

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)

OPINION

PER CURIAM.

Peck v Milbank LLP (2026 NY Slip Op 00322) Peck v Milbank LLP 2026 NY Slip Op 00322
Decided on January 27, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: January 27, 2026 Before: Webber, J.P., Gesmer, Higgitt, Michael, Chan, JJ. Index No. 152290/22|Appeal No. 5693|Case No.

2025-00947| [*1]Ian Peck, et al., Plaintiffs-Appellants, v Milbank LLP, et al. Defendants-Respondents.

Press Koral LLP, New York (Matthew J. Press of counsel), for appellants. Milbank LLP, New York (Robert C. Hora of counsel), for respondents. Order, Supreme Court, New York County (Andrew Borrok, J.), entered January 17, 2025, which denied plaintiffs' motion for leave to file a second amended complaint alleging a breach of fiduciary duty claim against defendants, unanimously affirmed, with costs.

Defendant attorneys abandoned their argument, raised in response to plaintiffs' instant appeal, that the proposed breach of fiduciary claim was time-barred, as they did not challenge an adverse statute of limitations ruling on their prior appeal from Supreme Court's July 29, 2024 order (see *Peck v Milbank*, 242 AD3d 610, 611 [1st Dept 2025]; *McHale v Anthony*, 41 AD3d 265, 266 [1st Dept 2007]; see also *Matter of Correction Officers' Benevolent Assn. v New York City Dept. of Corr.*, 157 AD3d 643, 643 [1st Dept 2018]).

Plaintiffs abandoned any argument regarding defendants' administration of the estate prior to grantor's death by not objecting to the initial adverse ruling on appeal addressing that issue (CPLR 5501), as well as by abandoning the argument in moving for leave to serve a second amended complaint (see *Llach v L.I.C.C. Realty Co.*, 232 AD3d 548, 548 [1st Dept 2024]).

It is well settled that leave to amend shall be freely given absent prejudice or surprise (CPLR 3025[b]). A movant "'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'" (*Perrotti v Becker*, Glynn, Melamed & Muffly LLP, 82 AD3d 495, 498 [1st Dept 2011] [internal quotation marks omitted]; see also *Favourite Ltd. v Cico*, 42 NY3d 250, 256 [2024]).

Here, Supreme Court providently exercised its discretion in denying plaintiffs' motion for leave to file a second amended complaint. It is undisputed that defendants owed a fiduciary duty to both the trust and its beneficiaries (see *Matter of Clarke*, 12 NY2d 183, 187 [1962]). Plaintiff s allege that defendants violated that duty by inducing or counseling the estate's preliminary executor to take unreasonable action on outstanding note obligations owed by the individual plaintiff, Ian Peck, to the grantor, Ian's father.

Specifically, they allege that the executor was induced to commence an action on the unpaid promissory notes. However, plaintiffs have set forth no specific allegations as to what defendants did or that the estate representatives took an unreasonable course of action. While plaintiffs point to a provision in the revocable trust which seemingly referenced the notes and which plaintiffs assert sets forth the action to be taken regarding the notes, the precise meaning of the provision was unclear as to the timing and course of action to be taken in addressing the outstanding note obligations owed to the Estate (see *Peck*, 242 AD3d at 610-611).

Plaintiffs have also failed to allege facts as would support a claim that defendants breached a fiduciary duty to the preliminary executor and to Ian's beneficiary interest by preparing a 2017 power of appointment (POA) that altered Ian's beneficiary interest.

The POA was reviewed by an independent trustee to the controlling trust and executed by both the preliminary executor and the independent trustee. No specific allegations were made as to how the preliminary executor was allegedly induced by defendants to exercise the POA.

The POA was thereafter altered in 2020 while the preliminary executor was represented by new counsel. While the language authorizing the POA in the trust provision limited the circumstances under which the preliminary executor could exercise it, such provision did not expressly impose a requirement of good faith or of reasonableness with respect to the donee's exercise of such power (see Estates, Powers and Trusts Law § 10-6.2).

Plaintiffs' allegation that individual defendant, attorney Georgiana Slade (Slade) had an undisclosed alleged conflict of interest concerning a commercial real estate venture in which her father Mr. Jarvis and the grantor shared an interest in (the Horseneck Trust), as well as other real estate ventures the grantor and Mr. Jarvis co-owned, also fails to support a breach of fiduciary duty claim.

As to the Horseneck Trust, the grantor, who held a 40% interest therein, also held 5% of that 40% interest as a nominee in favor of Mr. Jarvis. Upon the grantor's death in April 2016, the preliminary executor assigned to Mr. Jarvis the 5% interest.

Under the nominee agreement, Mr. Jarvis "was entitled to 5% of all the benefits of the entire ownership interest in the Property." Plaintiffs' allegations that the assignment of the 5% interest in the Horseneck Trust diminished the grantor's estate is refuted by the documentary evidence, as the grantor only held that interest as nominee for Mr. Jarvis. Plaintiffs also alleged that Slade was motivated by a conflict of interest to cut Ian out of the grantor's estate, by means of the POAs, because she stood to inherit other interests in certain real property ventures that the grantor and Mr. Jarvis co-owned, and because she did not want to co-own such interests with Ian.

These allegations are speculative and unsupported. The proposed SAC does not allege facts to show that Slade shared her father's alleged animosity towards Ian, that she knew she stood to inherit the shared investments from her father, or that having a shared financial interest would adversely affect her professional judgment in the context of the consolidated note and probate litigation (see *Power Play 1 LLC v Norfolk Tide Baseball Club, LLC*, 2017 WL 5312193, *3-4, 2017 US Dist LEXIS 187365, *8-10 [SD NY, Nov.

13, 2017, No. 17cv4831]; see also Rules of Prof Conduct [22 NYCRR 1200.0] rule 1.7). We have considered plaintiffs' remaining arguments and find them unavailing. THIS CONSTITUTES THE

DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST
DEPARTMENT. ENTERED: January 27, 2026

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