

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

Peck v. Milbank LLP

Peck, 2026 NY Slip Op 00322 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Index No. 152290/22; Appeal No. 5693; Case No. 2025-00947 · Decided January 27, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed the denial of plaintiffs’ motion for leave to file a second amended complaint asserting breach of fiduciary duty claims against attorneys involved in trust, estate, promissory-note, and power-of-appointment matters. The court held that the proposed allegations were insufficiently specific, speculative, or contradicted by documentary evidence, and that plaintiffs had abandoned certain arguments. The court also addressed the standards governing amendment of pleadings under CPLR 3025(b).

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Webber, J.P.; Gesmer, J.; Higgitt, J.; Michael, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	January 27, 2026
DOCKET	Index No. 152290/22; Appeal No. 5693; Case No. 2025-00947
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order of Supreme Court, New York County, denying their motion for leave to file a second amended complaint asserting a breach of fiduciary duty claim against defendants.
STANDARD OF REVIEW	The denial of leave to amend a pleading is reviewed for an abuse of discretion; leave should be freely given absent prejudice or surprise, but a proposed amendment may be denied when it is palpably insufficient or clearly devoid of merit.
PRECEDENTIAL VALUE	Published appellate decision
PARTIES	Ian Peck, et al. v. Milbank LLP, et al.

TOPICS

motion to amend trust administration trustee duties breach of trust appellate procedure

PRACTICE AREAS

civil procedure appellate procedure trusts and estates legal ethics

QUESTIONS PRESENTED

1. Whether Supreme Court properly denied plaintiffs leave to file a second amended complaint asserting breach of fiduciary duty.
2. Whether the proposed allegations adequately pleaded that defendants induced unreasonable action concerning promissory-note obligations.
3. Whether the proposed allegations adequately pleaded that defendants breached fiduciary duties by preparing or using powers of appointment that altered a beneficiary interest.
4. Whether the alleged conflicts of interest involving attorney Georgiana Slade supported a breach of fiduciary duty claim.
5. Whether plaintiffs or defendants preserved arguments concerning the statute of limitations and administration of the estate before the grantor's death.

HOLDINGS

1. Defendants abandoned their argument that the proposed breach-of-fiduciary-duty claim was time-barred by failing to challenge the adverse statute-of-limitations ruling in their prior appeal.
2. Plaintiffs abandoned any argument concerning defendants' administration of the estate before the grantor's death by failing to object to the initial adverse ruling on appeal and by abandoning the argument in their motion for leave to amend.
3. Leave to amend a pleading should be freely given absent prejudice or surprise, but a proposed amendment may be denied when it is palpably insufficient or clearly devoid of merit.
4. Supreme Court properly denied leave to amend because plaintiffs alleged no specific facts showing what defendants did or that the estate representatives took an unreasonable course of action concerning the unpaid promissory notes.
5. Plaintiffs failed to plead facts supporting a claim that defendants breached fiduciary duties by preparing the 2017 power of appointment or altering Ian Peck's beneficiary interest.
6. Allegations that Slade had conflicts of interest involving the Horseneck Trust and other real-estate ventures did not support a breach-of-fiduciary-duty claim.

KEY QUOTATIONS

“It is well settled that leave to amend shall be freely given absent prejudice or surprise” (at 1)

“need not establish the merit of its proposed new allegations but [must] simply show that the proffered amendment is not palpably insufficient or clearly devoid of merit” (at 1)

FACTUAL BACKGROUND

Plaintiffs alleged that defendants, who owed fiduciary duties to a trust and its beneficiaries, induced the estate's preliminary executor to pursue unpaid promissory notes owed by Ian Peck to the grantor and prepared powers of appointment that altered Ian's beneficiary interest. Plaintiffs also alleged that attorney Georgiana Slade had undisclosed conflicts involving real-estate ventures connected to her father and the grantor. The court found that the proposed allegations lacked specific facts showing improper conduct, inducement, unreasonable action, or an actionable conflict, and that documentary evidence refuted the alleged diminution of the estate concerning the Horseneck Trust interest.

PROCEDURAL HISTORY

Supreme Court, New York County (Andrew Borrok, J.), entered an order on January 17, 2025, denying plaintiffs' motion for leave to file a second amended complaint. The First Department unanimously affirmed the order with costs, concluding that the proposed fiduciary-duty allegations were insufficient and that several arguments had been abandoned.

DISPOSITION

affirmed

CASES CITED

- Peck v. Milbank, 242 AD3d 610, 611 (1st Dept 2025)
- McHale v. Anthony, 41 AD3d 265, 266 (1st Dept 2007)
- Matter of Correction Officers' Benevolent Assn. v. New York City Dept. of Corr., 157 AD3d 643, 643 (1st Dept 2018)
- Llach v. L.I.C.C. Realty Co., 232 AD3d 548, 548 (1st Dept 2024)
- Perrotti v. Becker, Glynn, Melamed & Muffly LLP, 82 AD3d 495, 498 (1st Dept 2011)
- Favourite Ltd. v. Cico, 42 NY3d 250, 256 (2024)
- Matter of Clarke, 12 NY2d 183, 187 (1962)
- Power Play 1 LLC v. Norfolk Tide Baseball Club, LLC, 2017 WL 5312193, *3-4, 2017 U.S. Dist. LEXIS 187365, *8-10 (S.D.N.Y. Nov. 13, 2017) (No. 17cv4831)

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