

NewBank v PT05, Inc
2026 NY Slip Op 31943(U)
May 5, 2026
Supreme Court, New York County
Docket Number: Index No. 655966/2025
Judge: Hasa A. Kingo
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: HON. HASA A. KINGO PART 65M

Justice

-----X

NEWBANK,

Plaintiff,

- v -

PT05, INC, PT01, INC, JOOYOUNG KIM, JAE HYUN KIM,

Defendants.

-----X

INDEX NO. 655966/2025

MOTION DATE N/A

MOTION SEQ. NO. 001

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 001) 13, 14, 15, 16, 17, 34, 35, 36, 37, 38, 39, 40, 42

were read on this motion to DISMISS

Upon the foregoing documents, Defendant Jooyoung Kim ("Ms. Kim") moves, pursuant to CPLR § 3211(a)(7), for an order dismissing Count Four, Count Five, and Count Six of the complaint as asserted against her. Count Four purports to allege constructive fraudulent conveyance under Debtor and Creditor Law §§ 273, 274, and 275. Count Five purports to allege intentional fraudulent conveyance under Debtor and Creditor Law § 276. Count Six purports to allege conspiracy to defraud NewBank. Plaintiff NewBank ("Plaintiff") opposes the motion.

For the reasons set forth below, the motion is granted.

BACKGROUND AND PROCEDURAL HISTORY

This action arises from an SBA loan allegedly made by Plaintiff NewBank to Defendant PT05, Inc. on or about December 15, 2017, in the original principal amount of \$780,000.00. Plaintiff alleges that PT05 executed a promissory note, that the note required monthly payments, that the loan was secured by PT05's business assets, and that Defendants Jooyoung Kim and Jae Hyun Kim each executed guarantees of PT05's payment obligations. Plaintiff further alleges that

1 Defendant Jooyoung Kim seeks dismissal of the fourth, fifth, and sixth causes of action as asserted against her. She does not, on this motion, seek dismissal of the third cause of action, which alleges liability against her on a written guaranty. The motion is therefore limited to whether the complaint states legally cognizable fraudulent conveyance and conspiracy claims against Ms. Kim personally.

2 The court notes, at the outset, that plaintiff's counsel failed to appear for duly scheduled oral argument on the pending motion, notwithstanding proper notice of the argument date. Under these circumstances, Plaintiff is deemed to have defaulted in appearance for purposes of oral argument. The court, however, in the exercise of its discretion and in the interest of resolving matters on their merits, has fully considered the parties' written submissions and the legal arguments advanced therein in rendering its determination, without consideration of Plaintiff's counsel's default.

PT05 defaulted and that, as of September 25, 2025, the accelerated amount due was \$311,389.53, exclusive of continuing interest, fees, and costs.

The complaint also alleges that, on or about January 24, 2023, Defendants caused PT01, Inc. to be formed and transferred PT05's business assets to PT01 so that PT01 could continue PT05's business while leaving PT05 unable to satisfy its obligations to NewBank. The complaint alleges that the transfer was made without fair consideration, at a time when PT05 was insolvent or rendered insolvent, and with actual intent to hinder, delay, or defraud NewBank. Based on those allegations, Plaintiff asserts fraudulent conveyance claims and a conspiracy claim against all Defendants collectively.

Ms. Kim now moves to dismiss those claims as asserted against her, arguing that the complaint impermissibly relies on undifferentiated group pleading, fails to allege any specific act by her, fails to allege that she transferred or received any asset, fails to plead fraudulent intent with particularity, and fails to state a conspiracy claim because civil conspiracy is not an independent tort under New York law.

ARGUMENTS

Ms. Kim argues that Count Four fails because the complaint does not allege that she was a transferor, transferee, beneficiary, officer, director, shareholder, manager, employee, or participant in any alleged transfer between PT05 and PT01. She contends that Plaintiff merely alleges that "Defendants" collectively caused PT01 to be formed and transferred PT05's assets, without pleading facts showing what she personally did, what assets were transferred, when the transfer occurred, how the transfer occurred, what consideration was exchanged, or why the transfer rendered PT05 insolvent.

Ms. Kim further argues that Count Five fails because a claim sounding in actual fraudulent intent must satisfy CPLR § 3016(b), and the complaint does not plead facts giving rise to a strong inference of fraudulent intent as to her. According to Ms. Kim, the complaint alleges no communication, representation, concealment, transaction, or conduct by her from which fraudulent intent can be inferred.

Finally, Ms. Kim argues that Count Six fails because New York does not recognize civil conspiracy as an independent cause of action. She further argues that, even if conspiracy allegations may be used to connect separate defendants to an otherwise actionable tort, Plaintiff has not pleaded any agreement, coordinated conduct, overt act, or intentional participation by her.

Plaintiff responds that the complaint must be liberally construed on a CPLR § 3211(a)(7) motion and that it adequately alleges that Defendants formed PT01 and transferred PT05's business assets to PT01 to defeat NewBank's rights as creditor. Plaintiff further argues that Ms. Kim's alleged execution of a guaranty permits an inference that she knew of PT05's obligations to NewBank, knew she was personally responsible for the debt, and therefore may reasonably be inferred to have participated in the alleged transfer. Plaintiff also argues that its conspiracy claim is adequately tethered to the fraudulent conveyance claim

DISCUSSION

On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must afford the pleading a liberal construction, accept the facts alleged in the complaint as true, accord the plaintiff the benefit of every favorable inference, and determine only whether the facts alleged fit within any cognizable legal theory (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]; *Sokoloff v Harriman Estates Dev. Corp.*, 96 NY2d 409, 414 [2001]). However, while the pleading receives the benefit of favorable inferences, bare legal conclusions, factual claims flatly contradicted by the record, and allegations consisting only of speculation are not entitled to that presumption of truth (*Simkin v Blank*, 19 NY3d 46, 52 [2012]; *Maas v Cornell Univ.*, 94 NY2d 87, 91 [1999]; *Leder v Spiegel*, 31 AD3d 266, 267 [1st Dept 2006], *affd* 9 NY3d 836 [2007]). Where the plaintiff's allegations do not supply facts from which the required legal elements may be reasonably inferred, the complaint cannot survive merely because it recites the governing legal standard (*Mandarin Trading Ltd. v Wildenstein*, 16 NY3d 173, 182 [2011]).

The distinction between factual pleading and conclusory accusation is especially important where, as here, the pleading seeks to impose fraud-based liability on an individual defendant by referring to all defendants collectively. Group pleading may be sufficient where the complaint otherwise alleges facts showing each defendant's role in the challenged conduct, but it is insufficient where the complaint merely attributes wrongdoing to "defendants" as a group without identifying the conduct by which the moving defendant participated in the alleged wrong (*Aetna Cas. & Sur. Co. v Merchants Mut. Ins. Co.*, 84 AD2d 736, 736 [1st Dept 1981]; *see also* CPLR § 3013).

Count Four is deficient as asserted against Ms. Kim. The gravamen of Count Four is that PT05's business assets were transferred to PT01 without fair consideration and at a time when PT05 was insolvent, rendered insolvent, left with unreasonably small capital, or unable to pay its debts. Those allegations, if adequately pleaded against proper parties, may state a constructive fraudulent conveyance theory (*see Wall St. Assoc. v Brodsky*, 257 AD2d 526, 528-529 [1st Dept 1999]). However, a fraudulent conveyance claim must plead, at minimum, a conveyance, the parties to the conveyance, the absence of fair consideration or reasonably equivalent value, and facts supporting the alleged financial condition of the debtor at the relevant time (*The Carlyle, LLC v Quik Park 1633 Garage LLC*, 160 AD3d 476, 477 [1st Dept 2018]; *RTN Networks, LLC v Telco Group, Inc.*, 126 AD3d 477, 478 [1st Dept 2015]).

Here, the complaint alleges that "Defendants" transferred PT05's business assets to PT01. It does not allege that Ms. Kim owned PT05, owned PT01, controlled either entity, served as an officer or director of either entity, transferred any asset, received any asset, directed any transfer, approved any transfer, signed any transfer document, communicated with any person regarding a transfer, or benefitted from any transfer. The complaint's only individualized allegation concerning Ms. Kim is that she was a guarantor of the SBA loan. That allegation may be relevant to Count Three, which is not the subject of this motion, but it does not, standing alone, plead participation in a fraudulent conveyance. A guarantor's knowledge that a debt exists is not the same as participation in a debtor's subsequent asset transfer. To hold otherwise would convert every guarantor into a presumptive fraudulent-transfer participant whenever the borrower later transfers assets, a proposition unsupported by New York law.

Nor does the complaint plead sufficient transactional detail. It does not identify the specific assets allegedly transferred, the date or dates of transfer, the mechanism of transfer, the person or persons who effectuated the transfer, the consideration exchanged, the value of the assets, or nonconclusory facts showing PT05's insolvency or undercapitalization at the time. Such allegations are necessary not because the court imposes a heightened standard on constructive fraudulent conveyance claims, but because a pleading must still give notice of the transactions intended to be proved and the material elements of the claim (CPLR § 3013; *Eurycleia Partners, LP v Seward & Kissel, LLP*, 12 NY3d 553, 559 [2009]). Count Four therefore fails as asserted against Ms. Kim.

Count Five fares no better. A claim alleging actual intent to hinder, delay, or defraud creditors sounds in fraud and must satisfy CPLR § 3016(b) (*Wall St. Assoc.*, 257 AD2d at 529; see also *Eurycleia Partners, LP*, 12 NY3d at 559). CPLR § 3016(b) does not require unassailable evidentiary detail at the pleading stage, because fraudulent intent is often uniquely within the knowledge of the parties charged (*Pludeman v Northern Leasing Sys., Inc.*, 10 NY3d 486, 491-492 [2008]). Nevertheless, the complaint must allege facts sufficient to permit a reasonable inference of the charged fraud and must inform the defendant of the complained-of conduct (*id.*; *Sargiss v Magarelli*, 12 NY3d 527, 530-531 [2009]).

The complaint does not satisfy that standard as to Ms. Kim. Plaintiff alleges that the transfer of PT05's business assets to PT01 was made with actual intent to hinder, delay, or defraud NewBank, but it does not plead facts showing Ms. Kim's actual intent or conduct. There is no allegation that she made a misrepresentation, concealed information, moved assets, directed corporate conduct, participated in PT01's formation, controlled PT05's property, or acted in concert with any other Defendant. Plaintiff asks the court to infer fraudulent intent from the fact that Ms. Kim allegedly executed a guaranty and therefore knew she could be liable if PT05 defaulted. That inference is too attenuated. Knowledge of potential guarantor liability does not, without more, support a reasonable inference that the guarantor later participated in an intentional fraudulent conveyance (see *Mandarin Trading Ltd.*, 16 NY3d at 182; *The Carlyle, LLC*, 160 AD3d at 477).

The court is mindful that fraudulent intent may be inferred from badges of fraud, including a close relationship between transferor and transferee, inadequacy of consideration, retention of control, suspicious timing, secrecy, or a transferor's knowledge of creditor claims (*Wall St. Assoc.*, 257 AD2d at 529). However, even badges of fraud must be connected to the defendant against whom liability is sought. The complaint does not allege that Ms. Kim was the transferor, the transferee, the person retaining control, or the person who orchestrated any suspicious transaction. The pleading therefore does not permit the court to draw a non-speculative inference of actual fraudulent intent as to her.

The court also notes that the complaint invokes Debtor and Creditor Law §§ 273, 274, 275, and 276 in a manner that appears to track portions of the former Debtor and Creditor Law. The alleged transfer occurred in 2023, after New York's adoption of the Uniform Voidable Transactions Act became effective. To the extent Plaintiff relies on statutory provisions that no longer govern the alleged transaction, that defect reinforces the conclusion that the fraudulent

conveyance claims are not adequately pleaded as presently framed. Even if the court were to construe the pleading liberally under the currently applicable Debtor and Creditor Law provisions, the claims would still fail as against Ms. Kim because Plaintiff has not alleged facts establishing her role as transferor, transferee, beneficiary, participant, or knowing actor in the challenged transfer.

Count Six must also be dismissed. New York does not recognize civil conspiracy to commit a tort as an independent cause of action (*Alexander & Alexander of N.Y. v Fritzen*, 68 NY2d 968, 969 [1986]; *Abacus Fed. Sav. Bank v Lim*, 75 AD3d 472, 474 [1st Dept 2010]). Allegations of conspiracy may be used only to connect the actions of separate defendants to an otherwise actionable underlying tort (*Alexander & Alexander of N.Y.*, 68 NY2d at 969; *Abacus Fed. Sav. Bank*, 75 AD3d at 474). To plead conspiracy in that limited connecting sense, a plaintiff must allege an underlying tort, an agreement between two or more parties, an overt act in furtherance of the agreement, intentional participation in the furtherance of the plan or purpose, and resulting damages (*Abacus Fed. Sav. Bank*, 75 AD3d at 474; *Kashi v Gratsos*, 790 F2d 1050, 1055 [2d Cir 1986]).

The complaint does not do so as to Ms. Kim. Its allegation that “all Defendants entered into a corrupt agreement” is a conclusion, not a fact. The complaint pleads no communication involving Ms. Kim, no meeting of the minds, no instruction, no transfer document, no corporate act, no receipt of property, and no overt act by her in furtherance of any fraudulent plan. Because the underlying fraudulent conveyance claims are insufficiently pleaded against her, and because the conspiracy allegations independently lack facts showing her knowing agreement and intentional participation, Count Six must be dismissed as against Ms. Kim (*Abacus Fed. Sav. Bank*, 75 AD3d at 474; *Mandarin Trading Ltd.*, 16 NY3d at 182).

This determination does not adjudicate the merits of Plaintiff’s guaranty claim against Ms. Kim, which remains outside the scope of this motion. Nor does it determine whether Plaintiff may have viable fraudulent conveyance claims against other defendants or against a proper transferee upon adequate factual allegations. The ruling is limited to the sufficiency of the complaint as pleaded against Ms. Kim on Counts Four, Five, and Six.

The court declines, on this record, to impose sanctions against Plaintiff’s counsel. While the failure to appear is not condoned, the record does not demonstrate the type of frivolous conduct, willful delay, or bad faith necessary to warrant sanctions under 22 NYCRR § 130-1.1. Conduct is deemed frivolous only where it is completely without merit in law, undertaken primarily to delay or prolong the litigation, or asserts material factual statements that are false (*see* 22 NYCRR § 130-1.1[c]). The Court of Appeals has cautioned that sanctions are a discretionary remedy to be exercised sparingly and only where the conduct at issue clearly meets that standard (*see Levy v Carol Mgt. Corp.*, 260 AD2d 27, 33–34 [1st Dept 1999]). Consistent with Appellate Division, First Department, precedent, the mere failure to appear, without more, does not constitute sanctionable conduct absent a showing of willfulness, bad faith, or a pattern of dilatory behavior (*see Pickens v Castro*, 55 AD3d 443, 444 [1st Dept 2008]). The absence, standing alone, therefore does not rise to a level justifying the imposition of punitive or monetary sanctions. While Ms. Kim’s counsel further noted at oral argument on May 5, 2026, the substance of which is incorporated herein by reference, that Plaintiff’s counsel declined to agree to a discontinuance with prejudice, such a

disagreement reflects a strategic litigation decision rather than sanctionable conduct. Differences in litigation posture, without more, do not constitute frivolous or bad-faith conduct within the meaning of 22 NYCRR § 130-1.1(c), which is reserved for conduct that is completely without merit, undertaken to delay or harass, or based on knowingly false statements. The Court of Appeals has made clear that sanctions are not warranted merely because a legal position is unsuccessful (*Levy*, 96 NY2d at 589), and the Appellate Division, First Department, has likewise recognized that the failure of an argument, standing alone, does not render it frivolous (*Gottlieb v Wynne*, 159 AD3d 799, 801 [1st Dept 2018]). To hold otherwise would risk chilling zealous advocacy by subjecting counsel to sanctions for advancing colorable positions on behalf of their clients.

With respect to Defendant's application for legal fees in the amount of \$8,000, as articulated on the record and incorporated herein by reference, the court finds that such relief is not warranted. Under the well-settled "American Rule," attorneys' fees are incidents of litigation and may not be recovered absent a contractual agreement, statutory authorization, or court rule (see *Hooper Assoc., Ltd. v AGS Computers, Inc.*, 74 NY2d 487, 491 [1989]; *Matter of A.G. Ship Maintenance Corp. v Lezak*, 69 NY2d 1, 5 [1986]). Here, Ms. Kim has not established an entitlement to fees under any applicable provision. To the extent the request is premised on alleged frivolous litigation conduct, the court finds that the record does not support such a finding under 22 NYCRR § 130-1.1 (see *Levy*, 96 NY2d at 589; *Gottlieb*, 159 AD3d at 801). Accordingly, the request for attorneys' fees is denied.

Finally, for reasons previously articulated, the court declines to dismiss Count Three of the complaint at this juncture. Count Three, which asserts a claim on the written guaranty, is not the subject of the instant CPLR § 3211(a)(7) motion and is pleaded with sufficient particularity to withstand dismissal at the pleading stage. On a motion to dismiss pursuant to CPLR § 3211(a)(7), the court must accept the facts alleged as true and accord the plaintiff the benefit of every favorable inference (see *Leon*, 84 NY2d at 87–88; *Sokoloff*, 96 NY2d at 414). Under controlling precedent, a claim on a guaranty is adequately stated where the plaintiff alleges the existence of the guaranty, the underlying obligation, and the guarantor's failure to perform (see *Cooperatieve Centrale Raiffeisen-Boerenleenbank, B.A. v Navarro*, 25 NY3d 485, 492 [2015]; *Davimos v Halle*, 35 AD3d 270, 271 [1st Dept 2006]). Accepting the allegations as true and according Plaintiff the benefit of every favorable inference, the court finds that Count Three states a cognizable cause of action. As such, it shall remain.

Accordingly, it is

ORDERED that Defendant Jooyoung Kim's motion to dismiss Counts Four, Five, and Six of the Complaint as asserted against her is granted; and it is further

ORDERED that Counts Four, Five, and Six are dismissed as against Defendant Jooyoung Kim; and it is further

ORDERED that the dismissal is without prejudice to Plaintiff seeking leave to amend, upon a proper motion and proposed amended pleading, if Plaintiff can allege in good faith nonconclusory facts sufficient to state a claim against Defendant Jooyoung Kim; and it is further

ORDERED that the remaining claims, including Count Three as asserted against Defendant Jooyoung Kim, shall continue; and it is further

ORDERED that the court declines to impose sanctions against Plaintiff's counsel pursuant to 22 NYCRR § 130-1.1; and it is further

ORDERED that Defendant Jooyoung Kim's request for attorneys' fees in the amount of \$8,000, as placed on the record and incorporated herein by reference, is denied; and it is further

ORDERED that Count Three of the complaint, asserting a claim on the written guaranty, is not dismissed and shall remain pending; and it is further

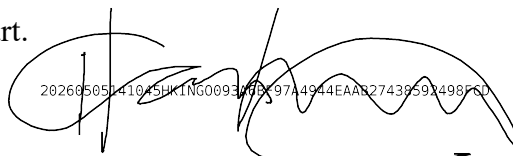
ORDERED that Defendant Jooyoung Kim shall serve a copy of this decision and order with notice of entry upon all parties within ten days of entry; and it is further

ORDERED that the balance of the court's determination shall proceed in accordance with the decision and order set forth above; and it is further

ORDERED that the parties are directed to appear for a preliminary conference on Tuesday June 9, 2026, at 2:15 at the courthouse located at 80 Centre Street, Room 308; and it is further

ORDERED that, in lieu of appearing for the preliminary conference, the parties may submit a proposed preliminary conference order, on consent, to the court via email at SFC-Part65@nycourts.gov no later than forty-eight (48) hours prior to the scheduled conference, and, upon the court's review and approval of such proposed order, the parties' personal appearance may be waived.

This constitutes the decision and order of the court.


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HASA A. KINGO, J.S.C.

5/5/2026
DATE

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