

Majority Opinion >

SUPREME COURT OF NEW YORK, APPELLATE  
DIVISION, FIRST DEPARTMENT

BML Properties Ltd., Plaintiff-Respondent, v China  
Construction America Inc., etc., et al., Defendants-  
Appellants, Does 1-10, et al., Defendants.

9800N 657550/17

July 2, 2019, Entered July 2, 2019, Decided  
THIS OPINION IS UNCORRECTED AND SUBJECT  
TO REVISION BEFORE PUBLICATION IN THE  
OFFICIAL REPORTS.

Squire Patton Boggs (US) LLP, New York (Mitchell R.  
Berger of counsel), for appellants.

Morrison Cohen LLP, New York (Malcolm I. Lewin of  
counsel), for respondent.

Richter, J.P., Tom, Gesmer, Kern, Moulton, JJ.

**[\*598]** Order, Supreme Court, New York County  
(Saliann Scarpulla, J.), entered on or about January  
24, 2019, which, to the extent appealed from as limited  
by the briefs, denied defendants' motion to compel  
arbitration, or, alternatively, to dismiss the causes of  
action for fraud, unanimously affirmed, without costs.

The court correctly denied the branch of  
defendants' motion seeking to compel arbitration  
because plaintiff was not a party to the agreement  
containing the arbitration clause and the claims at  
issue were, by separate agreement, required to be  
litigated in New York (*see Matter of Cammarata v  
InfoExchange, Inc.*, 122 AD3d 459 , 460 , 996 N.Y.S.2d  
266 [1st Dept 2014]; *Oxbow Calcining USA Inc. v  
American Indus. Partners*, 96 AD3d 646 , 649-650 ,

Plaintiff adequately stated a claim for fraud, by  
asserting justifiable reliance upon assurances,  
alleged to have been false when made, regarding  
the project's status, and the workforce and  
resources available to meet the deadline for  
completion of the project, which were collateral to,  
and not duplicative of plaintiff's claims for breach of  
contract (*see Deerfield Communications Corp. v  
Chesebrough-Ponds, Inc.*, 68 NY2d 954 , 956 , 502  
N.E.2d 1003 , 510 N.Y.S.2d 88 [1986]; *MBIA Ins.  
Corp. v Countrywide Home Loans, Inc.*, 87 AD3d 287 ,  
294 , 928 N.Y.S.2d 229 [1st Dept 2011]; *GoSmile, Inc.  
v Levine*, 81 AD3d 77 , 81 , 915 N.Y.S.2d 521 [1st Dept  
2010], *lv dismissed* 17 N.Y.3d 782 , 952 N.E.2d 1077 ,  
929 N.Y.S.2d 83 [2011]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION,  
FIRST DEPARTMENT.

ENTERED: JULY 2, 2019