

**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.

OPINION

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PER CURIAM.

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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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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

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