

# New York Commercial Division Round-Up

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## [Commercial Division Provides a Reminder to Practitioners that Failing to Plead All Elements of a Breach of Contract Action Will Result in Dismissal](#)

By [Sean Kirby](#)

It is a basic rule of pleading that in order to state a cause of action, all elements of a cause of action must be pled in a complaint. However, because “notice pleading” is all that is required, the temptation exists to be overly vague when pleading causes of action. In *GS Agrifuels Corp. v. Chaykin*, Index No. 101401/2009 (Sup. Ct. N.Y. County August 3, 2010) (“Chaykin”), the Commercial Division provided practitioners with a reminder that failing to plead all elements of a claim will result in dismissal for failure to state a cause of action.

In *Chaykin*, Justice Richard B. Lowe III dismissed all six causes of action in plaintiff’s complaint pursuant to CPLR 3211(a)(7) finding that plaintiff failed to properly state any causes of action. Of particular note, Justice Lowe found that plaintiff failed to plead two of the four necessary elements for breach of contract. As discussed by the court, the elements of a breach of contract claim in New York are “formation of a contract between the parties, performance by the plaintiff, the defendant’s failure to perform, and resulting damage.” *Chaykin*, at pp. 4-5 (quoting *Flomenbaum v. New York Univ.*, 71 A.D. 3d 80, 91 (1st Dept. 2009) (citing *Clearmont Prop., LLC v. Eisner*, 58 A.D.3d 1052, 1055 (1st Dept. 2009))).

First, the court found that plaintiff failed to plead the necessary element that it performed its own obligations under the agreement at issue. Indeed, the court noted that no-where in the complaint did plaintiff expressly state that it performed its own contractual obligations. This oversight alone made the breach of contract action improper as pled.

Second, the court found that plaintiff failed to properly allege that defendants breached the agreement at issue. In the complaint, plaintiff relied on three different sections of the agreement to support its breach of contract claim. However, the Court found that even though plaintiff listed the sections of the agreement allegedly breached by defendants, plaintiff failed to allege *how* defendants actually breached those provisions. For instance, one provision of the agreement states that the parties agreed to purchase and sell acquisition shares which would be free of all encumbrances. However, while purporting to allege that defendants breached this provision, plaintiff failed to allege that any encumbrances on the acquisition shares actually existed. Likewise, plaintiff alleged that the defendants breached sections of the agreement which

provided for general warranties that the seller had the power to transfer shares and that the transfer of shares does not constitute a default of any agreement to which the seller is a party. The court found that plaintiff failed to properly allege breaches of these provisions because plaintiff never alleged that defendants did not have the power or authority to transfer the shares, and that defendants were a party to a related agreement. Since plaintiff failed to properly plead two of the four elements of a breach of contract claim, the Court dismissed the claim pursuant to CPLR 3211(a)(7) for failure to state a cause of action.

In light of the *Chaykin* decision, practitioners should be reminded that while pleadings need to be carefully crafted, at a minimum, care must be taken to ensure that each of the elements of the cause of action are asserted, or else the complaint will be ripe for dismissal for failure to state a cause of action.

For further information, please contact [Sean J. Kirby](#) at (212) 634-3023.