

NEW YORK COURT OF APPEALS

111 W. 57th Inv. LLC v. 111 W57 Mezz Inv. LLC

111 W. 57th Inv. (N.Y. Ct. App. 2026) · No. No. 41 · Decided May 28, 2026

SUMMARY

The New York Court of Appeals holds that a party's contractual sole-discretion clause does not eliminate the implied covenant of good faith and fair dealing. The court concludes that the plaintiff sufficiently pleaded that Apollo breached the implied covenant by assigning a mezzanine loan as part of an alleged scheme to strip the plaintiff of its equity in a real estate project. The court reinstates that claim but affirms dismissal of the tortious interference claims against Apollo and Spruce.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Wilson; Judge Rivera; Judge Troutman; Judge Ogden; Judge Singas; Judge Cannataro; Judge Halligan
JURISDICTION	New York Court of Appeals
DECIDED	May 28, 2026
DOCKET	No. 41
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff appealed from an order of Supreme Court, New York County, and the Appellate Division, First Department's modification of that order, concerning dismissal of claims for breach of the implied covenant of good faith and fair dealing and tortious interference with contract. The Court of Appeals granted leave to appeal, reinstated the implied-covenant claim against Apollo, affirmed dismissal of the tortious-interference claims, and remitted for further proceedings.
STANDARD OF REVIEW	On a motion to dismiss, the court assumes the complaint's factual allegations to be true, affords the plaintiff every favorable inference, and determines whether the alleged facts fit within a cognizable legal theory; it assesses the adequacy of the pleadings rather than the ultimate evidentiary merits.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	111 West 57th Investment LLC, et al. v. ACREFI Mortgage Lending, LLC, et al., Spruce Capital Partners LLC, et al.

TOPICS

implied covenant of good faith commercial litigation contracts uniform commercial code
intentional interference with contract

PRACTICE AREAS

commercial litigation contracts uniform commercial code torts real estate

QUESTIONS PRESENTED

1. Whether a contractual grant of sole discretion to assign a loan categorically exculpates the lender from the implied covenant of good faith and fair dealing.
2. Whether plaintiff sufficiently pleaded that Apollo breached the implied covenant by assigning the junior mezzanine loan as part of an alleged scheme to deprive plaintiff of the benefit of its bargain.
3. Whether plaintiff sufficiently pleaded tortious interference with the joint venture agreement against Apollo and Spruce.

HOLDINGS

1. A party's sole discretion with respect to a contractual right does not, by itself, exculpate that party from complying with the implied covenant of good faith and fair dealing. The discretion must be exercised in a manner consistent with the contract's purpose and may not be used arbitrarily, irrationally, or in bad faith to destroy or injure the other party's right to receive the fruits of the agreement.
2. The second amended complaint sufficiently pleaded that Apollo breached the implied covenant in the Pledge Agreement by assigning the junior mezzanine loan to Spruce as part of an alleged backroom deal designed to strip plaintiff of the value of its equity investment.
3. The tortious-interference claims against Apollo and Spruce were insufficiently pleaded and remained dismissed.

KEY QUOTATIONS

*"We concur with the prevailing view among the Appellate Division departments—that a party's "sole discretion" with respect to a right does not exculpate that party from complying with the implied covenant with respect to that right." (at *3)*

*"Even if Apollo had the sole discretion to assign the junior mezzanine loan, doing so as part of an alleged backdoor deal to appropriate the value of plaintiff's equity by conspiring with others to facilitate the scheme states a legally cognizable claim for breach of the implied covenant." (at *9)*

FACTUAL BACKGROUND

111 West 57th Investment LLC invested approximately \$65 million in a joint venture developing a luxury residential tower. After the project became overleveraged and the mezzanine loan went into default, Apollo and the joint venture restructured the debt into senior and junior mezzanine loans secured by the joint venture's equity. Apollo assigned the \$25 million junior mezzanine loan to Spruce, which promptly pursued strict

foreclosure under UCC 9-620 and acquired the project's equity, allegedly pursuant to a collusive arrangement involving Apollo, Spruce, and the project sponsor that deprived plaintiff of its investment while preserving benefits for the sponsor.

PROCEDURAL HISTORY

Supreme Court dismissed the tortious-interference claims but allowed plaintiff's implied-covenant claim against Apollo to proceed. The Appellate Division dismissed the implied-covenant claim on the ground that Apollo's sole-discretion assignment right could not be limited by the implied covenant and otherwise affirmed. The Court of Appeals modified the Appellate Division order by reinstating the implied-covenant claim and remitting to Supreme Court, while affirming dismissal of the tortious-interference claims.

DISPOSITION

other

REMAND INSTRUCTIONS

The second cause of action of the second amended complaint, alleging breach of the implied covenant against Apollo, is reinstated. The matter is remitted to Supreme Court, New York County, for further proceedings on that cause of action not inconsistent with the Court of Appeals' decision.

CASES CITED

- Singh v. City of New York, 40 NY3d 138 [2023]
- Kalisch-Jarcho, Inc. v. City of New York, 58 NY2d 377 [1983]
- Kirke La Shelle Co. v. Paul Armstrong Co., 263 NY 79 [1933]
- Cordero v. Transamerica Annuity Serv. Co., 39 NY3d 399 [2023]
- Dalton v. Educ. Testing Serv., 87 NY2d 384 [1995]
- Rowe v. Great Atl. & Pac. Tea Co., 46 NY2d 62 [1978]
- 511 W. 232nd Owners Co. v. Jennifer Realty Co., 98 NY2d 144 [2002]
- Tr. Funding Assoc., LLC v. Capital One Equip. Fin. Co., 149 AD3d 23 [1st Dept 2017]
- Cambridge Investments LLC v. Prophecy Asset Mgt., LP, 188 AD3d 521 [1st Dept 2020]
- Greenland Asset Mgt. Co. v. MicroCloud Hologram, Inc., 244 AD3d 528 [1st Dept 2025]
- Gutt v. N. Am. Partners in Anesthesia, LLP, 237 AD3d 1063 [2d Dept 2025]
- Ahmed Elkoulily, M.D., P.C. v. New York State Catholic Healthplan, Inc., 153 AD3d 768 [2d Dept 2017]
- Scheer v. Elam Sand & Gravel Co., 177 AD3d 1290 [4th Dept 2019]
- Gizara v. New York Times Co., 80 AD3d 1026 [3d Dept 2011]
- 34-06 73, LLC v. Seneca Ins. Co., 39 NY3d 44 [2022]
- Leon v. Martinez, 84 NY2d 83 [1994]
- Cortlandt St. Recovery Co. v. Bonderman, 31 NY3d 30 [2018]
- Empresas Cablevision, S.A.B. de C.V. v. JPMorgan Chase Bank, N.A., 680 F Supp 2d 625 [SD NY 2010]

- Norte v. WorldBusiness Capital, Inc., 2015 WL 7730980 [SD NY 2015]
- Moran v. Erk, 11 NY3d 452 [2008]
- Erk v. Moran, 11 NY3d 452 [2008]
- In re January 2021 Short Squeeze Trading Litigation, 76 F4th 1335 [11th Cir 2023]
- Third Story Music, Inc. v. Waits, 41 Cal App 4th 798 [1995]
- Glaxo Group Ltd. v. DRIT LP, 248 A3d 911 [Del 2021]
- Charlotte Broadcasting, LLC v. Davis Broadcasting of Atlanta, L.L.C., 2015 WL 3863245 [Del Super Ct June 10, 2015], affd, 134 A3d 759 [Del 2016]
- Cygnus Opportunity Fund, LLC v. Washington Prime Group, LLC, 302 A3d 430 [Del Ch 2023]
- AmBase Corp. v. 111 W. 57th Sponsor LLC, 2022 NY Slip Op 31503[U] [Sup Ct, NY County 2022]

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-york-court-of-appeals-new-york-court-of-appeals/2026/111-w-57th-inv-llc-v-111-w57-mezz-inv-llc-6t976wc0>