, Inc.*, 182 AD2d 551, 552 [1st Dept 1992] [citations omitted].)

Here, the majority of plaintiff’s theories of liability against defendants relies on attributing liability for the acts of Lam to defendants. (See generally NYSCEF 29, FAC.) As stated above, the purpose of the heightened pleading standard elucidated in CPLR 3016(b) is to put the defendant on notice of the specific allegations lobbied against him. The alleged facts supporting plaintiff’s fraud theory are the same whether liability is

attributed to CCBC, CCBC Asia, or CCBNY, as they are based upon plaintiff's theory that Lam was acting in his capacity as the defendants' agent or employee, and thus liability attaches to all defendants. Plaintiff, of course, must still plead individual theories of how liability should attach to each individual defendant, which is addressed below; however, there is no merit to CCBC and CCBNY's argument that plaintiff improperly engaged in group pleading by referring to actions taken by Lam as attributable to all three defendants. The FAC differentiates the three defendants and explains plaintiff's theory of assigning liability to each. (NYSCEF 29, FAC ¶¶ 10-14.) Therefore, the FAC will not be dismissed due to group pleading.

b. Vicarious Liability

Plaintiff asserts four causes of action against defendants based on a theory of defendants' vicarious liability for Lam's affirmative acts. Specifically, plaintiff relies on *respondeat superior* and agency authority to hold defendants liable for (1) fraud; (2) fraudulent misrepresentation; (3) fraudulent concealment; and (4) negligent misrepresentation. (NYSCEF 29, FAC.)

i. Respondeat Superior

The doctrine of *respondeat superior* provides: "[a]n employer may be vicariously liable for its employees' negligent or intentional tortious conduct so long as the employees' acts were committed in furtherance of the employer's business." (*Fauntleroy v EMM Group Holdings LLC*, 133 AD3d 452, 453 [1st Dept 2015] [internal citations omitted].) "Respondeat superior cannot exist without a present employer-employee relationship." (*K.I. v NY City of Bd. of Educ.*, 256 AD2d 189, 191 [1st Dept 1998].) "Whether an employee was acting within the scope of his or her employment is

generally a question of fact for the jury.” (*Cobena v Antonioli*, 217 AD3d 746, 747 [2d Dept 2023] [citation omitted].) Liability will not attach to an employer for torts that are committed by an employee who is acting “for personal motives unrelated to the furtherance of the employer’s business.” (*Carnegie v J.P. Phillips, Inc.*, 28 AD3d 599, 600 [2d Dept 2006].)

CCBC and CCBNY argue that plaintiff has failed to plead an employer relationship that would implicate *respondeat superior*. However, plaintiff has pleaded that Lam was a “CCB banker acting for CCB as a Relationship Manager” who used “an official CCB email amount” and “an authentic CCB telephone number”, and also “held meeting at a CCB office.” (NYSCEF 29, FAC ¶ 6.) Moreover, plaintiff alleges that CCB “routinely makes legal representations in one voice on behalf of [CCBC] and all of its subsidiaries” and “acts as a single unit in its purported efforts to regulate ‘corporate behavior.’” (*Id.* ¶ 18-19.) These facts at least raise an issue of triable fact as to whether CCBC and CCBNY “held itself out to the public” as Lam’s employer. (*Devlin v City of NY*, 254 AD2d 16, 17 [1st Dept 1998].) However, plaintiff’s theory of *respondeat superior*, nevertheless, fails on other grounds.

The defendants argue that even if Lam was an employee, plaintiff has failed to plead non-conclusory facts that Lam’s action were committed in furtherance of the employer’s business. In the FAC, plaintiff alleges that the defendants benefited from Lam’s fraud because his actions “provid[ed] a stream of revenue, promot[ed] customers’ reliance on CCB banking and investment products, and rais[ed] CCB’s profile in the United States and globally consistent with its expansion goals.” (NYSCEF 29, FAC ¶ 63.) Plaintiff supplements its FAC with the affirmation of Ryan Rakower, plaintiff’s

attorney, asserting that defendants benefited from the scheme because “Vesttoo’s largest investor, Yu Po Holdings [Yu Po], maintained a bank account in CCBA . . . and a certain Vesttoo investor transferred \$4 million to [Yu Po’s] bank account at CCBA.” (NYSCEF 65, Rakower aff ¶ 4; see also NYSCEF 66, Record of Payment.) Plaintiff argues that while the deposit was made into Yu Po’s own account, and not into an account owned by defendants, defendants still benefited because a bank benefits whenever an entity deposits money into one of their accounts. (See NYSCEF 116, Tr at 100:7-102:4.) This alleged benefit is far too speculative to support the allegation that Lam was issuing the fraudulent LOCs in furtherance of defendants’ business. (See *Heffernan v Mar. Midland Bank, N.A.*, 267 AD2d 83, 84 [1st Dept 1999] [holding that a bank could not be held vicariously liable for the fraud of an employee who perpetrated a Ponzi scheme and solicited funds that he deposited into his own personal account at the bank as such acts “cannot be considered to have been within the scope of his employment” (citations omitted)].)

Accordingly, plaintiff cannot seek to hold defendants liable under a theory of *respondeat superior* as the allegations in the FAC do not support the argument that the scheme was perpetrated in furtherance of defendants’ business.

ii. Agency Authority

While plaintiff must show under a theory of *respondeat superior* that the allegedly tortious acts were committed “in furtherance of the [employer’s] business and within the scope of employment . . . there is no requirement that the tortious act be committed in furtherance of the principal’s business” under an apparent authority theory. (*Parlato v Equit. Life Assur. Socy. of US*, 299 AD2d 108, 113-14 [1st Dept 2002] [internal citations

omitted].) Instead, plaintiff must establish “that the principal created an appearance of authority on which the plaintiff reasonably relied, thereby enabling the agent to successfully perpetrate the tort.” (*Id.* at 114 [citation omitted].) In fact, a principal can be held liable for the fraudulent acts of an agent “even if the agent commits the fraud solely for his personal benefit, and to the detriment of the principal.” (*Id.* at 113 [citations omitted].) “It is well established that the scope of an agent's authority includes not only the actual authorization delegated by the principal, but also, in some cases, the apparent or ostensible authority to perform an act.” (*Zigabarra v Falk*, 143 AD2d 901, 902 [2d Dept 1988] [citation omitted].)

“Actual authority granted to an agent to bind his principal is created by direct manifestations from the principal to the agent.” (*Matter of Elizabeth T.*, 214 AD3d 815, 817 [2d Dept 2023].) The extent of this authority “is interpreted in the light of all the circumstances attending these manifestations, including the customs of business, the subject matter, any formal agreement between the parties, and the facts of which both parties are aware.” (*Id.* [citations omitted].) Where, the “circumstances raise the possibility of a principal-agent relationship but no written authority of the agent has been proven, questions of agency and of its nature and scope ... are questions of fact.” (*Bostany v Trump Org. LLC*, 73 AD3d 479, 480 [1st Dept 2010] [citation omitted].)

In the absence of actual authority, a principal may be held vicariously liable for torts of the agent under the principle of “apparent authority”, where “words or conduct by the principal [] are communicated to a third party may create the apparent authority of the agent to act on behalf of the principal.” (*NY Community Bank v Woodhaven Assoc., LLC*, 137 AD3d 1231, 1233 [2d Dept 2016] [citation omitted].) “The agent cannot by his

own acts imbue himself with apparent authority. Rather the existence of apparent authority depends upon a factual showing that the third party relied upon the misrepresentation of the agent because of some misleading conduct on the part of the principal--not the agent." (*Parlato*, 299 AD2d at 112 [1st Dept 2002] [internal quotation marks omitted].) "[L]iability is based upon the fact that the agent's position facilitates the consummation of the fraud, in that from the point of view of the third person the transaction seems regular on its face and the agent appears to be acting in the ordinary course of the business confided to [them]." (*Canfield Funding, LLC v Focalpointe Group, LLC*, 240 AD3d 1363, 1365 [4th Dept 2025] [citation omitted].) "The reason for this rule is that the principal, by virtue of its ability to select its agents and to exercise control over them ..., is in a better position than third parties to prevent the perpetration of fraud by such agents through the misuse of their positions." (*Id.* [citation omitted].)

Here, it is undisputed that Lam was an employee of CCB Asia while he was distributing the allegedly fraudulent LOCs; CCB Asia publicly registered Lam as an official banker with the authority to deal in securities. (NYSCEF 29, FAC ¶ 40.) Further, Lam was allegedly promoted from "Assistant Relationship Manager" in 2022 to "Relationship Manager" in 2023. (*Id.* at ¶ 44.) At this pre-discovery juncture, there is at least triable issues of fact as to whether CCB Asia gave Lam the actual authority to issue LOCs, and thus to hold CCB Asia vicariously liable for the alleged fraud. These allegations, if accepted as true, also support plaintiff's theory of apparent authority, considering that CCB Asia's retention and promotion of Lam as a licensed banker, and Lam's use of CCB resources to facilitate the fraud, are sufficient at the pleading stage to support an allegation that CCB Asia's actions imbued Lam with apparent authority to

enter into LOCs.⁶ (See *Bardach v Weber*, 144 AD3d 553, 553 [1st Dept 2016] [found that apparent authority was properly plead when accounting firm promoted employee who performed services within the scope of principal's business, and employee communicated said transactions via company email].)

Plaintiff has also alleged that Lam was an employee of CCBC, and specifically that the LOCs Lam issued used "CCB logo letterhead with a New York address" and made "payable" at CCBNY's Manhattan office, and in response to "audit confirmation forms," Lam signed the confirmations as if he was representing both CCBC and CCB Asia. (NYSECF 29, FAC ¶¶ 20, 31, 48-51.) Further, plaintiff alleges that when CCBNY was presented with the fraudulent LOCs, they stated that they "were issued by another China Construction Bank branch" suggesting that even internally, Lam possessed the authority to issue the LOCs. (*Id.* ¶¶ 24, 32.)

While CCBC and CCBNY argue that plaintiff has not plead anything to suggest that they authorized Lam to use their letterheads or the official CCBC stamp, at the pleading stage, "we are required to assume the truth of plaintiffs' allegation that the transactions . . . would have been within the scope of the apparent authority with which

⁶ This court previously decided that it had personal jurisdiction over CCBC, and CCBNY, and directed jurisdictional discovery for CCB Asia. (NYSECF 116, Tr at 8:17-8:24.) However, a determination here, that plaintiff has adequately plead that Lam was acting as an agent for CCB Asia, is dispositive on the jurisdictional question since pursuant to CPLR 302[a], "a court may exercise personal jurisdiction over any non-domiciliary ... who in person or through an agent ... transacts any business within the state [or] commits a tortious act within the state [or] commits a tortious act without the state causing injury to person or property within the state," and here plaintiff alleges that Lam "intentionally directed his actions at this State by having many of the CCB LOCs issued from, and made payable at, CCBNY." (NYSECF 29, FAC ¶ 56). Therefore, this court has personal jurisdiction over CCB Asia.

[defendants] clothed him during his employment.” (*Parlato*, 299 AD2d at 112 [1st Dept 2002].) These are issues of fact for plaintiff to establish later in this litigation.

Finally, while CCB Asia argues that plaintiff failed to satisfy its “duty of inquiry” (NYSCEF 55, MOL at 16), which arises in an apparent authority context when “(1) the facts and circumstances are such as to put the third party on inquiry, (2) the transaction is extraordinary, or (3) the novelty of the transaction alerts the third party to a danger of fraud” (*FDIC v Providence Coll.*, 115 F3d 136, 141 [2d Cir 1997] [citation omitted]), these are factual inquiries that are inappropriate to consider at this juncture.

Therefore, the FAC will not be dismissed against CCBC, CCBNY, or CCB Asia, as plaintiff has adequately alleged vicarious liability based on agency authority.

c. Fraud / Fraudulent Misrepresentation

Defendants argue that plaintiff failed to state causes of action for fraud, and fraudulent misrepresentation, because it failed to allege a “plausible allegations of reasonable reliance.” (NYSCEF 55, MOL at 17.) Specifically, they argue that plaintiff, as a sophisticated reinsurance broker, could not have justifiably relied on the fraudulent statements made by Lam and should have discovered the fraud through due diligence.

However, on a pre-answer motion to dismiss for failure to state a cause of action, “a plaintiff ... need only plead that he relied on misrepresentations made by the defendant ... since the reasonableness of his reliance [generally] implicates factual issues whose resolution would be inappropriate at this early stage.” (*Knight Secs. L.P. v Fiduciary Tr. Co.*, 5 AD3d 172, 173 [1st Dept 2004] [citations omitted].) Plaintiff has plead that it relied on Lam’s representations (NYSCEF 29, FAC ¶¶ 8, 21, 46, 52-56) and inquiry into the reasonableness of such reliance is premature at this juncture.

d. Direct Claims

Defendants argue that the negligence-based claims asserted directly against them – the fourth cause of action for negligent misrepresentation, the fifth cause of action for negligent supervision and retention, and the sixth cause of action for negligence – must be dismissed.

Plaintiff's fourth cause of action for negligent misrepresentation is based upon a theory of vicarious liability. (See NYSCEF 57, Plaintiff's MOL at 21.) Therefore, defendants' argument that plaintiff did not allege that defendants had a "special relationship" with plaintiff that gave rise to a special duty need not be addressed since plaintiff has adequately alleged that it had a "special relationship" with Lam, and a principal can be held vicariously liable for the negligent misrepresentations of its agent. (*Rinaldo v McCormick*, 139 AD2d 874, 875 [3d Dept 1988].) Moreover, "[w]ether the nature and caliber of the relationship between the parties is such that the injured party's reliance on a negligent misrepresentation is justified generally raises an issue of fact" that is not appropriately resolved on a motion to dismiss. (*Kimmell v Schaefer*, 89 NY2d 257, 264 [1996].) Therefore, the court declines to dismiss plaintiff's fourth cause of action for negligent misrepresentation.

To plead a cause of action for negligent supervision, a plaintiff must allege "that the employer knew or should have known of the employee's propensity for the conduct which caused the injury prior to the injury's occurrence." (*Rich v Fox News Network, LLC*, 939 F3d 112, 129 [2d Cir 2019].) While plaintiff do not allege that any of the defendants had actual knowledge of Lam's fraud until it was discovered by internal investigation, plaintiff's allegations that Lam committed the fraud over a period of years

and CCBNY reviewed several of the LOCs (NYSCEF 29, AC ¶¶ 32-33, 39), are sufficient at the pleading stage to find that plaintiff has adequately alleged that defendants should have discovered the fraud. (See Moore Charitable Found. v PJT Partners, Inc., 40 NY3d 150, 158-59 [2023] [“the notice element is satisfied if a reasonably prudent employer, exercising ordinary care under the circumstances, would have been aware of the employee's propensity to engage in the injury-causing conduct”].) Therefore, the negligent supervision claim survives. However, since plaintiff bases its negligence claim on the defendants’ alleged negligent supervision of Lam, the sixth cause of action is dismissed as duplicative.

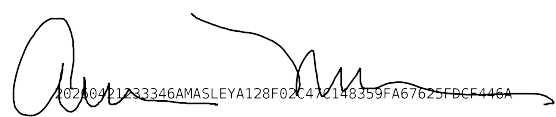
Accordingly, it is

ORDERED that motions 003 and 004 are granted, in part, to the extent that the sixth cause of action is dismissed, and otherwise denied; and it is further

ORDERED that motion 005 for a stay is denied as moot; and it is further

ORDERED that defendants shall answer the amended complaint within 20 days of the date of this order; and it further

ORDERED that the parties shall update the court on the status of discovery, via email, by April 30, 2026, at 5 pm.



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4/21/2026

DATE

ANDREA MASLEY, J.S.C.

CHECK ONE:

CASE DISPOSED
GRANTED

DENIED

APPLICATION:

SETTLE ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

