

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

ANS 1 Corp. v. Yosef

2025 NY Slip Op 06684 · No. 2023-09441 · Decided December 3, 2025

SUMMARY

The New York Appellate Division, Second Department, reversed an order denying Rothkrug Rothkrug & Spector, LLP's motion to dismiss a third-party complaint. The court held that the claims for fraud, defamation, abuse of process, and malicious prosecution were inadequately pleaded and directed dismissal of those claims insofar as asserted against Rothkrug.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Second Judicial Department
WRITING FOR THE COURT	Mark C. Dillon, J.P.; Linda Christopher, J.; Lourdes M. Ventura, J.; James P. McCormack, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Second Department
DECIDED	December 3, 2025
DOCKET	2023-09441
DISPOSITION	reversed
PROCEDURAL POSTURE	Third-party defendant Rothkrug Rothkrug & Spector, LLP appealed from an order denying its CPLR 3211(a) motion to dismiss the third-party complaint insofar as asserted against it.
STANDARD OF REVIEW	On a CPLR 3211(a)(7) motion, the court accepts the complaint's factual allegations as true, gives the plaintiff the benefit of every favorable inference, and determines only whether the alleged facts fit within a cognizable legal theory.
PRECEDENTIAL VALUE	Published
PARTIES	Rothkrug Rothkrug & Spector, LLP v. Rosso Law Firm, P.C.

TOPICS

- motions to dismiss
- pleadings
- fraud
- defamation
- abuse of process

PRACTICE AREAS

civil procedure

torts

commercial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether the third-party complaint adequately pleaded fraud against Rothkrug under CPLR 3211(a)(7) and CPLR 3016(b).
2. Whether the third-party complaint adequately pleaded defamation under CPLR 3016(a).
3. Whether the alleged commencement of the underlying lawsuit supported a claim for abuse of process.
4. Whether the third-party complaint adequately pleaded malicious prosecution of a civil action.

HOLDINGS

1. The third-party complaint failed to state a cause of action for fraud against Rothkrug because it did not allege that Rosso Law justifiably relied on any alleged misrepresentation contained in or made in connection with the purported fraudulent shareholder agreement.
2. The third-party complaint failed to state a cause of action for defamation because it did not allege that the challenged statement or agreement exposed Rosso Law to public contempt, hatred, or ridicule, and it failed to sufficiently allege how the statements were published and to whom.
3. The third-party complaint failed to state a cause of action for abuse of process because its allegations were based solely on the mere commencement of a lawsuit.
4. The third-party complaint failed to state a cause of action for malicious prosecution because it did not allege that Rothkrug prosecuted a civil action against Rosso Law without probable cause or that the action terminated in Rosso Law's favor.

KEY QUOTATIONS

“When deciding a motion to dismiss pursuant to CPLR 3211(a)(7) for failure to state a cause of action, “the court must ‘accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory’”

“The mere commencement of a lawsuit cannot serve as the basis for a cause of action alleging abuse of process”

FACTUAL BACKGROUND

The underlying derivative action alleged financial misconduct and fraud involving, among others, Rosso Law. Rosso Law's third-party complaint alleged that Rothkrug was involved with an allegedly fraudulent shareholder agreement and asserted claims for fraud, defamation, abuse of process, and malicious prosecution. The allegations did not establish justifiable reliance by Rosso Law, the required particulars of defamatory publication, abuse of process beyond commencement of a lawsuit, or a civil action prosecuted by Rothkrug without probable cause that terminated favorably to Rosso Law.

PROCEDURAL HISTORY

ANS 1 Corp. and others commenced an underlying derivative action in December 2022. Rosso Law commenced a third-party action in March 2023 against Rothkrug and Noah Goldstein asserting claims for fraud, defamation, abuse of process, and malicious prosecution. The Supreme Court, Queens County, denied Rothkrug's motion to dismiss under CPLR 3211(a), and the Appellate Division reversed and granted dismissal of all claims asserted against Rothkrug.

DISPOSITION

reversed

CASES CITED

- Rudovic v. Law Off. of Timothy A. Green, 200 A.D.3d 814, 815
- Leon v. Martinez, 84 N.Y.2d 83, 87-88
- Eurycleia Partners, LP v. Seward & Kissel, LLP, 12 N.Y.3d 553, 559
- Clevenger v. Yuzek, 222 A.D.3d 931, 935
- Benjamin v. Yeroushalmi, 178 A.D.3d 650, 654
- Whelan v. Cuomo, 220 A.D.3d 979, 980-981
- Greenberg v. Spitzer, 155 A.D.3d 27, 41
- Lemieux v. Fox, 135 A.D.3d 713, 714
- Horbul v. Mercury Ins. Group, 64 A.D.3d 682, 683
- Starr v. Akdeniz, 162 A.D.3d 948, 950
- CSI Group, LLP v. Harper, 153 A.D.3d 1314, 1320
- Lynn v. McCormick, 153 A.D.3d 688, 688
- Kaufman v. Kaufman, Kaufman v. Kaufman, 206 A.D.3d 805, 807-808
- Maspeth Fed. Sav. & Loan Assn. v. Elizer, 197 A.D.3d 1253, 1254-1255
- Furgang & Adwar, LLP v. Fiber-Shield Indus., Inc., 55 A.D.3d 665, 666