

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

Motcomb Estates, Ltd. v. CMB Export Infrastructure Investment
Group 48, LP

2026 NY Slip Op 03234 (N.Y. Ct. App. 2026) · No. Index No. 653343/24; Appeal No. 6702; Case No. 2025-01517 · Decided May 21, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed dismissal of a malicious prosecution action under CPLR 3211(a)(7). The court held that plaintiffs failed to sufficiently allege the absence of probable cause, noting that prior orders created a presumption of probable cause that plaintiffs did not overcome. The court also held that its reversal of orders in the underlying action did not establish a lack of probable cause when that action was commenced.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Moulton, J.P.; González, J.; O'Neill Levy, J.; Chan, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 21, 2026
DOCKET	Index No. 653343/24; Appeal No. 6702; Case No. 2025-01517
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed from an order of Supreme Court, New York County, granting defendants' motion to dismiss the complaint under CPLR 3211(a)(7).
STANDARD OF REVIEW	Review of dismissal under CPLR 3211(a)(7), examining whether the complaint sufficiently stated a cause of action.
PRECEDENTIAL VALUE	Published
PARTIES	Motcomb Estates, Ltd., et al. v. CMB Export Infrastructure Investment Group 48, LP, et al.

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QUESTIONS PRESENTED

1. Whether the complaint sufficiently alleged that defendants lacked probable cause to initiate or continue the underlying action, as required for a malicious-prosecution claim.
2. Whether the prior motion court's orders and consideration of the Term Sheet created a presumption of probable cause that plaintiffs' allegations failed to overcome.
3. Whether reversal of the prior motion court's orders established that defendants lacked probable cause when they commenced the underlying action.

HOLDINGS

1. The complaint was properly dismissed under CPLR 3211(a)(7) because it failed to sufficiently allege the absence of probable cause to initiate or continue the underlying action.
2. Reversal of the prior motion court's orders did not establish or conclusively determine that defendants lacked probable cause to commence the underlying action in the first instance.

KEY QUOTATIONS

“The complaint, which asserted a single cause of action, for malicious prosecution, was properly dismissed for failure to sufficiently allege the absence of probable cause to initiate or continue the underlying action”
(at *1)

“The reversal of the motion court's orders by this Court is not dispositive of whether defendants had probable cause to commence the underlying action in the first instance” (at *1)

FACTUAL BACKGROUND

Plaintiffs brought a malicious-prosecution claim based on a prior action in which defendants asserted that plaintiffs concealed transfer restrictions in a Participation Agreement and their negative effect on defendants. In the prior action, the motion court granted plaintiffs' motion for a preliminary injunction, denied defendants' motion to dismiss, and denied defendants' motions to renew; the motion court also considered a Term Sheet and alleged fraudulent misrepresentations. Plaintiffs relied on those materials and the later reversal of the prior-action orders to argue that defendants lacked probable cause.

PROCEDURAL HISTORY

Plaintiffs asserted a single cause of action for malicious prosecution based on defendants' prior action. Supreme Court dismissed the complaint for failure to sufficiently allege lack of probable cause, and the Appellate Division unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Cold Spring Advisory Group, LLC v. National Sec. Corp., 226 AD3d 612, 613 (1st Dept 2024)
- Napoli v. James, 204 AD3d 413, 413-414 (1st Dept 2022)
- Hornstein v. Wolf, 109 AD2d 129, 132 (2d Dept 1985), affd, 67 NY2d 721, 723 (1986)
- CMB Export Infrastructure Inv. Group 48, LP v. Motcomb Estates, Ltd., 223 AD3d 513 (1st Dept 2024)
- I.G. Second Generation Partners, L.P. v. Duane Reade, 17 AD3d 206, 207 (1st Dept 2005)
- Web Mgt. LLC v. Sphere Drake Ins., 302 AD2d 273, 273 (1st Dept 2003)

OPINION

Motcomb Estates, Ltd. v. CMB Export Infrastructure Inv. Group 48, LP 2026 NY Slip Op 03234
PER CURIAM.

Motcomb Estates, Ltd. v CMB Export Infrastructure Inv. Group 48, LP - 2026 NY Slip Op 03234
skip to main content It appears you are using Adblock. Please disable Adblock to best experience our website. Law Reporting Bureau Thomas J.K. Smith, State Reporter Court Decisions Resources About Home All Court Decisions Decisions Motcomb Estates, Ltd. v CMB Export Infrastructure Inv. Group 48, LP 2026 NY Slip Op 03234 May 21, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This decision is uncorrected and subject to revision before publication in the Official Reports. Motcomb Estates, Ltd., et al., Plaintiffs-Appellants, v CMB Export Infrastructure Investment Group 48, LP, et al., Defendants-Respondents. Decided and Entered: May 21, 2026 Index No. 653343/24|Appeal No. 6702|Case No. 2025-01517| Before: Moulton, J.P., González, O'Neill Levy, Chan, Hagler, JJ. Otterbourg P.C., New York (Richard G. Haddad of counsel), for appellants Lewis Brisbois Bisgaard & Smith LLP, New York (Jonathan Preziosi of the bar of the State of New Jersey, admitted pro hac vice, of counsel), for respondents. [*1] Order, Supreme Court, New York County (Nancy M. Bannon, J.), entered on or about February 17, 2025, which granted defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7), unanimously affirmed, without costs. The complaint, which asserted a single cause of action, for malicious prosecution, was properly dismissed for failure to sufficiently allege the absence of probable cause to initiate or continue the underlying action (see Cold Spring Advisory Group, LLC v National Sec. Corp. , 226 AD3d 612 , 613 [1st Dept 2024]). A presumption of probable cause was created by the motion court's orders in the prior action granting plaintiff's motion for a preliminary injunction, denying defendants' motion to dismiss, and denying defendants' motions to renew . Plaintiffs' allegations were insufficient to overcome this presumption. Notably, in the motion to renew, the motion court considered the effect of the Term Sheet on which plaintiffs now rely as evidence that defendants

knew their claim in the prior action was without merit (see Napoli v James , 204 AD3d 413, 413-414 [1st Dept 2022]; Hornstein v Wolf , 109 AD2d 129, 132 [2d Dept 1985], affd 67 NY2d 721, 723 [1986]). Neither the Term Sheet nor any of the alleged fraudulent misrepresentations that plaintiffs assert were contradicted by the Term Sheet persuaded the motion court that defendants did not have a colorable claim that plaintiffs concealed from defendants the transfer restrictions included in the Participation Agreement, and their negative effect on defendants. The reversal of the motion court's orders by this Court (CMB Export Infrastructure Inv. Group 48, LP v Motcomb Estates, Ltd. , 223 AD3d 513 [1st Dept 2024]) is not dispositive of whether defendants had probable cause to commence the underlying action in the first instance (see I.G. Second Generation Partners, L.P. v Duane Reade , 17 AD3d 206, 207 [1st Dept 2005]; see also Web Mgt. LLC v Sphere Drake Ins. , 302 AD2d 273, 273 [1st Dept 2003]). 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: May 21, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

PER CURIAM.

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Jersey, admitted pro hac vice, of counsel), for respondents.

Order, Supreme Court, New York County (Nancy M. Bannon, J.), entered on or about February 17, 2025, which granted defendants' motion to dismiss the complaint pursuant to CPLR 3211(a)(7), unanimously affirmed, without costs.

The complaint, which asserted a single cause of action, for malicious prosecution, was properly dismissed for failure to sufficiently allege the absence of probable cause to initiate or continue the underlying action (*see Cold Spring Advisory Group, LLC v National Sec. Corp.*, 226 AD3d 612, 613 [1st Dept 2024]).

A presumption of probable cause was created by the motion court's orders in the prior action granting plaintiff's motion for a preliminary injunction, denying defendants' motion to dismiss, and denying defendants' motions to renew.

Plaintiffs' allegations were insufficient to overcome this presumption. Notably, in the motion to renew, the motion court considered the effect of the Term Sheet on which plaintiffs now rely as evidence that defendants knew their claim in the prior action was without merit (*see Napoli v James*, 204 AD3d 413, 413-414 [1st Dept 2022]; *Hornstein v Wolf*, 109 AD2d 129, 132 [2d Dept 1985], *affd* 67 NY2d 721, 723 [1986]).

Neither the Term Sheet nor any of the alleged fraudulent misrepresentations that plaintiffs assert were contradicted by the Term Sheet persuaded the motion court that defendants did not have a colorable claim that plaintiffs concealed from defendants the transfer restrictions included in the Participation Agreement, and their negative effect on defendants. The reversal of the motion court's orders by this Court (*CMB Export Infrastructure Inv. Group 48, LP v Motcomb Estates, Ltd.*, 223 AD3d 513 [1st Dept 2024]) is not dispositive of whether defendants had probable cause to commence the underlying action in the first instance (*see I.G. Second Generation Partners, L.P. v Duane Reade*, 17 AD3d 206, 207 [1st Dept 2005]; *see also Web Mgt. LLC v Sphere Drake Ins.*, 302 AD2d 273, 273 [1st Dept 2003]).

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: May 21, 2026

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