

Clients & Friends Memo

Sacred Guarantees Survive: *Lions Gate* Notes Guarantee and Tortious Interference Claims Advance, Other Theories Fall Short

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On March 17, 2026, Justice Joel M. Cohen of the New York Supreme Court, Commercial Division, issued a mixed ruling in *CPPIB Credit Investments II Inc. v. Lions Gate Entertainment Corp.*, a dispute regarding Lions Gate's liability management exercise. The Court held that minority noteholders had plausibly alleged that certain amendments to the indenture violated the "sacred rights" provision because those amendments modified the form of the notes guarantee and enabled the release of guarantors constituting all or substantially all of the value of the guarantees without the consent of each affected holder. However, the Court dismissed the minority noteholders' breach of contract claims regarding other sacred rights provisions, including for amendments concerning reduction of principal, rights of holders to enforce payment of the notes, and reduction of redemption premiums. Generally, the Court seems to distinguish between modifications that changed the plain language of provisions expressly protected by the plaintiffs' sacred rights, and those only affected indirectly and/or economically. The Court also permitted the plaintiffs' tortious interference claims to proceed against an equity sponsor. Index No. 654398/2024, NYSCEF No. 234 (N.Y. Sup. Ct. Mar. 17, 2026).

Background

Lions Gate is a movie studio that distributed a number of successful films, including *Hunger Games* and *Twilight*. In 2016, Lions Gate spent \$4.4 billion to acquire Starz, a former cable network that became a digital subscription platform. The Starz acquisition purportedly led to a decline in Lions Gate's stock price.

The 2021 Indenture

In 2021, Lions Gate issued approximately \$1 billion of senior notes under an indenture, which were scheduled to mature in 2029. The senior notes were guaranteed by entities affiliated with Lions Gate's studio business, as well as entities affiliated with Starz. The indenture authorized the issuer and its subsidiaries to incur additional debt, subject to compliance with the indenture's debt and lien baskets. The indenture also restricted the issuer's ability to make certain payments (such as

dividends and capital stock), execute on transactions with affiliates worth more than \$30 million (unless certain guarantees were provided), and sell assets for less than fair market value. Finally, the indenture required the issuer to pay the notes in full upon a change of control and for the issuer to cause certain affiliates to become guarantors under the indenture.

Most amendments to the indenture required the consent of the majority noteholders. However, the indenture included certain “sacred rights” provisions that protected noteholders from modifications to their key contractual rights without their express consent. The sacred rights included limitations on amendments that: (i) “modify the form of the Notes Guarantee in any manner adverse to the Holders” or release the guarantors constituting “all or substantially all of the value of the Notes Guarantees”; (ii) reduce principal or extend the stated maturity of any note; (iii) reduce the redemption premium or change the time in which a note may be redeemed or repurchased; or (iv) amend the rights of any noteholder to enforce payment of the notes.

The indenture also provided that the guarantors may be released from their obligations under the notes guarantee upon the occurrence of certain events, including: the sale or other disposition of substantially all of the assets of the guarantor in compliance with the indenture; the proper designation of any “Restricted Subsidiary” that is a guarantor as an “Unrestricted Subsidiary”; the issuer legally defeasing the notes in accordance with the indenture; and the issuer’s election to release a guarantor from the notes guarantee.

The Separation Transaction and Litigation

In 2023, Lions Gate announced that it had entered into a business combination arrangement with a special purpose acquisition company, which was sponsored by Eagle Equity. Under that arrangement, Lions Gate would transfer its valuable television and movie studio (now known as LG Studios) to an affiliate of the special purpose acquisition company, leaving behind a legacy Lions Gate business that included only the Starz segment.

Lions Gate engaged in a series of transactions with a select group of noteholders to effectuate the separation. These transactions included: (i) amending the indenture to eliminate key covenants and guarantees that otherwise would have prohibited the separation transaction; (ii) amending the indenture to remove events of default and to add several provisions enabling the separation transaction; and (iii) cancelling the participating noteholders’ notes in exchange for new notes. The supplemental indenture also added a new section to the indenture, which provided that upon consummation of the separation transaction, any guarantor that was a part of the studio business would be automatically released from its obligations under the notes guarantee. After the issuer completed these transactions, it designated 68 guarantor entities as “Unrestricted Subsidiaries” and provided notice to the notes trustee that 230 (of 243) legacy Lions Gate entities were released from the notes guarantee—leaving the legacy notes backed only by 13 Starz-related guarantors.

Plaintiffs—individual non-participating noteholders—commenced a lawsuit alleging that defendants (Legacy Lions Gate, the participating noteholders, other investors, and the notes trustee) had breached the sacred rights provisions, breached the implied covenant of good faith and fair dealing, and tortiously interfered with plaintiffs' contractual rights. Defendants filed motions to dismiss the complaints.

Litigation History Concerning LMEs

The dispute over the transactions in Lions Gate is part of a larger trend of litigation ensuing from liability management exercises, which have played a significant role in recent restructurings. In a typical LME, a debtor may give preferential treatment to a select group of debt holders in exchange for their support to eliminate restrictive covenants in the applicable debt agreements. Courts have reached varying conclusions on the legality of LMEs under the applicable sacred rights provisions.

Some courts have sustained challenges to LMEs, finding that non-participating creditors stated plausible claims based on alleged violations of sacred rights provisions. *See, e.g., In re Serta Simmons Bedding LLC*, 125 F.4th 555 (5th Cir. 2024); *Audax Credit Opp. Offshore Ltd. v. TMK Hawk Parent, Corp.*, 72 Misc.3d 1218(A) (N.Y. Sup. Ct. 2021). Some of these courts found breaches of the sacred rights provisions even where the amendments did not directly modify the sacred rights provisions. *See Axos Fin. Inc. v. STG Dist. LLC*, Index No. 650108/2025 (Sup. Ct. N.Y. Cnty. Jan. 3, 2026) (finding that multi-step transaction was part of a single integrated transaction, and denying motion to dismiss breach of contract claims based on alleged violations of sacred rights provisions).

By contrast, other courts have upheld the validity of LMEs, finding that they did not breach the applicable sacred rights provisions. *E.g., Ocean Trails CLO VII v. MLN Topco Ltd.*, 233 A.D.3d 614, 616 (1st Dept. 2024) (“*Mitel*”). These courts refused to find a breach where the effect of an amendment was “indirect” and where the amendment did not directly implicate the sacred right. *Id.* at 615. In virtually all of these cases, courts have emphasized that they are interpreting the plain language of the loan agreements at issue.

The Lions Gate Decision

The Court denied defendants' motions to dismiss based on the indenture's no-action clause and to dismiss claims based on the notes guarantee sacred rights provision—allowing these claims to proceed to trial. The Court dismissed plaintiffs' other claims alleging breach of sacred rights provisions and the implied covenant of good faith and fair dealing.

No-Action Clause Inapplicable. The Court first addressed defendants' arguments that plaintiffs lacked standing to pursue claims as individual noteholders due to the indenture's no-action

provision. Although the Court agreed that ordinary breach of contract claims are otherwise subject to the no-action clause, it found that “[t]he no-action clause should not be construed to apply to an effort by a minority holder to enforce its consent rights.” The Court found that applying a no-action clause in this dispute was not warranted because it would make enforcement of minority consent rights futile. However, the Court held that the no-action clause continues to bar ordinary breach of contract claims against Lions Gate that are not tied to those consent rights. The Court held that “the no-action clause ... barred all but the [sacred rights] breach of contract claims.”

The Notes Guarantee Sacred Rights Claims Survive. The Court held that plaintiffs stated a viable claim that the separation transaction violated the indenture, by releasing the guarantors constituting “substantially all of the value” of the notes guarantee without the consent of all affected holders. Specifically, the indenture precluded amendments that “modify the form of the Notes Guarantee in any manner adverse to the Holders or release the Guarantors constituting all or substantially all of the value of the Notes Guarantees of all Guarantors as a whole. . . .”

The Court held that plaintiffs sufficiently alleged that the supplemental indenture qualified as an “amendment, supplement or waiver” because that supplemental indenture added in a new provision that provided that the studio business guarantors were “automatically and unconditionally released.” Moreover, plaintiffs also alleged that the supplemental indenture granted the issuer a broader right to designate any subsidiary to be an “Unrestricted Subsidiary,” and therefore subject to removal as a guarantor.

In addition, the Court held that plaintiffs sufficiently alleged that these amendments modified the “form of Notes Guarantee,” which was an undefined term in the indenture. The Court found that the “form of Notes Guarantee” could reasonably be read to include the “basic structure and scope” of the indenture provisions governing the notes guarantees. The Court rejected the issuer’s argument that the “form of Notes Guarantee” was not amended because the amendments did not directly amend Section 10.01 of the indenture, which was entitled “Notes Guarantee.” However, the indenture’s sacred rights provision, unlike the provision at issue in *Mitel*, did not include a specific cross-reference to another section of the indenture and therefore the amendments arguably did modify the form of Notes Guarantee.

Finally, the Court held that plaintiffs adequately alleged that the supplemental indenture effectuated a release of guarantors constituting “all or substantially all of the value of the Notes Guarantees of the Guarantors as a whole.” Lions Gate disputed plaintiffs’ claims, arguing that plaintiffs improperly relied on the number of released studio guarantors and their relative market capitalization. Although the Court acknowledged that Lions Gate’s arguments may be credible, the Court found that its arguments raised factual issues that are more appropriately addressed through summary judgment motion. Accordingly, the Court found that the notes guarantee sacred rights claim survives dismissal.

Dismissal of Other Sacred Rights Claims. Plaintiffs also raised other breach of contract claims, alleging that the separation transaction and supplemental indenture had breached other sacred rights provisions. These included provisions requiring consent of all affected holders to amendments that (i) reduce principal of the notes, (ii) reduce the redemption premium or change the time for redemptions, or (iii) affect the holders' ability to enforce payment of their notes.

First, the Court dismissed plaintiffs' claims that the exchange offer with the participating noteholders effectively constituted a redemption or repurchase. The sacred rights provision regarding notes redemption specifically cross referenced section 3.07 of the indenture, which governed redemptions. However, the Court noted that the supplemental indenture did not amend section 3.07 and, in any event, the transaction involved an exchange offer (not a notes repurchase or redemption).

Second, the Court found that plaintiffs did not state a viable claim that defendants breached section 9.02(e)(6) of the indenture, which required the consent of all affected holders to amendments that modified the right of any holder to institute suit for the enforcement of payment of the notes. Plaintiffs argued that the deletion of certain events of default "*effectively amended*" the right of noteholders to sue for payment of the notes. The Court rejected this argument, finding that if the "parties had wanted an effective or functional amendment to be covered by a sacred rights provision, they could have used language to that affect." Because the parties used terms suggesting an "actual, textual amendment," the Court held that this sacred rights provision was not applicable.

Third, the Court dismissed plaintiffs' claims that the transactions breached a sacred rights provision that required the consent of all affected holders to amendments that reduce the principal of the notes. The Court found that any changes to the participating noteholders' notes were effected through a separate Exchange Agreement, rather than through an indenture amendment requiring unanimous consent. The Court found that the sacred rights provision was triggered only by an "actual, textual amendment" that reduced the principal or extended the maturity of any note. But there was no such amendment here: the Court held that the changes to the participating noteholders' notes were "entirely made via the Exchange Agreement," which resulted in the cancellation of the notes. In other words, the Court concluded that there was no amendment to the indenture that actually resulted in a reduction of principal.

Tortious Interference Claims Survive. Plaintiffs asserted tortious interference claims against Eagle Equity, which was an equity investor in the special purpose acquisition company. Plaintiffs alleged that Eagle Equity had tortiously interfered with the indenture by procuring breaches thereof in order to secure a substantial ownership stake in LG Studios free from any legacy liabilities. Tortious interference with a contract generally requires the defendant's "intentional procurement of the third-party's breach of the contract without justification, actual breach of the contract, and damages

resulting therefrom.” The Court found that plaintiffs had sufficiently alleged that Eagle Equity tortiously interfered with the indenture by intentionally procuring a breach thereof, noting that “these allegations, if proven, are sufficient to state a claim that Eagle Equity tortiously interfered with the indenture by intentionally procuring a breach thereof.”

Eagle Equity sought to dismiss these claims based on the economic interest defense, which generally protects actions to protect an entity’s legal or financial stake in the breaching party’s business. The Court found that this defense did not serve as a basis for dismissing plaintiffs’ claims because Eagle Equity allegedly did not have an economic interest in the legacy Lions Gate entities. On the contrary, Eagle Equity’s interests were solely in the special purpose acquisition company, which had acquired the studio business through the separation transaction. The Court therefore denied the motion to dismiss the tortious interference claims.

Breach of Implied Covenant Claims Dismissed. Plaintiffs alleged that the transactions violated the implied covenant of good faith and fair dealing, which generally requires that parties to the contract shall not do anything that has the effect of destroying or injuring the rights of the other party to receive the fruits of the contract. The Court dismissed this claim, finding that the implied covenant could not be used to expand carefully negotiated sacred rights protections or revive non-viable breach of contract claims. In addition, the Court found that dismissal of this claim was warranted because it was duplicative of the breach of contract claims; *i.e.*, the claim relied on the same operative facts and damages as the breach of contract claims.

Key Takeaways and Conclusions

- Courts have typically focused their LME analysis on the plain language of relevant credit agreements. Here, the Court allowed the plaintiffs to go forward with claims that the transaction violated contractual sacred rights where the supplemental indenture added new provisions to the indenture. Specifically, the supplemental indenture provided for the automatic release of guarantors and modified the issuer’s ability to designate its subsidiaries as “Unrestricted Subsidiaries.” These changes directly affected the holders’ rights under the guarantee. The Court determined that the non-participating holders had viable claims under the applicable sacred rights provisions.
- However, like the First Department in *Mitel*, the *Lions Gate* Court found that challenges based on the economics of a transaction should not implicate a sacred rights provision. Put another way, a sacred rights breach of contract claim might not be viable where the transaction does not directly amend any provisions governing the sacred right.
- The *Lions Gate* Court held that a no-action clause did not bar claims based on individual consent rights, but did bar ordinary breach of contract claims against the borrower. This is in contrast with the recent *STG Logistics* decision, which held that a no-action clause was

inapplicable where a demand on the administrative agent would be futile. The *STG* court found that demand futility could exist where an administrative agent acts to protect the rights of only the majority lenders, but not the non-participating lenders.

- Unlike the recent decision in *Wesco* in the U.S. District Court for the Southern District of Texas, the *Lions Gate* Court sustained the plaintiffs' tortious interference claims on the basis that the equity sponsor lacked an economic interest in the legacy *Lions Gate* entities. By contrast, the *Wesco* court found that plaintiffs' tortious interference claims were not viable because the majority lenders were acting to protect their financial interests. Although the facts of the *Lions Gate* decision are arguably distinguishable from other cases, the decision is notable for denying a motion to dismiss a tortious interference claim against an equity sponsor.

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